

**As Introduced**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**H. B. No. 260**

**Representatives Denson, Weinstein**

**Cosponsors: Representatives Sykes, Boggs, Leland, O'Brien, Robinson, Smith, K., Boyd, Howse, Brent, Sweeney, Crossman, Miller, A., Lightbody, Brown, Liston, Russo, Crawley, Miranda, Galonski, Hicks-Hudson, Sobecki, Sheehy, West, Miller, J., Lepore-Hagan, Clites, Upchurch**

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**A BILL**

To amend sections 717.25, 1710.061, 3706.03, 1  
4905.31, 4906.20, 4906.201, 4928.01, 4928.02, 2  
4928.142, 4928.143, 4928.20, 4928.61, 4928.621, 3  
4928.64, 4928.643, 4928.645, 4928.65, 4928.66, 4  
4928.662, 4928.6612, and 5727.75; to enact 5  
sections 3706.40, 3706.42, 3706.44, 3706.46, 6  
3706.47, 3706.48, 3706.481, 3706.482, 3706.483, 7  
3706.484, 3706.485, 3706.486, 3706.50, 3706.51, 8  
3706.52, and 4928.663 of the Revised Code to 9  
maintain operations of certified clean air 10  
resources, establish the Ohio generation and 11  
jobs incentive program and the energy 12  
performance and waste reduction program, and 13  
make changes regarding wind turbine siting. 14

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

**Section 1.** That sections 717.25, 1710.061, 3706.03, 15  
4905.31, 4906.20, 4906.201, 4928.01, 4928.02, 4928.142, 16  
4928.143, 4928.20, 4928.61, 4928.621, 4928.64, 4928.643, 17

4928.645, 4928.65, 4928.66, 4928.662, 4928.6612, and 5727.75 be 18  
amended and sections 3706.40, 3706.42, 3706.44, 3706.46, 19  
3706.47, 3706.48, 3706.481, 3706.482, 3706.483, 3706.484, 20  
3706.485, 3706.486, 3706.50, 3706.51, 3706.52, and 4928.663 of 21  
the Revised Code be enacted to read as follows: 22

**Sec. 717.25.** (A) As used in this section: 23

(1) "Customer-generated energy project" means a wind, 24  
biomass, or gasification facility for the generation of 25  
electricity that meets either of the following requirements: 26

(a) The facility is designed to have a generating capacity 27  
of two hundred fifty kilowatts of electricity or less. 28

(b) The facility is: 29

(i) Designed to have a generating capacity of more than 30  
two hundred fifty kilowatts of electricity; 31

(ii) Operated in parallel with electric transmission and 32  
distribution facilities serving the real property at the site of 33  
the customer-generated energy project; 34

(iii) Intended primarily to offset part or all of the 35  
facility owner's requirements for electricity at the site of the 36  
customer-generated energy project and is located on the facility 37  
owner's real property; and 38

(iv) Not producing energy for direct sale by the facility 39  
owner to the public. 40

(2) "Electric distribution utility" and "mercantile 41  
customer" have the same meanings as in section 4928.01 of the 42  
Revised Code. 43

(3) "Reduction in demand" has the same meaning as in 44

section 1710.01 of the Revised Code. 45

(B) The legislative authority of a municipal corporation 46  
may establish a low-cost alternative energy revolving loan 47  
program to assist owners of real property within the municipal 48  
corporation with installing and implementing either of the 49  
following on their real property: 50

(1) Alternative energy technologies limited to solar 51  
photovoltaic projects, solar thermal energy projects, geothermal 52  
energy projects, and customer-generated energy projects; 53

(2) Energy ~~efficiency savings~~ technologies, products, and 54  
activities that reduce or support the reduction of energy 55  
consumption, allow for the reduction in demand, or support the 56  
production of clean, renewable energy. 57

(C) If the legislative authority decides to establish such 58  
a program, the legislative authority shall adopt an ordinance 59  
that provides for the following: 60

(1) Creation in the municipal treasury of an alternative 61  
energy revolving loan fund; 62

(2) A source of money, such as gifts, bond issues, real 63  
property assessments, or federal subsidies, to seed the 64  
alternative energy revolving loan fund; 65

(3) Facilities for making loans from the alternative 66  
energy revolving loan fund, including an explanation of how 67  
owners of real property within the municipal corporation may 68  
qualify for loans from the fund, a description of the 69  
alternative energy and energy efficiency technologies and 70  
related equipment for which a loan can be made from the fund, 71  
authorization of a municipal agency to process applications for 72  
loans and otherwise to administer the low-cost alternative 73

energy revolving loan program, a procedure whereby loans can be 74  
applied for, criteria for reviewing and accepting or denying 75  
applications for loans, criteria for determining the appropriate 76  
amount of a loan, the interest rate to be charged, the repayment 77  
schedule, and other terms and conditions of a loan, and 78  
procedures for collecting loans that are not repaid according to 79  
the repayment schedule; 80

(4) A specification that repayments of loans from the 81  
alternative energy revolving loan fund may be made in 82  
installments and, at the option of the real property owner 83  
repaying the loan, the installments may be paid and collected as 84  
if they were special assessments paid and collected in the 85  
manner specified in Chapter 727. of the Revised Code and as 86  
specified in the ordinance; 87

(5) A specification that repayments of loans from the 88  
alternative energy revolving loan fund are to be credited to the 89  
fund, that the money in the fund is to be invested pending its 90  
being lent out, and that investment earnings on the money in the 91  
fund are to be credited to the fund; and 92

(6) Other matters necessary and proper for efficient 93  
operation of the low-cost alternative energy revolving loan 94  
program as a means of encouraging use of alternative energy and 95  
energy efficiency technologies. 96

The interest rate charged on a loan from the alternative 97  
energy revolving loan fund shall be below prevailing market 98  
rates. The legislative authority may specify the interest rate 99  
in the ordinance or may, after establishing a standard in the 100  
ordinance whereby the interest rate can be specified, delegate 101  
authority to specify the interest rate to the administrator of 102  
loans from the alternative energy revolving loan fund. 103

The alternative energy revolving loan fund shall be seeded 104  
with sufficient money to enable loans to be made until the fund 105  
accumulates sufficient reserves through investment and repayment 106  
of loans for revolving operation. 107

(D) Except as provided in division (E) of this section, an 108  
electric distribution utility may count toward its compliance 109  
with the energy ~~efficiency performance and waste reduction~~ 110  
program and peak demand reduction requirements of section 111  
4928.66 of the Revised Code any energy ~~efficiency~~ savings or any 112  
reduction in demand that is produced by projects utilizing 113  
alternative energy technologies or energy ~~efficiency~~ savings 114  
technologies, products, and activities that are located in its 115  
certified territory and for which a loan has been made under 116  
this section. 117

(E) A mercantile customer that realizes energy ~~efficiency~~ 118  
savings or reduction in demand produced by alternative energy 119  
technologies or energy ~~efficiency~~ savings technologies, 120  
products, or activities that it owns and for which a loan has 121  
been made under this section may elect to commit the savings or 122  
reduction to the electric distribution utility in exchange for 123  
an exemption from an energy ~~efficiency~~ savings cost recovery 124  
mechanism permitted under section 4928.66 of the Revised Code, 125  
approved by the public utilities commission. 126

(F) The legislative authority shall submit a quarterly 127  
report to the electric distribution utility that includes, but 128  
is not limited to, both of the following: 129

(1) The number and a description of each new and ongoing 130  
project utilizing alternative energy technologies or energy 131  
~~efficiency~~ savings technologies, products, or activities located 132  
in the utility's certified territory that produces energy 133

~~efficiency~~ savings or reduction in demand and for which a loan 134  
has been made under this section; 135

(2) Any additional information that the electric 136  
distribution utility needs in order to obtain credit under 137  
section 4928.66 of the Revised Code for energy ~~efficiency~~- 138  
savings or reduction in demand from such projects. 139

**Sec. 1710.061.** (A) Except as provided in division (B) of 140  
this section, an electric distribution utility may count toward 141  
its compliance with the energy ~~efficiency~~-performance and waste 142  
reduction program and peak demand reduction requirements of 143  
section 4928.66 of the Revised Code any ~~efficiency~~-savings or 144  
reduction in demand produced by a special energy improvement 145  
project located in its certified territory. 146

(B) A mercantile customer that realizes energy ~~efficiency~~- 147  
savings or reduction in demand produced by a special energy 148  
improvement project that it owns may elect to commit the savings 149  
or reduction to the electric distribution utility in exchange 150  
for an exemption from an energy ~~efficiency~~-savings cost recovery 151  
mechanism permitted under section 4928.66 of the Revised Code, 152  
approved by the public utilities commission. 153

(C) The board of directors of a special improvement 154  
district shall submit a quarterly report to the electric 155  
distribution utility that includes, but is not limited to, both 156  
of the following: 157

(1) The total number and a description of each new and 158  
ongoing special energy improvement project located within the 159  
special improvement district that produces energy ~~efficiency~~- 160  
savings or reduction in demand; 161

(2) Any additional information that the electric 162

distribution utility needs in order to obtain credit under 163  
section 4928.66 of the Revised Code for energy ~~efficiency~~ 164  
savings or reduction in demand from such projects. 165

**Sec. 3706.03.** It is hereby declared to be the public 166  
policy of the state through the operations of the Ohio air 167  
quality development authority under this chapter to contribute 168  
toward one or more of the following: to provide for the 169  
conservation of air as a natural resource of the state, and to 170  
prevent or abate the pollution thereof, to provide for the 171  
comfort, health, safety, and general welfare of all employees, 172  
as well as all other inhabitants of the state, to assist in the 173  
financing of air quality facilities for industry, commerce, 174  
distribution, and research, including public utility companies, 175  
to create or preserve jobs and employment opportunities or 176  
improve the economic welfare of the people, or assist and 177  
cooperate with governmental agencies in achieving such purposes, 178  
and to maintain operations of certified clean air resources, as 179  
defined in section 3706.40 of the Revised Code, that, through 180  
continued operation, are expected to provide the greatest 181  
quantity of carbon-dioxide-free electric energy generation. In 182  
furtherance of such public policy the Ohio air quality 183  
development authority may initiate, acquire, construct, 184  
maintain, repair, and operate air quality projects or cause the 185  
same to be operated pursuant to a lease, sublease, or agreement 186  
with any person or governmental agency; may make loans and 187  
grants to governmental agencies for the acquisition or 188  
construction of air quality facilities by such governmental 189  
agencies; may make loans to persons for the acquisition or 190  
construction of air quality facilities by such persons; may 191  
enter into commodity contracts with, or make loans for the 192  
purpose of entering into commodity contracts to, any person, 193

governmental agency, or entity located within or without the 194  
state in connection with the acquisition or construction of air 195  
quality facilities; and may issue air quality revenue bonds of 196  
this state payable solely from revenues, to pay the cost of such 197  
projects, including any related commodity contracts. Any air 198  
quality project shall be determined by the authority to be not 199  
inconsistent with any applicable air quality standards duly 200  
established and then required to be met pursuant to the "Clean 201  
Air Act," 84 Stat. 1679 (1970), 42 U.S.C.A. 1857, as amended. 202  
Any resolution of the authority providing for acquiring or 203  
constructing such projects or for making a loan or grant for 204  
such projects shall include a finding by the authority that such 205  
determination has been made. Determinations by resolution of the 206  
authority that a project is an air quality facility under this 207  
chapter and is consistent with the purposes of section 13 of 208  
Article VIII, Ohio Constitution, and this chapter, shall be 209  
conclusive as to the validity and enforceability of the air 210  
quality revenue bonds issued to finance such project and of the 211  
resolutions, trust agreements or indentures, leases, subleases, 212  
sale agreements, loan agreements, and other agreements made in 213  
connection therewith, all in accordance with their terms. 214

Sec. 3706.40. As used in sections 3706.40 to 3706.52 of 215  
the Revised Code: 216

(A) "Clean air resource" means an electric generating 217  
facility in this state fueled by nuclear power and that 218  
satisfies all of the following criteria: 219

(1) The facility is not wholly or partially owned by a 220  
municipal or cooperative corporation or a group, association, or 221  
consortium of those corporations. 222

(2) The facility is not used to supply customers of a 223



<u>wholly owned municipal or cooperative corporation or a group,</u>	224
<u>association, or consortium of those corporations.</u>	225
<u>(3) Either of the following:</u>	226
<u>(a) The facility has made a significant historical</u>	227
<u>contribution to the air quality of the state by minimizing</u>	228
<u>emissions that result from electricity generated in this state.</u>	229
<u>(b) The facility will make a significant contribution</u>	230
<u>toward minimizing emissions that result from electric generation</u>	231
<u>in this state.</u>	232
<u>(4) The facility is interconnected with the transmission</u>	233
<u>grid that is subject to the operational control of PJM</u>	234
<u>interconnection, L.L.C., or its successor organization.</u>	235
<u>(5) The facility is a major utility facility in this state</u>	236
<u>as defined in section 4906.01 of the Revised Code.</u>	237
<u>(B) "Program year" means the twelve-month period beginning</u>	238
<u>the first day of June of a given year of the Ohio clean air</u>	239
<u>program and ending the thirty-first day of May of the following</u>	240
<u>year.</u>	241
<u>(C) "Electric distribution utility" and "renewable energy</u>	242
<u>resource" have the same meanings as in section 4928.01 of the</u>	243
<u>Revised Code.</u>	244
<u>(D) "Annual capacity factor" means the actual energy</u>	245
<u>produced in a year divided by the energy that would have been</u>	246
<u>produced if the facility was operating continuously at the</u>	247
<u>maximum rating.</u>	248
<u>(E) "Clean air credit" means a credit that represents the</u>	249
<u>clean air attributes of one megawatt hour of electric energy</u>	250
<u>produced from a certified clean air resource.</u>	251

<u>Sec. 3706.42. (A) (1) There is hereby created the Ohio</u>	252
<u>clean air program.</u>	253
<u>(2) The Ohio clean air program shall terminate on December</u>	254
<u>31, 2029.</u>	255
<u>(B) Any person owning or controlling an electric</u>	256
<u>generating facility that meets the definition of a clean air</u>	257
<u>resource in section 3706.40 of the Revised Code may submit a</u>	258
<u>written application with the Ohio air quality development</u>	259
<u>authority for certification as a clean air resource to be</u>	260
<u>eligible to participate in the Ohio clean air program.</u>	261
<u>Applications shall be submitted by the first day of February for</u>	262
<u>any program year beginning the first day of June of the same</u>	263
<u>calendar year.</u>	264
<u>(C) Applications shall include all of the following</u>	265
<u>information:</u>	266
<u>(1) The in-service date and estimated remaining useful</u>	267
<u>life of the resource;</u>	268
<u>(2) For an existing resource, the quantity of megawatt</u>	269
<u>hours generated by the resource annually during each of the</u>	270
<u>previous five calendar years during which the resource was</u>	271
<u>generating, and the annual capacity factor for each of those</u>	272
<u>calendar years;</u>	273
<u>(3) A forecast estimate of the annual quantity of megawatt</u>	274
<u>hours to be generated by the resource and the projected annual</u>	275
<u>capacity factor over the remaining useful life of the resource;</u>	276
<u>(4) A forecast estimate of the emissions that would occur</u>	277
<u>in this state during the remaining useful life of the resource</u>	278
<u>if the resource discontinued operations prior to the end of the</u>	279
<u>resource's useful life;</u>	280

<u>(5) Verified documentation demonstrating all of the</u>	281
<u>following:</u>	282
<u>(a) That certification as a clean air resource and</u>	283
<u>participation in the Ohio clean air program will permit the</u>	284
<u>resource to reduce future emissions per unit of electrical</u>	285
<u>energy generated in this state;</u>	286
<u>(b) That without certification as a clean air resource,</u>	287
<u>the positive contributions to the air quality of this state that</u>	288
<u>the resource has made and is capable of making in the future may</u>	289
<u>be diminished or eliminated;</u>	290
<u>(c) That the clean air resource or reduced emissions</u>	291
<u>resource meets the definition of a clean air resource or reduced</u>	292
<u>emissions resource, as applicable, in section 3706.40 of the</u>	293
<u>Revised Code;</u>	294
<u>(d) That the person seeking certification owns or controls</u>	295
<u>the resource.</u>	296
<u>(6) The resource's nameplate capacity;</u>	297
<u>(7) Any other data or information that the authority</u>	298
<u>requests and determines is necessary to evaluate an application</u>	299
<u>for certification as a clean air resource or to demonstrate that</u>	300
<u>certification would be in the public interest.</u>	301
<u>(D) The authority shall post on the authority's web site</u>	302
<u>all applications and nonconfidential supporting materials</u>	303
<u>submitted under this section.</u>	304
<u>(E) Interested persons may file comments not later than</u>	305
<u>twenty days after the date that an application is posted on the</u>	306
<u>authority's web site. All comments shall be posted on the</u>	307
<u>authority's web site. An applicant may respond to those comments</u>	308

not later than ten days thereafter. 309

Sec. 3706.44. (A) (1) On or before the thirty-first day of 310  
March, the Ohio air quality development authority shall review 311  
all applications timely submitted under section 3706.42 of the 312  
Revised Code and issue an order certifying a clean air resource 313  
that meets the definition of a clean air resource in section 314  
3706.40 of the Revised Code. 315

(2) Except as provided in division (D) of this section, a 316  
clean air resource shall remain certified as a clean air 317  
resource as long as the resource continues to meet the 318  
definition of a clean air resource in section 3706.40 of the 319  
Revised Code. 320

(B) In the event the authority does not issue an order 321  
under division (A) of this section by the thirty-first day of 322  
March, each electric generating facility included in a timely 323  
and properly filed application shall be deemed a clean air 324  
resource. 325

(C) (1) The authority may decertify a clean air resource at 326  
any time if it determines that certification is not in the 327  
public interest. 328

(2) Before decertifying a clean air resource, the 329  
authority shall do both of the following: 330

(a) Allow the resource to provide additional information 331  
in support of remaining certified; 332

(b) Hold a public hearing and allow for public comment. 333

(D) If a certified clean air resource or certified reduced 334  
emissions resource is participating in the Ohio clean air 335  
program and is sold to a new owner, the new owner shall apply 336

under section 3706.42 of the Revised Code to the authority for 337  
certification as a clean air resource or reduced emissions 338  
resource to be eligible to participate in the Ohio clean air 339  
program. 340

**Sec. 3706.46.** (A) For the purpose of funding benefits 341  
provided by the Ohio clean air program, there is hereby created 342  
the Ohio clean air program fund. The fund shall be in the 343  
custody of the state treasurer but shall not be part of the 344  
state treasury. The fund shall consist of the charges under 345  
section 3706.47 of the Revised Code. All interest generated by 346  
the fund shall be retained in the fund and used for the purpose 347  
of funding the Ohio clean air program. 348

(B) The treasurer shall distribute the moneys in the Ohio 349  
clean air program fund in accordance with the directions 350  
provided by the Ohio air quality development authority. 351

**Sec. 3706.47.** (A) Beginning January 1, 2020, and until 352  
December 31, 2029, each retail electric customer of an electric 353  
distribution utility in this state shall pay a per-account 354  
monthly charge, which may vary by customer class and shall be 355  
billed and collected by each electric distribution utility and 356  
remitted to the state treasurer for deposit into the Ohio clean 357  
air program fund, created under section 3706.46 of the Revised 358  
Code. 359

(B) The monthly charges under division (A) of this section 360  
shall be established by the public utilities commission in 361  
accordance with the information provided by the Ohio air quality 362  
development authority from the financial disclosures submitted 363  
under section 3706.486 of the Revised Code. The commission shall 364  
periodically review the charges based on information provided by 365  
the authority from the most recent financial disclosures 366

submitted, to determine the continued need for the charges and 367  
whether the charges are reasonable. 368

(C) The monthly charges established in division (B) of 369  
this section shall not exceed the following: 370

(1) For customers classified by the utility as 371  
residential, one dollar and twenty five cents. 372

(2) For customers classified by the utility as commercial, 373  
fifteen dollars. 374

(3) For customers classified by the utility as industrial, 375  
two hundred dollars. 376

(D) The charges required to be collected under divisions 377  
(A) and (B) of this section shall cease upon reaching a total 378  
amount of one hundred sixty million dollars in the Ohio clean 379  
air program fund created under section 3706.46 of the Revised 380  
Code as enacted in ...B... of the 133rd General Assembly. 381

**Sec. 3706.48.** Each owner of a certified clean air resource 382  
shall report to the Ohio air quality development authority, not 383  
later than seven days after the close of each month during a 384  
program year, the number of megawatt hours the resource produced 385  
in the previous month. 386

**Sec. 3706.481.** A certified clean air resource shall earn a 387  
clean air credit for each megawatt hour of electricity it 388  
produces. 389

**Sec. 3706.482.** (A) (1) Not later than fourteen days after 390  
the close of each month during a program year, the Ohio air 391  
quality development authority shall direct the treasurer of 392  
state to remit money from the Ohio clean air program fund, as 393  
long as there is sufficient money in the fund, to each owner of 394

a certified clean air resource in the amount equivalent to the 395  
number of credits earned by the resource during the previous 396  
month multiplied by the credit price. 397

(2) If the money in the Ohio clean air program fund is 398  
insufficient to pay for all the credits earned by a resource, 399  
the unpaid credits shall be paid first in the next monthly 400  
payment period. 401

(B) The price for each clean air credit shall be 402  
established by the authority in accordance with the information 403  
from the financial disclosures submitted under section 3706.486 404  
of the Revised Code. The authority shall adjust the price as it 405  
determines necessary based on the most recent financial 406  
disclosures submitted. 407

**Sec. 3706.483.** The Ohio air quality development authority 408  
shall adopt rules to provide for this state a system of 409  
registering clean air credits by specifying that the generation 410  
attribute tracking system may be used for that purpose and not 411  
by creating a registry. 412

**Sec. 3706.484.** A certified clean air resource that 413  
receives a clean air credit shall be ineligible to receive a 414  
renewable energy credit under section 4928.645 of the Revised 415  
Code for the same megawatt hour of electricity. This section 416  
shall not be construed to prohibit a resource from purchasing or 417  
selling a renewable energy credit in another state. 418

**Sec. 3706.485.** The money remitted to an owner of a 419  
certified clean air resource under section 3706.482 of the 420  
Revised Code shall be used only for the operation and 421  
maintenance of the resource and to cover any shortfalls 422  
regarding that operation or maintenance, including shortfalls 423

for employee wages, salaries, and benefits. The remitted money 424  
shall not be applied to subsidize any profit, return on 425  
investment, or earned rate of return. 426

**Sec. 3706.486.** (A) Each owner of a certified clean air 427  
resource shall submit, beginning on July 1, 2021, and on the 428  
date that is every six months thereafter, a financial disclosure 429  
to the Ohio air quality development authority, providing 430  
financial information regarding the operation and maintenance of 431  
the resource, including employee wages, salaries, and benefits, 432  
demonstrating compliance with the requirements of section 433  
3706.485 of the Revised Code, and providing any other financial 434  
information required under rules adopted by the authority. 435

(B) The authority shall provide information from the 436  
financial disclosures to the public utilities commission for the 437  
commission's purposes under section 3706.47 of the Revised Code. 438

(C) The authority, not later than ninety days after the 439  
effective date of this section, shall adopt rules under Chapter 440  
119. of the Revised Code governing the financial disclosures 441  
required under this section. 442

**Sec. 3706.50.** (A) The Ohio air quality development 443  
authority shall conduct an annual audit of the Ohio clean air 444  
program. 445

(B) Not later than ninety days after the effective date of 446  
this section, the authority shall adopt rules that are necessary 447  
to begin implementation of the Ohio clean air program. The rules 448  
adopted under this division shall include provisions for both of 449  
the following: 450

(1) Tracking the number of clean air credits earned by 451  
each certified clean air resource during each month of a program 452



year, based on the information reported under section 3706.48 of 453  
the Revised Code; 454

(2) The annual audit required under division (A) of this 455  
section. 456

(C) Not later than two hundred seventy-five days after the 457  
effective date of this section, the authority shall adopt rules 458  
that are necessary for the further implementation and 459  
administration of the Ohio clean air program. 460

**Sec. 3706.51.** Any owner of a clean air resource receiving 461  
clean air credits shall annually, beginning February 1, 2021, 462  
provide to the governor, the general assembly, and the Ohio air 463  
quality development authority a report of the following 464  
information for the prior calendar year: 465

(A) The amount of jobs created in this state by the 466  
resource, and the wage and salary ranges of the jobs; 467

(B) The amount of carbon dioxide emissions prevented due 468  
to the use of the resource; 469

(C) Annual tax disbursements to or from the state and any 470  
political subdivision of the state; 471

(D) The number of megawatts of electricity produced and 472  
sold by the resource and the price per megawatt hour received by 473  
the resource. 474

**Sec. 3706.52.** (A) Notwithstanding section 4905.32 of the 475  
Revised Code, if a certified clean air resource or certified 476  
reduced emissions resource closes or is sold prior to the 477  
termination of the Ohio clean air program, the charges paid 478  
under section 3706.47 of the Revised Code shall be refunded to 479  
the customers that paid the charges. 480

(B) Not later than ninety days after the effective date of 481  
this section, the public utilities commission, in consultation 482  
with the consumers' counsel, shall adopt rules to determine the 483  
disbursement of refunds under division (A) of this section. 484

**Sec. 4905.31.** Chapters 4901., 4903., 4905., 4907., 4909., 485  
4921., 4923., 4927., 4928., and 4929. of the Revised Code do not 486  
prohibit a public utility from filing a schedule or establishing 487  
or entering into any reasonable arrangement with another public 488  
utility or with one or more of its customers, consumers, or 489  
employees, and do not prohibit a mercantile customer of an 490  
electric distribution utility as those terms are defined in 491  
section 4928.01 of the Revised Code or a group of those 492  
customers from establishing a reasonable arrangement with that 493  
utility or another public utility electric light company, 494  
providing for any of the following: 495

(A) The division or distribution of its surplus profits; 496

(B) A sliding scale of charges, including variations in 497  
rates based upon stipulated variations in cost as provided in 498  
the schedule or arrangement. 499

(C) A minimum charge for service to be rendered unless 500  
such minimum charge is made or prohibited by the terms of the 501  
franchise, grant, or ordinance under which such public utility 502  
is operated; 503

(D) A classification of service based upon the quantity 504  
used, the time when used, the purpose for which used, the 505  
duration of use, and any other reasonable consideration; 506

(E) Any other financial device that may be practicable or 507  
advantageous to the parties interested. In the case of a 508  
schedule or arrangement concerning a public utility electric 509

light company, such other financial device may include a device 510  
to recover costs incurred in conjunction with any economic 511  
development and job retention program of the utility within its 512  
certified territory, including recovery of revenue ~~foregone~~ 513  
forgone as a result of any such program; any development and 514  
implementation of peak demand reduction and energy ~~efficiency~~ 515  
performance and waste reduction programs under section 4928.66 516  
of the Revised Code; any acquisition and deployment of advanced 517  
metering, including the costs of any meters prematurely retired 518  
as a result of the advanced metering implementation; and 519  
compliance with any government mandate. 520

No such schedule or arrangement is lawful unless it is 521  
filed with and approved by the commission pursuant to an 522  
application that is submitted by the public utility or the 523  
mercantile customer or group of mercantile customers of an 524  
electric distribution utility and is posted on the commission's 525  
docketing information system and is accessible through the 526  
internet. 527

Every such public utility is required to conform its 528  
schedules of rates, tolls, and charges to such arrangement, 529  
sliding scale, classification, or other device, and where 530  
variable rates are provided for in any such schedule or 531  
arrangement, the cost data or factors upon which such rates are 532  
based and fixed shall be filed with the commission in such form 533  
and at such times as the commission directs. 534

Every such schedule or reasonable arrangement shall be 535  
under the supervision and regulation of the commission, and is 536  
subject to change, alteration, or modification by the 537  
commission. 538

**Sec. 4906.20.** (A) No person shall commence to construct an 539

economically significant wind farm in this state without first 540  
having obtained a certificate from the power siting board. An 541  
economically significant wind farm with respect to which such a 542  
certificate is required shall be constructed, operated, and 543  
maintained in conformity with that certificate and any terms, 544  
conditions, and modifications it contains. A certificate shall 545  
be issued only pursuant to this section. The certificate may be 546  
transferred, subject to the approval of the board, to a person 547  
that agrees to comply with those terms, conditions, and 548  
modifications. 549

(B) The board shall adopt rules governing the 550  
certificating of economically significant wind farms under this 551  
section. Initial rules shall be adopted within one hundred 552  
twenty days after June 24, 2008. 553

(1) The rules shall provide for an application process for 554  
certificating economically significant wind farms that is 555  
identical to the extent practicable to the process applicable to 556  
certificating major utility facilities under sections 4906.06, ~~557~~  
~~4906.07, 4906.08, 4906.09, 4906.10, 4906.11, and~~ to 4906.12 of 558  
the Revised Code and shall prescribe a reasonable schedule of 559  
application filing fees structured in the manner of the schedule 560  
of filing fees required for major utility facilities. 561

(2) Additionally, the rules shall prescribe reasonable 562  
regulations regarding any wind turbines and associated 563  
facilities of an economically significant wind farm, including, 564  
but not limited to, their location, erection, construction, 565  
reconstruction, change, alteration, maintenance, removal, use, 566  
or enlargement and including erosion control, aesthetics, 567  
recreational land use, wildlife protection, interconnection with 568  
power lines and with regional transmission organizations, 569

independent transmission system operators, or similar 570  
organizations, ice throw, sound and noise levels, blade shear, 571  
shadow flicker, decommissioning, and necessary cooperation for 572  
site visits and enforcement investigations. 573

(a) The rules also shall prescribe a minimum setback for a 574  
wind turbine of an economically significant wind farm. That 575  
minimum shall be equal to a horizontal distance, from the 576  
turbine's base to the property line of the wind farm property, 577  
equal to one and one-tenth times the total height of the turbine 578  
structure as measured from its base to the tip of its highest 579  
blade and be at least one thousand one hundred twenty-five feet 580  
in horizontal distance from the tip of the turbine's nearest 581  
blade at ninety degrees to ~~property line~~ the exterior of the 582  
nearest habitable residential structure, if any, located on 583  
adjacent property at the time of the certification application. 584

(b) (i) For any existing certificates and amendments 585  
thereto, and existing certification applications that have been 586  
found by the chairperson to be in compliance with division (A) 587  
of section 4906.06 of the Revised Code before the effective date 588  
of the amendment of this section by H.B. 59 of the 130th general 589  
assembly, September 29, 2013, the distance shall be seven 590  
hundred fifty feet instead of one thousand one hundred twenty- 591  
five feet. 592

(ii) Any amendment made to an existing certificate after 593  
the effective date of the amendment of this section by H.B. 483 594  
of the 130th general assembly, September 15, 2014, and before 595  
the effective date of the amendment of this section by H.B. 6 of 596  
the 133rd general assembly shall be subject to the setback 597  
provision of this section as amended by ~~that act~~ H.B. 483 of the 598  
130th general assembly. The amendments to this section by ~~that~~ 599

~~act~~ H.B. 483 of the 130th general assembly shall not be 600  
construed to limit or abridge any rights or remedies in equity 601  
or under the common law. 602

(iii) Any amendment made to an existing certificate after 603  
the effective date of the amendment of this section by H.B. 6 of 604  
the 133rd general assembly shall be subject to the setback 605  
provision of this section as amended by that act. The amendments 606  
to this section by that act shall not be construed to limit or 607  
abridge any rights or remedies in equity or under the common 608  
law. 609

(c) The setback shall apply in all cases except those in 610  
which all owners of property adjacent to the wind farm property 611  
waive application of the setback to that property pursuant to a 612  
procedure the board shall establish by rule and except in which, 613  
in a particular case, the board determines that a setback 614  
greater than the minimum is necessary. 615

**Sec. 4906.201.** (A) An electric generating plant that 616  
consists of wind turbines and associated facilities with a 617  
single interconnection to the electrical grid that is designed 618  
for, or capable of, operation at an aggregate capacity of fifty 619  
megawatts or more is subject to the minimum setback requirements 620  
established in rules adopted by the power siting board under 621  
division (B) (2) of section 4906.20 of the Revised Code. 622

(B) (1) For any existing certificates and amendments 623  
thereto, and existing certification applications that have been 624  
found by the chairperson to be in compliance with division (A) 625  
of section 4906.06 of the Revised Code before the effective date 626  
of the amendment of this section by H.B. 59 of the 130th general 627  
assembly, September 29, 2013, the distance shall be seven 628  
hundred fifty feet instead of one thousand one hundred twenty- 629

five feet. 630

(2) Any amendment made to an existing certificate after 631  
the effective date of the amendment of this section by H.B. 483 632  
of the 130th general assembly, September 15, 2014, and before 633  
the effective date of the amendment of this section by H.B. 6 of 634  
the 133rd general assembly shall be subject to the setback 635  
provision of this section as amended by ~~that act~~ H.B. 483 of the 636  
130th general assembly. The amendments to this section by ~~that~~ 637  
~~act~~ H.B. 483 of the 130th general assembly shall not be 638  
construed to limit or abridge any rights or remedies in equity 639  
or under the common law. 640

(3) Any amendment made to an existing certificate after 641  
the effective date of the amendment of this section by H.B. 6 of 642  
the 133rd general assembly shall be subject to the setback 643  
provision of this section as amended by that act. The amendments 644  
to this section by that act shall not be construed to limit or 645  
abridge any rights or remedies in equity or under common law. 646

**Sec. 4928.01.** (A) As used in this chapter: 647

(1) "Ancillary service" means any function necessary to 648  
the provision of electric transmission or distribution service 649  
to a retail customer and includes, but is not limited to, 650  
scheduling, system control, and dispatch services; reactive 651  
supply from generation resources and voltage control service; 652  
reactive supply from transmission resources service; regulation 653  
service; frequency response service; energy imbalance service; 654  
operating reserve-spinning reserve service; operating reserve- 655  
supplemental reserve service; load following; back-up supply 656  
service; real-power loss replacement service; dynamic 657  
scheduling; system black start capability; and network stability 658  
service. 659

(2) "Billing and collection agent" means a fully 660  
independent agent, not affiliated with or otherwise controlled 661  
by an electric utility, electric services company, electric 662  
cooperative, or governmental aggregator subject to certification 663  
under section 4928.08 of the Revised Code, to the extent that 664  
the agent is under contract with such utility, company, 665  
cooperative, or aggregator solely to provide billing and 666  
collection for retail electric service on behalf of the utility 667  
company, cooperative, or aggregator. 668

(3) "Certified territory" means the certified territory 669  
established for an electric supplier under sections 4933.81 to 670  
4933.90 of the Revised Code. 671

(4) "Competitive retail electric service" means a 672  
component of retail electric service that is competitive as 673  
provided under division (B) of this section. 674

(5) "Electric cooperative" means a not-for-profit electric 675  
light company that both is or has been financed in whole or in 676  
part under the "Rural Electrification Act of 1936," 49 Stat. 677  
1363, 7 U.S.C. 901, and owns or operates facilities in this 678  
state to generate, transmit, or distribute electricity, or a 679  
not-for-profit successor of such company. 680

(6) "Electric distribution utility" means an electric 681  
utility that supplies at least retail electric distribution 682  
service. 683

(7) "Electric light company" has the same meaning as in 684  
section 4905.03 of the Revised Code and includes an electric 685  
services company, but excludes any self-generator to the extent 686  
that it consumes electricity it so produces, sells that 687  
electricity for resale, or obtains electricity from a generating 688



facility it hosts on its premises. 689

(8) "Electric load center" has the same meaning as in 690  
section 4933.81 of the Revised Code. 691

(9) "Electric services company" means an electric light 692  
company that is engaged on a for-profit or not-for-profit basis 693  
in the business of supplying or arranging for the supply of only 694  
a competitive retail electric service in this state. "Electric 695  
services company" includes a power marketer, power broker, 696  
aggregator, or independent power producer but excludes an 697  
electric cooperative, municipal electric utility, governmental 698  
aggregator, or billing and collection agent. 699

(10) "Electric supplier" has the same meaning as in 700  
section 4933.81 of the Revised Code. 701

(11) "Electric utility" means an electric light company 702  
that has a certified territory and is engaged on a for-profit 703  
basis either in the business of supplying a noncompetitive 704  
retail electric service in this state or in the businesses of 705  
supplying both a noncompetitive and a competitive retail 706  
electric service in this state. "Electric utility" excludes a 707  
municipal electric utility or a billing and collection agent. 708

(12) "Firm electric service" means electric service other 709  
than nonfirm electric service. 710

(13) "Governmental aggregator" means a legislative 711  
authority of a municipal corporation, a board of township 712  
trustees, or a board of county commissioners acting as an 713  
aggregator for the provision of a competitive retail electric 714  
service under authority conferred under section 4928.20 of the 715  
Revised Code. 716

(14) A person acts "knowingly," regardless of the person's 717

purpose, when the person is aware that the person's conduct will 718  
probably cause a certain result or will probably be of a certain 719  
nature. A person has knowledge of circumstances when the person 720  
is aware that such circumstances probably exist. 721

(15) "Level of funding for low-income customer energy 722  
efficiency programs provided through electric utility rates" 723  
means the level of funds specifically included in an electric 724  
utility's rates on October 5, 1999, pursuant to an order of the 725  
public utilities commission issued under Chapter 4905. or 4909. 726  
of the Revised Code and in effect on October 4, 1999, for the 727  
purpose of improving the energy efficiency of housing for the 728  
utility's low-income customers. The term excludes the level of 729  
any such funds committed to a specific nonprofit organization or 730  
organizations pursuant to a stipulation or contract. 731

(16) "Low-income customer assistance programs" means the 732  
percentage of income payment plan program, the home energy 733  
assistance program, the home weatherization assistance program, 734  
and the targeted energy efficiency and weatherization program. 735

(17) "Market development period" for an electric utility 736  
means the period of time beginning on the starting date of 737  
competitive retail electric service and ending on the applicable 738  
date for that utility as specified in section 4928.40 of the 739  
Revised Code, irrespective of whether the utility applies to 740  
receive transition revenues under this chapter. 741

(18) "Market power" means the ability to impose on 742  
customers a sustained price for a product or service above the 743  
price that would prevail in a competitive market. 744

(19) "Mercantile customer" means a commercial or 745  
industrial customer if the electricity consumed is for 746

nonresidential use and the customer consumes more than seven 747  
hundred thousand kilowatt hours per year or is part of a 748  
national account involving multiple facilities in one or more 749  
states. 750

(20) "Municipal electric utility" means a municipal 751  
corporation that owns or operates facilities to generate, 752  
transmit, or distribute electricity. 753

(21) "Noncompetitive retail electric service" means a 754  
component of retail electric service that is noncompetitive as 755  
provided under division (B) of this section. 756

(22) "Nonfirm electric service" means electric service 757  
provided pursuant to a schedule filed under section 4905.30 of 758  
the Revised Code or pursuant to an arrangement under section 759  
4905.31 of the Revised Code, which schedule or arrangement 760  
includes conditions that may require the customer to curtail or 761  
interrupt electric usage during nonemergency circumstances upon 762  
notification by an electric utility. 763

(23) "Percentage of income payment plan arrears" means 764  
funds eligible for collection through the percentage of income 765  
payment plan rider, but uncollected as of July 1, 2000. 766

(24) "Person" has the same meaning as in section 1.59 of 767  
the Revised Code. 768

(25) "Advanced energy project" means any technologies, 769  
products, activities, or management practices or strategies that 770  
facilitate the generation or use of electricity or energy and 771  
that reduce or support the reduction of energy consumption or 772  
support the production of clean, renewable energy for 773  
industrial, distribution, commercial, institutional, 774  
governmental, research, not-for-profit, or residential energy 775

users, including, but not limited to, advanced energy resources 776  
and renewable energy resources. "Advanced energy project" also 777  
includes any project described in division (A), (B), or (C) of 778  
section 4928.621 of the Revised Code. 779

(26) "Regulatory assets" means the unamortized net 780  
regulatory assets that are capitalized or deferred on the 781  
regulatory books of the electric utility, pursuant to an order 782  
or practice of the public utilities commission or pursuant to 783  
generally accepted accounting principles as a result of a prior 784  
commission rate-making decision, and that would otherwise have 785  
been charged to expense as incurred or would not have been 786  
capitalized or otherwise deferred for future regulatory 787  
consideration absent commission action. "Regulatory assets" 788  
includes, but is not limited to, all deferred demand-side 789  
management costs; all deferred percentage of income payment plan 790  
arrears; post-in-service capitalized charges and assets 791  
recognized in connection with statement of financial accounting 792  
standards no. 109 (receivables from customers for income taxes); 793  
future nuclear decommissioning costs and fuel disposal costs as 794  
those costs have been determined by the commission in the 795  
electric utility's most recent rate or accounting application 796  
proceeding addressing such costs; the undepreciated costs of 797  
safety and radiation control equipment on nuclear generating 798  
plants owned or leased by an electric utility; and fuel costs 799  
currently deferred pursuant to the terms of one or more 800  
settlement agreements approved by the commission. 801

(27) "Retail electric service" means any service involved 802  
in supplying or arranging for the supply of electricity to 803  
ultimate consumers in this state, from the point of generation 804  
to the point of consumption. For the purposes of this chapter, 805  
retail electric service includes one or more of the following 806

"service components": generation service, aggregation service, 807  
power marketing service, power brokerage service, transmission 808  
service, distribution service, ancillary service, metering 809  
service, and billing and collection service. 810

(28) "Starting date of competitive retail electric 811  
service" means January 1, 2001. 812

(29) "Customer-generator" means a user of a net metering 813  
system. 814

(30) "Net metering" means measuring the difference in an 815  
applicable billing period between the electricity supplied by an 816  
electric service provider and the electricity generated by a 817  
customer-generator that is fed back to the electric service 818  
provider. 819

(31) "Net metering system" means a facility for the 820  
production of electrical energy that does all of the following: 821

(a) Uses as its fuel either solar, wind, biomass, landfill 822  
gas, or hydropower, or uses a microturbine or a fuel cell; 823

(b) Is located on a customer-generator's premises; 824

(c) Operates in parallel with the electric utility's 825  
transmission and distribution facilities; 826

(d) Is intended primarily to offset part or all of the 827  
customer-generator's requirements for electricity. 828

(32) "Self-generator" means an entity in this state that 829  
owns or hosts on its premises an electric generation facility 830  
that produces electricity primarily for the owner's consumption 831  
and that may provide any such excess electricity to another 832  
entity, whether the facility is installed or operated by the 833  
owner or by an agent under a contract. 834

(33) "Rate plan" means the standard service offer in effect on the effective date of the amendment of this section by S.B. 221 of the 127th general assembly, July 31, 2008.

(34) "Advanced energy resource" means any of the following:

(a) Any method or any modification or replacement of any property, process, device, structure, or equipment that increases the generation output of an electric generating facility to the extent such efficiency is achieved without additional carbon dioxide emissions by that facility;

(b) Any distributed generation system consisting of customer cogeneration technology;

(c) Clean coal technology that includes a carbon-based product that is chemically altered before combustion to demonstrate a reduction, as expressed as ash, in emissions of nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or sulfur trioxide in accordance with the American society of testing and materials standard D1757A or a reduction of metal oxide emissions in accordance with standard D5142 of that society, or clean coal technology that includes the design capability to control or prevent the emission of carbon dioxide, which design capability the commission shall adopt by rule and shall be based on economically feasible best available technology or, in the absence of a determined best available technology, shall be of the highest level of economically feasible design capability for which there exists generally accepted scientific opinion;

(d) Advanced nuclear energy technology consisting of generation III technology as defined by the nuclear regulatory

commission; other, later technology; or significant improvements 864  
to existing facilities; 865

(e) Any fuel cell used in the generation of electricity, 866  
including, but not limited to, a proton exchange membrane fuel 867  
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 868  
solid oxide fuel cell; 869

(f) Advanced solid waste or construction and demolition 870  
debris conversion technology, including, but not limited to, 871  
advanced stoker technology, and advanced fluidized bed 872  
gasification technology, that results in measurable greenhouse 873  
gas emissions reductions as calculated pursuant to the United 874  
States environmental protection agency's waste reduction model 875  
(WARM); 876

(g) Demand-side management and any energy ~~efficiency~~ 877  
performance and waste reduction improvement; 878

(h) Any new, retrofitted, refueled, or repowered 879  
generating facility located in Ohio, including a simple or 880  
combined-cycle natural gas generating facility or a generating 881  
facility that uses biomass, coal, modular nuclear, or any other 882  
fuel as its input; 883

(i) Any uprated capacity of an existing electric 884  
generating facility if the uprated capacity results from the 885  
deployment of advanced technology. 886

"Advanced energy resource" does not include a waste energy 887  
recovery system that is, or has been, included in an energy 888  
~~efficiency performance and waste reduction~~ program of an 889  
electric distribution utility pursuant to ~~requirements~~ standards 890  
under section 4928.66 of the Revised Code. 891

(35) "Air contaminant source" has the same meaning as in 892

section 3704.01 of the Revised Code.	893
(36) "Cogeneration technology" means technology that produces electricity and useful thermal output simultaneously.	894 895
(37) (a) "Renewable energy resource" means any of the following:	896 897
(i) Solar photovoltaic or solar thermal energy;	898
(ii) Wind energy;	899
(iii) Power produced by a hydroelectric facility;	900
(iv) Power produced by a small hydroelectric facility, which is a facility that operates, or is rated to operate, at an aggregate capacity of less than six megawatts;	901 902 903
(v) Power produced by a run-of-the-river hydroelectric facility placed in service on or after January 1, 1980, that is located within this state, relies upon the Ohio river, and operates, or is rated to operate, at an aggregate capacity of forty or more megawatts;	904 905 906 907 908
(vi) Geothermal energy;	909
(vii) Fuel derived from solid wastes, as defined in section 3734.01 of the Revised Code, through fractionation, biological decomposition, or other process that does not principally involve combustion;	910 911 912 913
(viii) Biomass energy;	914
(ix) Energy produced by cogeneration technology that is placed into service on or before December 31, 2015, and for which more than ninety per cent of the total annual energy input is from combustion of a waste or byproduct gas from an air contaminant source in this state, which source has been in	915 916 917 918 919



operation since on or before January 1, 1985, provided that the cogeneration technology is a part of a facility located in a county having a population of more than three hundred sixty-five thousand but less than three hundred seventy thousand according to the most recent federal decennial census;

(x) Biologically derived methane gas;

(xi) Heat captured from a generator of electricity, boiler, or heat exchanger fueled by biologically derived methane gas;

(xii) Energy derived from nontreated by-products of the pulping process or wood manufacturing process, including bark, wood chips, sawdust, and lignin in spent pulping liquors.

"Renewable energy resource" includes, but is not limited to, any fuel cell used in the generation of electricity, including, but not limited to, a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell; wind turbine located in the state's territorial waters of Lake Erie; methane gas emitted from an abandoned coal mine; waste energy recovery system placed into service or retrofitted on or after the effective date of the amendment of this section by S.B. 315 of the 129th general assembly, September 10, 2012, except that a waste energy recovery system described in division (A)(38)(b) of this section may be included only if it was placed into service between January 1, 2002, and December 31, 2004; storage facility that will promote the better utilization of a renewable energy resource; or distributed generation system used by a customer to generate electricity from any such energy.

"Renewable energy resource" does not include a waste

energy recovery system that is, or was, on or after January 1, 949  
2012, included in an energy ~~efficiency-performance and waste~~ 950  
reduction program of an electric distribution utility pursuant 951  
to ~~requirements-standards~~ under section 4928.66 of the Revised 952  
Code. 953

(b) As used in division (A) (37) of this section, 954  
"hydroelectric facility" means a hydroelectric generating 955  
facility that is located at a dam on a river, or on any water 956  
discharged to a river, that is within or bordering this state or 957  
within or bordering an adjoining state and meets all of the 958  
following standards: 959

(i) The facility provides for river flows that are not 960  
detrimental for fish, wildlife, and water quality, including 961  
seasonal flow fluctuations as defined by the applicable 962  
licensing agency for the facility. 963

(ii) The facility demonstrates that it complies with the 964  
water quality standards of this state, which compliance may 965  
consist of certification under Section 401 of the "Clean Water 966  
Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and 967  
demonstrates that it has not contributed to a finding by this 968  
state that the river has impaired water quality under Section 969  
303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 970  
U.S.C. 1313. 971

(iii) The facility complies with mandatory prescriptions 972  
regarding fish passage as required by the federal energy 973  
regulatory commission license issued for the project, regarding 974  
fish protection for riverine, anadromous, and catadromous fish. 975

(iv) The facility complies with the recommendations of the 976  
Ohio environmental protection agency and with the terms of its 977

federal energy regulatory commission license regarding watershed 978  
protection, mitigation, or enhancement, to the extent of each 979  
agency's respective jurisdiction over the facility. 980

(v) The facility complies with provisions of the 981  
"Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 982  
to 1544, as amended. 983

(vi) The facility does not harm cultural resources of the 984  
area. This can be shown through compliance with the terms of its 985  
federal energy regulatory commission license or, if the facility 986  
is not regulated by that commission, through development of a 987  
plan approved by the Ohio historic preservation office, to the 988  
extent it has jurisdiction over the facility. 989

(vii) The facility complies with the terms of its federal 990  
energy regulatory commission license or exemption that are 991  
related to recreational access, accommodation, and facilities 992  
or, if the facility is not regulated by that commission, the 993  
facility complies with similar requirements as are recommended 994  
by resource agencies, to the extent they have jurisdiction over 995  
the facility; and the facility provides access to water to the 996  
public without fee or charge. 997

(viii) The facility is not recommended for removal by any 998  
federal agency or agency of any state, to the extent the 999  
particular agency has jurisdiction over the facility. 1000

(c) The standards in divisions (A) (37) (b) (i) to (viii) of 1001  
this section do not apply to a small hydroelectric facility 1002  
under division (A) (37) (a) (iv) of this section. 1003

(38) "Waste energy recovery system" means either of the 1004  
following: 1005

(a) A facility that generates electricity through the 1006

conversion of energy from either of the following: 1007

(i) Exhaust heat from engines or manufacturing, 1008  
industrial, commercial, or institutional sites, except for 1009  
exhaust heat from a facility whose primary purpose is the 1010  
generation of electricity; 1011

(ii) Reduction of pressure in gas pipelines before gas is 1012  
distributed through the pipeline, provided that the conversion 1013  
of energy to electricity is achieved without using additional 1014  
fossil fuels. 1015

(b) A facility at a state institution of higher education 1016  
as defined in section 3345.011 of the Revised Code that recovers 1017  
waste heat from electricity-producing engines or combustion 1018  
turbines and that simultaneously uses the recovered heat to 1019  
produce steam, provided that the facility was placed into 1020  
service between January 1, 2002, and December 31, 2004. 1021

(39) "Smart grid" means capital improvements to an 1022  
electric distribution utility's distribution infrastructure that 1023  
improve reliability, efficiency, resiliency, or reduce energy 1024  
demand or use, including, but not limited to, advanced metering 1025  
and automation of system functions. 1026

(40) "Combined heat and power system" means the 1027  
coproduction of electricity and useful thermal energy from the 1028  
same fuel source designed to achieve thermal-efficiency levels 1029  
of at least sixty per cent, with at least twenty per cent of the 1030  
system's total useful energy in the form of thermal energy. 1031

(B) For the purposes of this chapter, a retail electric 1032  
service component shall be deemed a competitive retail electric 1033  
service if the service component is competitive pursuant to a 1034  
declaration by a provision of the Revised Code or pursuant to an 1035

order of the public utilities commission authorized under 1036  
division (A) of section 4928.04 of the Revised Code. Otherwise, 1037  
the service component shall be deemed a noncompetitive retail 1038  
electric service. 1039

**Sec. 4928.02.** It is the policy of this state to do the 1040  
following throughout this state: 1041

(A) Ensure the availability to consumers of adequate, 1042  
reliable, safe, efficient, nondiscriminatory, and reasonably 1043  
priced retail electric service; 1044

(B) Ensure the availability of unbundled and comparable 1045  
retail electric service that provides consumers with the 1046  
supplier, price, terms, conditions, and quality options they 1047  
elect to meet their respective needs; 1048

(C) Ensure diversity of electricity supplies and 1049  
suppliers, by giving consumers effective choices over the 1050  
selection of those supplies and suppliers and by encouraging the 1051  
development of distributed and small generation facilities; 1052

(D) Encourage innovation and market access for cost- 1053  
effective supply- and demand-side retail electric service 1054  
including, but not limited to, demand-side management, time- 1055  
differentiated pricing, waste energy recovery systems, smart 1056  
grid programs, and implementation of advanced metering 1057  
infrastructure; 1058

(E) Encourage cost-effective and efficient access to 1059  
information regarding the operation of the transmission and 1060  
distribution systems of electric utilities in order to promote 1061  
both effective customer choice of retail electric service and 1062  
the development of performance standards and targets for service 1063  
quality for all consumers, including annual achievement reports 1064

written in plain language; 1065

(F) Ensure that an electric utility's transmission and 1066  
distribution systems are available to a customer-generator or 1067  
owner of distributed generation, so that the customer-generator 1068  
or owner can market and deliver the electricity it produces; 1069

(G) Recognize the continuing emergence of competitive 1070  
electricity markets through the development and implementation 1071  
of flexible regulatory treatment; 1072

(H) Ensure effective competition in the provision of 1073  
retail electric service by avoiding anticompetitive subsidies 1074  
flowing from a noncompetitive retail electric service to a 1075  
competitive retail electric service or to a product or service 1076  
other than retail electric service, and vice versa, including by 1077  
prohibiting the recovery of any generation-related costs through 1078  
distribution or transmission rates; 1079

(I) Ensure retail electric service consumers protection 1080  
against unreasonable sales practices, market deficiencies, and 1081  
market power; 1082

(J) Provide coherent, transparent means of giving 1083  
appropriate incentives to technologies that can adapt 1084  
successfully to potential environmental mandates; 1085

(K) Encourage implementation of distributed generation 1086  
across customer classes through regular review and updating of 1087  
administrative rules governing critical issues such as, but not 1088  
limited to, interconnection standards, standby charges, and net 1089  
metering; 1090

(L) Protect at-risk populations, including, but not 1091  
limited to, when considering the implementation of any new 1092  
advanced energy or renewable energy resource; 1093

(M) Encourage the education of small business owners in 1094  
this state regarding the use of, and encourage the use of, 1095  
energy ~~efficiency~~ performance and waste reduction programs and 1096  
alternative energy resources in their businesses; 1097

(N) Facilitate the state's effectiveness in the global 1098  
economy. 1099

In carrying out this policy, the commission shall consider 1100  
rules as they apply to the costs of electric distribution 1101  
infrastructure, including, but not limited to, line extensions, 1102  
for the purpose of development in this state. 1103

**Sec. 4928.142.** (A) For the purpose of complying with 1104  
section 4928.141 of the Revised Code and subject to division (D) 1105  
of this section and, as applicable, subject to the rate plan 1106  
requirement of division (A) of section 4928.141 of the Revised 1107  
Code, an electric distribution utility may establish a standard 1108  
service offer price for retail electric generation service that 1109  
is delivered to the utility under a market-rate offer. 1110

(1) The market-rate offer shall be determined through a 1111  
competitive bidding process that provides for all of the 1112  
following: 1113

(a) Open, fair, and transparent competitive solicitation; 1114

(b) Clear product definition; 1115

(c) Standardized bid evaluation criteria; 1116

(d) Oversight by an independent third party that shall 1117  
design the solicitation, administer the bidding, and ensure that 1118  
the criteria specified in ~~division~~ divisions (A) (1) (a) to (c) of 1119  
this section are met; 1120

(e) Evaluation of the submitted bids prior to the 1121

selection of the least-cost bid winner or winners. 1122

No generation supplier shall be prohibited from 1123  
participating in the bidding process. 1124

(2) The public utilities commission shall modify rules, or 1125  
adopt new rules as necessary, concerning the conduct of the 1126  
competitive bidding process and the qualifications of bidders, 1127  
which rules shall foster supplier participation in the bidding 1128  
process and shall be consistent with the requirements of 1129  
division (A) (1) of this section. 1130

(B) Prior to initiating a competitive bidding process for 1131  
a market-rate offer under division (A) of this section, the 1132  
electric distribution utility shall file an application with the 1133  
commission. An electric distribution utility may file its 1134  
application with the commission prior to the effective date of 1135  
the commission rules required under division (A) (2) of this 1136  
section, and, as the commission determines necessary, the 1137  
utility shall immediately conform its filing to the rules upon 1138  
their taking effect. 1139

An application under this division shall detail the 1140  
electric distribution utility's proposed compliance with the 1141  
requirements of division (A) (1) of this section and with 1142  
commission rules under division (A) (2) of this section and 1143  
demonstrate that all of the following requirements are met: 1144

(1) The electric distribution utility or its transmission 1145  
service affiliate belongs to at least one regional transmission 1146  
organization that has been approved by the federal energy 1147  
regulatory commission; or there otherwise is comparable and 1148  
nondiscriminatory access to the electric transmission grid. 1149

(2) Any such regional transmission organization has a 1150



market-monitor function and the ability to take actions to 1151  
identify and mitigate market power or the electric distribution 1152  
utility's market conduct; or a similar market monitoring 1153  
function exists with commensurate ability to identify and 1154  
monitor market conditions and mitigate conduct associated with 1155  
the exercise of market power. 1156

(3) A published source of information is available 1157  
publicly or through subscription that identifies pricing 1158  
information for traded electricity on- and off-peak energy 1159  
products that are contracts for delivery beginning at least two 1160  
years from the date of the publication and is updated on a 1161  
regular basis. 1162

The commission shall initiate a proceeding and, within 1163  
ninety days after the application's filing date, shall determine 1164  
by order whether the electric distribution utility and its 1165  
market-rate offer meet all of the foregoing requirements. If the 1166  
finding is positive, the electric distribution utility may 1167  
initiate its competitive bidding process. If the finding is 1168  
negative as to one or more requirements, the commission in the 1169  
order shall direct the electric distribution utility regarding 1170  
how any deficiency may be remedied in a timely manner to the 1171  
commission's satisfaction; otherwise, the electric distribution 1172  
utility shall withdraw the application. However, if such remedy 1173  
is made and the subsequent finding is positive and also if the 1174  
electric distribution utility made a simultaneous filing under 1175  
this section and section 4928.143 of the Revised Code, the 1176  
utility shall not initiate its competitive bid until at least 1177  
one hundred fifty days after the filing date of those 1178  
applications. 1179

(C) Upon the completion of the competitive bidding process 1180

authorized by divisions (A) and (B) of this section, including 1181  
for the purpose of division (D) of this section, the commission 1182  
shall select the least-cost bid winner or winners of that 1183  
process, and such selected bid or bids, as prescribed as retail 1184  
rates by the commission, shall be the electric distribution 1185  
utility's standard service offer unless the commission, by order 1186  
issued before the third calendar day following the conclusion of 1187  
the competitive bidding process for the market rate offer, 1188  
determines that one or more of the following criteria were not 1189  
met: 1190

(1) Each portion of the bidding process was 1191  
oversubscribed, such that the amount of supply bid upon was 1192  
greater than the amount of the load bid out. 1193

(2) There were four or more bidders. 1194

(3) At least twenty-five per cent of the load is bid upon 1195  
by one or more persons other than the electric distribution 1196  
utility. 1197

All costs incurred by the electric distribution utility as 1198  
a result of or related to the competitive bidding process or to 1199  
procuring generation service to provide the standard service 1200  
offer, including the costs of energy and capacity and the costs 1201  
of all other products and services procured as a result of the 1202  
competitive bidding process, shall be timely recovered through 1203  
the standard service offer price, and, for that purpose, the 1204  
commission shall approve a reconciliation mechanism, other 1205  
recovery mechanism, or a combination of such mechanisms for the 1206  
utility. 1207

(D) The first application filed under this section by an 1208  
electric distribution utility that, as of July 31, 2008, 1209

directly owns, in whole or in part, operating electric 1210  
generating facilities that had been used and useful in this 1211  
state shall require that a portion of that utility's standard 1212  
service offer load for the first five years of the market rate 1213  
offer be competitively bid under division (A) of this section as 1214  
follows: ten per cent of the load in year one, not more than 1215  
twenty per cent in year two, thirty per cent in year three, 1216  
forty per cent in year four, and fifty per cent in year five. 1217  
Consistent with those percentages, the commission shall 1218  
determine the actual percentages for each year of years one 1219  
through five. The standard service offer price for retail 1220  
electric generation service under this first application shall 1221  
be a proportionate blend of the bid price and the generation 1222  
service price for the remaining standard service offer load, 1223  
which latter price shall be equal to the electric distribution 1224  
utility's most recent standard service offer price, adjusted 1225  
upward or downward as the commission determines reasonable, 1226  
relative to the jurisdictional portion of any known and 1227  
measurable changes from the level of any one or more of the 1228  
following costs as reflected in that most recent standard 1229  
service offer price: 1230

(1) The electric distribution utility's prudently incurred 1231  
cost of fuel used to produce electricity; 1232

(2) Its prudently incurred purchased power costs; 1233

(3) Its prudently incurred costs of satisfying the supply 1234  
and demand portfolio requirements of this state, including, but 1235  
not limited to, renewable energy resource requirements and 1236  
~~energy efficiency requirements~~ performance and waste reduction  
standards; 1237  
1238

(4) Its costs prudently incurred to comply with 1239

environmental laws and regulations, with consideration of the 1240  
derating of any facility associated with those costs. 1241

In making any adjustment to the most recent standard 1242  
service offer price on the basis of costs described in division 1243  
(D) of this section, the commission shall include the benefits 1244  
that may become available to the electric distribution utility 1245  
as a result of or in connection with the costs included in the 1246  
adjustment, including, but not limited to, the utility's receipt 1247  
of emissions credits or its receipt of tax benefits or of other 1248  
benefits, and, accordingly, the commission may impose such 1249  
conditions on the adjustment to ensure that any such benefits 1250  
are properly aligned with the associated cost responsibility. 1251  
The commission shall also determine how such adjustments will 1252  
affect the electric distribution utility's return on common 1253  
equity that may be achieved by those adjustments. The commission 1254  
shall not apply its consideration of the return on common equity 1255  
to reduce any adjustments authorized under this division unless 1256  
the adjustments will cause the electric distribution utility to 1257  
earn a return on common equity that is significantly in excess 1258  
of the return on common equity that is earned by publicly traded 1259  
companies, including utilities, that face comparable business 1260  
and financial risk, with such adjustments for capital structure 1261  
as may be appropriate. The burden of proof for demonstrating 1262  
that significantly excessive earnings will not occur shall be on 1263  
the electric distribution utility. 1264

Additionally, the commission may adjust the electric 1265  
distribution utility's most recent standard service offer price 1266  
by such just and reasonable amount that the commission 1267  
determines necessary to address any emergency that threatens the 1268  
utility's financial integrity or to ensure that the resulting 1269  
revenue available to the utility for providing the standard 1270

service offer is not so inadequate as to result, directly or 1271  
indirectly, in a taking of property without compensation 1272  
pursuant to Section 19 of Article I, Ohio Constitution. The 1273  
electric distribution utility has the burden of demonstrating 1274  
that any adjustment to its most recent standard service offer 1275  
price is proper in accordance with this division. 1276

(E) Beginning in the second year of a blended price under 1277  
division (D) of this section and notwithstanding any other 1278  
requirement of this section, the commission may alter 1279  
prospectively the proportions specified in that division to 1280  
mitigate any effect of an abrupt or significant change in the 1281  
electric distribution utility's standard service offer price 1282  
that would otherwise result in general or with respect to any 1283  
rate group or rate schedule but for such alteration. Any such 1284  
alteration shall be made not more often than annually, and the 1285  
commission shall not, by altering those proportions and in any 1286  
event, including because of the length of time, as authorized 1287  
under division (C) of this section, taken to approve the market 1288  
rate offer, cause the duration of the blending period to exceed 1289  
ten years as counted from the effective date of the approved 1290  
market rate offer. Additionally, any such alteration shall be 1291  
limited to an alteration affecting the prospective proportions 1292  
used during the blending period and shall not affect any 1293  
blending proportion previously approved and applied by the 1294  
commission under this division. 1295

(F) An electric distribution utility that has received 1296  
commission approval of its first application under division (C) 1297  
of this section shall not, nor ever shall be authorized or 1298  
required by the commission to, file an application under section 1299  
4928.143 of the Revised Code. 1300

**Sec. 4928.143.** (A) For the purpose of complying with 1301  
section 4928.141 of the Revised Code, an electric distribution 1302  
utility may file an application for public utilities commission 1303  
approval of an electric security plan as prescribed under 1304  
division (B) of this section. The utility may file that 1305  
application prior to the effective date of any rules the 1306  
commission may adopt for the purpose of this section, and, as 1307  
the commission determines necessary, the utility immediately 1308  
shall conform its filing to those rules upon their taking 1309  
effect. 1310

(B) Notwithstanding any other provision of Title XLIX of 1311  
the Revised Code to the contrary except division (D) of this 1312  
section, divisions (I), (J), and (K) of section 4928.20, 1313  
division (E) of section 4928.64, and section 4928.69 of the 1314  
Revised Code: 1315

(1) An electric security plan shall include provisions 1316  
relating to the supply and pricing of electric generation 1317  
service. In addition, if the proposed electric security plan has 1318  
a term longer than three years, it may include provisions in the 1319  
plan to permit the commission to test the plan pursuant to 1320  
division (E) of this section and any transitional conditions 1321  
that should be adopted by the commission if the commission 1322  
terminates the plan as authorized under that division. 1323

(2) The plan may provide for or include, without 1324  
limitation, any of the following: 1325

(a) Automatic recovery of any of the following costs of 1326  
the electric distribution utility, provided the cost is 1327  
prudently incurred: the cost of fuel used to generate the 1328  
electricity supplied under the offer; the cost of purchased 1329  
power supplied under the offer, including the cost of energy and 1330

capacity, and including purchased power acquired from an 1331  
affiliate; the cost of emission allowances; and the cost of 1332  
federally mandated carbon or energy taxes; 1333

(b) A reasonable allowance for construction work in 1334  
progress for any of the electric distribution utility's cost of 1335  
constructing an electric generating facility or for an 1336  
environmental expenditure for any electric generating facility 1337  
of the electric distribution utility, provided the cost is 1338  
incurred or the expenditure occurs on or after January 1, 2009. 1339  
Any such allowance shall be subject to the construction work in 1340  
progress allowance limitations of division (A) of section 1341  
4909.15 of the Revised Code, except that the commission may 1342  
authorize such an allowance upon the incurrence of the cost or 1343  
occurrence of the expenditure. No such allowance for generating 1344  
facility construction shall be authorized, however, unless the 1345  
commission first determines in the proceeding that there is need 1346  
for the facility based on resource planning projections 1347  
submitted by the electric distribution utility. Further, no such 1348  
allowance shall be authorized unless the facility's construction 1349  
was sourced through a competitive bid process, regarding which 1350  
process the commission may adopt rules. An allowance approved 1351  
under division (B) (2) (b) of this section shall be established as 1352  
a nonbypassable surcharge for the life of the facility. 1353

(c) The establishment of a nonbypassable surcharge for the 1354  
life of an electric generating facility that is owned or 1355  
operated by the electric distribution utility, was sourced 1356  
through a competitive bid process subject to any such rules as 1357  
the commission adopts under division (B) (2) (b) of this section, 1358  
and is newly used and useful on or after January 1, 2009, which 1359  
surcharge shall cover all costs of the utility specified in the 1360  
application, excluding costs recovered through a surcharge under 1361

division (B) (2) (b) of this section. However, no surcharge shall 1362  
be authorized unless the commission first determines in the 1363  
proceeding that there is need for the facility based on resource 1364  
planning projections submitted by the electric distribution 1365  
utility. Additionally, if a surcharge is authorized for a 1366  
facility pursuant to plan approval under division (C) of this 1367  
section and as a condition of the continuation of the surcharge, 1368  
the electric distribution utility shall dedicate to Ohio 1369  
consumers the capacity and energy and the rate associated with 1370  
the cost of that facility. Before the commission authorizes any 1371  
surcharge pursuant to this division, it may consider, as 1372  
applicable, the effects of any decommissioning, deratings, and 1373  
retirements. 1374

(d) Terms, conditions, or charges relating to limitations 1375  
on customer shopping for retail electric generation service, 1376  
bypassability, standby, back-up, or supplemental power service, 1377  
default service, carrying costs, amortization periods, and 1378  
accounting or deferrals, including future recovery of such 1379  
deferrals, as would have the effect of stabilizing or providing 1380  
certainty regarding retail electric service; 1381

(e) Automatic increases or decreases in any component of 1382  
the standard service offer price; 1383

(f) Consistent with sections 4928.23 to 4928.2318 of the 1384  
Revised Code, both of the following: 1385

(i) Provisions for the electric distribution utility to 1386  
securitize any phase-in, inclusive of carrying charges, of the 1387  
utility's standard service offer price, which phase-in is 1388  
authorized in accordance with section 4928.144 of the Revised 1389  
Code; 1390



(ii) Provisions for the recovery of the utility's cost of securitization.	1391 1392
(g) Provisions relating to transmission, ancillary, congestion, or any related service required for the standard service offer, including provisions for the recovery of any cost of such service that the electric distribution utility incurs on or after that date pursuant to the standard service offer;	1393 1394 1395 1396 1397
(h) Provisions regarding the utility's distribution service, including, without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary, provisions regarding single issue ratemaking, a revenue decoupling mechanism or any other incentive ratemaking, and provisions regarding distribution infrastructure and modernization incentives for the electric distribution utility. The latter may include a long-term energy delivery infrastructure modernization plan for that utility or any plan providing for the utility's recovery of costs, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on such infrastructure modernization. As part of its determination as to whether to allow in an electric distribution utility's electric security plan inclusion of any provision described in division (B) (2) (h) of this section, the commission shall examine the reliability of the electric distribution utility's distribution system and ensure that customers' and the electric distribution utility's expectations are aligned and that the electric distribution utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system.	1398 1399 1400 1401 1402 1403 1404 1405 1406 1407 1408 1409 1410 1411 1412 1413 1414 1415 1416 1417 1418 1419
(i) Provisions under which the electric distribution	1420

utility may implement economic development, job retention, and 1421  
energy ~~efficiency-performance and waste reduction~~ programs, 1422  
which provisions may allocate program costs across all classes 1423  
of customers of the utility and those of electric distribution 1424  
utilities in the same holding company system. 1425

(C) (1) The burden of proof in the proceeding shall be on 1426  
the electric distribution utility. The commission shall issue an 1427  
order under this division for an initial application under this 1428  
section not later than one hundred fifty days after the 1429  
application's filing date and, for any subsequent application by 1430  
the utility under this section, not later than two hundred 1431  
seventy-five days after the application's filing date. Subject 1432  
to division (D) of this section, the commission by order shall 1433  
approve or modify and approve an application filed under 1434  
division (A) of this section if it finds that the electric 1435  
security plan so approved, including its pricing and all other 1436  
terms and conditions, including any deferrals and any future 1437  
recovery of deferrals, is more favorable in the aggregate as 1438  
compared to the expected results that would otherwise apply 1439  
under section 4928.142 of the Revised Code. Additionally, if the 1440  
commission so approves an application that contains a surcharge 1441  
under division (B) (2) (b) or (c) of this section, the commission 1442  
shall ensure that the benefits derived for any purpose for which 1443  
the surcharge is established are reserved and made available to 1444  
those that bear the surcharge. Otherwise, the commission by 1445  
order shall disapprove the application. 1446

(2) (a) If the commission modifies and approves an 1447  
application under division (C) (1) of this section, the electric 1448  
distribution utility may withdraw the application, thereby 1449  
terminating it, and may file a new standard service offer under 1450  
this section or a standard service offer under section 4928.142 1451

of the Revised Code. 1452

(b) If the utility terminates an application pursuant to 1453  
division (C)(2)(a) of this section or if the commission 1454  
disapproves an application under division (C)(1) of this 1455  
section, the commission shall issue such order as is necessary 1456  
to continue the provisions, terms, and conditions of the 1457  
utility's most recent standard service offer, along with any 1458  
expected increases or decreases in fuel costs from those 1459  
contained in that offer, until a subsequent offer is authorized 1460  
pursuant to this section or section 4928.142 of the Revised 1461  
Code, respectively. 1462

(D) Regarding the rate plan requirement of division (A) of 1463  
section 4928.141 of the Revised Code, if an electric 1464  
distribution utility that has a rate plan that extends beyond 1465  
December 31, 2008, files an application under this section for 1466  
the purpose of its compliance with division (A) of section 1467  
4928.141 of the Revised Code, that rate plan and its terms and 1468  
conditions are hereby incorporated into its proposed electric 1469  
security plan and shall continue in effect until the date 1470  
scheduled under the rate plan for its expiration, and that 1471  
portion of the electric security plan shall not be subject to 1472  
commission approval or disapproval under division (C) of this 1473  
section, and the earnings test provided for in division (F) of 1474  
this section shall not apply until after the expiration of the 1475  
rate plan. However, that utility may include in its electric 1476  
security plan under this section, and the commission may 1477  
approve, modify and approve, or disapprove subject to division 1478  
(C) of this section, provisions for the incremental recovery or 1479  
the deferral of any costs that are not being recovered under the 1480  
rate plan and that the utility incurs during that continuation 1481  
period to comply with section 4928.141, division (B) of section 1482

4928.64, or division (A) of section 4928.66 of the Revised Code. 1483

(E) If an electric security plan approved under division 1484  
(C) of this section, except one withdrawn by the utility as 1485  
authorized under that division, has a term, exclusive of phase- 1486  
ins or deferrals, that exceeds three years from the effective 1487  
date of the plan, the commission shall test the plan in the 1488  
fourth year, and if applicable, every fourth year thereafter, to 1489  
determine whether the plan, including its then-existing pricing 1490  
and all other terms and conditions, including any deferrals and 1491  
any future recovery of deferrals, continues to be more favorable 1492  
in the aggregate and during the remaining term of the plan as 1493  
compared to the expected results that would otherwise apply 1494  
under section 4928.142 of the Revised Code. The commission shall 1495  
also determine the prospective effect of the electric security 1496  
plan to determine if that effect is substantially likely to 1497  
provide the electric distribution utility with a return on 1498  
common equity that is significantly in excess of the return on 1499  
common equity that is likely to be earned by publicly traded 1500  
companies, including utilities, that face comparable business 1501  
and financial risk, with such adjustments for capital structure 1502  
as may be appropriate. The burden of proof for demonstrating 1503  
that significantly excessive earnings will not occur shall be on 1504  
the electric distribution utility. If the test results are in 1505  
the negative or the commission finds that continuation of the 1506  
electric security plan will result in a return on equity that is 1507  
significantly in excess of the return on common equity that is 1508  
likely to be earned by publicly traded companies, including 1509  
utilities, that will face comparable business and financial 1510  
risk, with such adjustments for capital structure as may be 1511  
appropriate, during the balance of the plan, the commission may 1512  
terminate the electric security plan, but not until it shall 1513

have provided interested parties with notice and an opportunity 1514  
to be heard. The commission may impose such conditions on the 1515  
plan's termination as it considers reasonable and necessary to 1516  
accommodate the transition from an approved plan to the more 1517  
advantageous alternative. In the event of an electric security 1518  
plan's termination pursuant to this division, the commission 1519  
shall permit the continued deferral and phase-in of any amounts 1520  
that occurred prior to that termination and the recovery of 1521  
those amounts as contemplated under that electric security plan. 1522

(F) With regard to the provisions that are included in an 1523  
electric security plan under this section, the commission shall 1524  
consider, following the end of each annual period of the plan, 1525  
if any such adjustments resulted in excessive earnings as 1526  
measured by whether the earned return on common equity of the 1527  
electric distribution utility is significantly in excess of the 1528  
return on common equity that was earned during the same period 1529  
by publicly traded companies, including utilities, that face 1530  
comparable business and financial risk, with such adjustments 1531  
for capital structure as may be appropriate. Consideration also 1532  
shall be given to the capital requirements of future committed 1533  
investments in this state. The burden of proof for demonstrating 1534  
that significantly excessive earnings did not occur shall be on 1535  
the electric distribution utility. If the commission finds that 1536  
such adjustments, in the aggregate, did result in significantly 1537  
excessive earnings, it shall require the electric distribution 1538  
utility to return to consumers the amount of the excess by 1539  
prospective adjustments; provided that, upon making such 1540  
prospective adjustments, the electric distribution utility shall 1541  
have the right to terminate the plan and immediately file an 1542  
application pursuant to section 4928.142 of the Revised Code. 1543  
Upon termination of a plan under this division, rates shall be 1544

set on the same basis as specified in division (C)(2)(b) of this 1545  
section, and the commission shall permit the continued deferral 1546  
and phase-in of any amounts that occurred prior to that 1547  
termination and the recovery of those amounts as contemplated 1548  
under that electric security plan. In making its determination 1549  
of significantly excessive earnings under this division, the 1550  
commission shall not consider, directly or indirectly, the 1551  
revenue, expenses, or earnings of any affiliate or parent 1552  
company. 1553

**Sec. 4928.20.** (A) The legislative authority of a municipal 1554  
corporation may adopt an ordinance, or the board of township 1555  
trustees of a township or the board of county commissioners of a 1556  
county may adopt a resolution, under which, on or after the 1557  
starting date of competitive retail electric service, it may 1558  
aggregate in accordance with this section the retail electrical 1559  
loads located, respectively, within the municipal corporation, 1560  
township, or unincorporated area of the county and, for that 1561  
purpose, may enter into service agreements to facilitate for 1562  
those loads the sale and purchase of electricity. The 1563  
legislative authority or board also may exercise such authority 1564  
jointly with any other such legislative authority or board. For 1565  
customers that are not mercantile customers, an ordinance or 1566  
resolution under this division shall specify whether the 1567  
aggregation will occur only with the prior, affirmative consent 1568  
of each person owning, occupying, controlling, or using an 1569  
electric load center proposed to be aggregated or will occur 1570  
automatically for all such persons pursuant to the opt-out 1571  
requirements of division (D) of this section. The aggregation of 1572  
mercantile customers shall occur only with the prior, 1573  
affirmative consent of each such person owning, occupying, 1574  
controlling, or using an electric load center proposed to be 1575

aggregated. Nothing in this division, however, authorizes the 1576  
aggregation of the retail electric loads of an electric load 1577  
center, as defined in section 4933.81 of the Revised Code, that 1578  
is located in the certified territory of a nonprofit electric 1579  
supplier under sections 4933.81 to 4933.90 of the Revised Code 1580  
or an electric load center served by transmission or 1581  
distribution facilities of a municipal electric utility. 1582

(B) If an ordinance or resolution adopted under division 1583  
(A) of this section specifies that aggregation of customers that 1584  
are not mercantile customers will occur automatically as 1585  
described in that division, the ordinance or resolution shall 1586  
direct the board of elections to submit the question of the 1587  
authority to aggregate to the electors of the respective 1588  
municipal corporation, township, or unincorporated area of a 1589  
county at a special election on the day of the next primary or 1590  
general election in the municipal corporation, township, or 1591  
county. The legislative authority or board shall certify a copy 1592  
of the ordinance or resolution to the board of elections not 1593  
less than ninety days before the day of the special election. No 1594  
ordinance or resolution adopted under division (A) of this 1595  
section that provides for an election under this division shall 1596  
take effect unless approved by a majority of the electors voting 1597  
upon the ordinance or resolution at the election held pursuant 1598  
to this division. 1599

(C) Upon the applicable requisite authority under 1600  
divisions (A) and (B) of this section, the legislative authority 1601  
or board shall develop a plan of operation and governance for 1602  
the aggregation program so authorized. Before adopting a plan 1603  
under this division, the legislative authority or board shall 1604  
hold at least two public hearings on the plan. Before the first 1605  
hearing, the legislative authority or board shall publish notice 1606

of the hearings once a week for two consecutive weeks in a 1607  
newspaper of general circulation in the jurisdiction or as 1608  
provided in section 7.16 of the Revised Code. The notice shall 1609  
summarize the plan and state the date, time, and location of 1610  
each hearing. 1611

(D) No legislative authority or board, pursuant to an 1612  
ordinance or resolution under divisions (A) and (B) of this 1613  
section that provides for automatic aggregation of customers 1614  
that are not mercantile customers as described in division (A) 1615  
of this section, shall aggregate the electrical load of any 1616  
electric load center located within its jurisdiction unless it 1617  
in advance clearly discloses to the person owning, occupying, 1618  
controlling, or using the load center that the person will be 1619  
enrolled automatically in the aggregation program and will 1620  
remain so enrolled unless the person affirmatively elects by a 1621  
stated procedure not to be so enrolled. The disclosure shall 1622  
state prominently the rates, charges, and other terms and 1623  
conditions of enrollment. The stated procedure shall allow any 1624  
person enrolled in the aggregation program the opportunity to 1625  
opt out of the program every three years, without paying a 1626  
switching fee. Any such person that opts out before the 1627  
commencement of the aggregation program pursuant to the stated 1628  
procedure shall default to the standard service offer provided 1629  
under section 4928.14 or division (D) of section 4928.35 of the 1630  
Revised Code until the person chooses an alternative supplier. 1631

(E) (1) With respect to a governmental aggregation for a 1632  
municipal corporation that is authorized pursuant to divisions 1633  
(A) to (D) of this section, resolutions may be proposed by 1634  
initiative or referendum petitions in accordance with sections 1635  
731.28 to 731.41 of the Revised Code. 1636



(2) With respect to a governmental aggregation for a township or the unincorporated area of a county, which aggregation is authorized pursuant to divisions (A) to (D) of this section, resolutions may be proposed by initiative or referendum petitions in accordance with sections 731.28 to 731.40 of the Revised Code, except that:

(a) The petitions shall be filed, respectively, with the township fiscal officer or the board of county commissioners, who shall perform those duties imposed under those sections upon the city auditor or village clerk.

(b) The petitions shall contain the signatures of not less than ten per cent of the total number of electors in, respectively, the township or the unincorporated area of the county who voted for the office of governor at the preceding general election for that office in that area.

(F) A governmental aggregator under division (A) of this section 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 shall be subject to supervision and regulation by the public utilities commission only to the extent of any competitive retail electric service it provides and commission authority under this chapter.

(G) This section 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.

(H) A governmental aggregator shall not include in its aggregation the accounts of any of the following:

(1) A customer that has opted out of the aggregation;

(2) A customer in contract with a certified electric services company;

(3) A customer that has a special contract with an electric distribution utility;

(4) A customer that is not located within the governmental aggregator's governmental boundaries;

(5) Subject to division (C) of section 4928.21 of the Revised Code, a customer who appears on the "do not aggregate" list maintained under that section.

(I) Customers that are part of a governmental aggregation under this section shall be responsible only for such portion of a surcharge under section 4928.144 of the Revised Code that is proportionate to the benefits, as determined by the commission, that electric load centers within the jurisdiction of the governmental aggregation as a group receive. The proportionate surcharge so established shall apply to each customer of the governmental aggregation while the customer is part of that aggregation. If a customer ceases being such a customer, the otherwise applicable surcharge shall apply. Nothing in this section shall result in less than full recovery by an electric distribution utility of any surcharge authorized under section 4928.144 of the Revised Code. Nothing in this section shall result in less than the full and timely imposition, charging, collection, and adjustment by an electric distribution utility, its assignee, or any collection agent, of the phase-in-recovery charges authorized pursuant to a final financing order issued

pursuant to sections 4928.23 to 4928.2318 of the Revised Code. 1695

(J) On behalf of the customers that are part of a 1696  
governmental aggregation under this section and by filing 1697  
written notice with the public utilities commission, the 1698  
legislative authority that formed or is forming that 1699  
governmental aggregation may elect not to receive standby 1700  
service within the meaning of division (B) (2) (d) of section 1701  
4928.143 of the Revised Code from an electric distribution 1702  
utility in whose certified territory the governmental 1703  
aggregation is located and that operates under an approved 1704  
electric security plan under that section. Upon the filing of 1705  
that notice, the electric distribution utility shall not charge 1706  
any such customer to whom competitive retail electric generation 1707  
service is provided by another supplier under the governmental 1708  
aggregation for the standby service. Any such consumer that 1709  
returns to the utility for competitive retail electric service 1710  
shall pay the market price of power incurred by the utility to 1711  
serve that consumer plus any amount attributable to the 1712  
utility's cost of compliance with the ~~renewable energy resource~~ 1713  
~~provisions of Ohio generation and jobs incentive program under~~ 1714  
section 4928.64 of the Revised Code to serve the consumer. Such 1715  
market price shall include, but not be limited to, capacity and 1716  
energy charges; all charges associated with the provision of 1717  
that power supply through the regional transmission 1718  
organization, including, but not limited to, transmission, 1719  
ancillary services, congestion, and settlement and 1720  
administrative charges; and all other costs incurred by the 1721  
utility that are associated with the procurement, provision, and 1722  
administration of that power supply, as such costs may be 1723  
approved by the commission. The period of time during which the 1724  
market price and renewable energy resource amount shall be so 1725

assessed on the consumer shall be from the time the consumer so 1726  
returns to the electric distribution utility until the 1727  
expiration of the electric security plan. However, if that 1728  
period of time is expected to be more than two years, the 1729  
commission may reduce the time period to a period of not less 1730  
than two years. 1731

(K) The commission shall adopt rules to encourage and 1732  
promote large-scale governmental aggregation in this state. For 1733  
that purpose, the commission shall conduct an immediate review 1734  
of any rules it has adopted for the purpose of this section that 1735  
are in effect on the effective date of the amendment of this 1736  
section by S.B. 221 of the 127th general assembly, July 31, 1737  
2008. Further, within the context of an electric security plan 1738  
under section 4928.143 of the Revised Code, the commission shall 1739  
consider the effect on large-scale governmental aggregation of 1740  
any nonbypassable generation charges, however collected, that 1741  
would be established under that plan, except any nonbypassable 1742  
generation charges that relate to any cost incurred by the 1743  
electric distribution utility, the deferral of which has been 1744  
authorized by the commission prior to the effective date of the 1745  
amendment of this section by S.B. 221 of the 127th general 1746  
assembly, July 31, 2008. 1747

**Sec. 4928.61.** (A) There is hereby established in the state 1748  
treasury the advanced energy fund, into which shall be deposited 1749  
all advanced energy revenues remitted to the director of 1750  
development under division (B) of this section, for the 1751  
exclusive purposes of funding the advanced energy program 1752  
created under section 4928.62 of the Revised Code and paying the 1753  
program's administrative costs. Interest on the fund shall be 1754  
credited to the fund. 1755

(B) Advanced energy revenues shall include all of the 1756  
following: 1757

(1) Revenues remitted to the director after collection by 1758  
each electric distribution utility in this state of a temporary 1759  
rider on retail electric distribution service rates as such 1760  
rates are determined by the public utilities commission pursuant 1761  
to this chapter. The rider shall be a uniform amount statewide, 1762  
determined by the director of development, after consultation 1763  
with the public benefits advisory board created by section 1764  
4928.58 of the Revised Code. The amount shall be determined by 1765  
dividing an aggregate revenue target for a given year as 1766  
determined by the director, after consultation with the advisory 1767  
board, by the number of customers of electric distribution 1768  
utilities in this state in the prior year. Such aggregate 1769  
revenue target shall not exceed more than fifteen million 1770  
dollars in any year through 2005 and shall not exceed more than 1771  
five million dollars in any year after 2005. The rider shall be 1772  
imposed beginning on the effective date of the amendment of this 1773  
section by Sub. H.B. 251 of the 126th general assembly, January 1774  
4, 2007, and shall terminate at the end of ten years following 1775  
the starting date of competitive retail electric service or 1776  
until the advanced energy fund, including interest, reaches one 1777  
hundred million dollars, whichever is first. 1778

(2) Revenues from payments, repayments, and collections 1779  
under the advanced energy program and from program income; 1780

(3) Revenues remitted to the director after collection by 1781  
a municipal electric utility or electric cooperative in this 1782  
state upon the utility's or cooperative's decision to 1783  
participate in the advanced energy fund; 1784

(4) Revenues from ~~renewable energy compliance~~ payments as 1785

provided under division (C) (2) of section 4928.64 of the Revised Code; 1786  
1787

(5) Revenue from forfeitures under division (C) of section 4928.66 of the Revised Code; 1788  
1789

(6) Funds transferred pursuant to division (B) of Section 512.10 of S.B. 315 of the 129th general assembly; 1790  
1791

(7) Interest earnings on the advanced energy fund. 1792

(C) (1) Each electric distribution utility in this state shall remit to the director on a quarterly basis the revenues described in divisions (B) (1) and (2) of this section. Such remittances shall occur within thirty days after the end of each calendar quarter. 1793  
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(2) Each participating electric cooperative and participating municipal electric utility shall remit to the director on a quarterly basis the revenues described in division (B) (3) of this section. Such remittances shall occur within thirty days after the end of each calendar quarter. For the purpose of division (B) (3) of this section, the participation of an electric cooperative or municipal electric utility in the energy efficiency revolving loan program as it existed immediately prior to the effective date of the amendment of this section by Sub. H.B. 251 of the 126th general assembly, January 4, 2007, does not constitute a decision to participate in the advanced energy fund under this section as so amended. 1798  
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(3) All remittances under divisions (C) (1) and (2) of this section shall continue only until the end of ten years following the starting date of competitive retail electric service or until the advanced energy fund, including interest, reaches one hundred million dollars, whichever is first. 1810  
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(D) Any moneys collected in rates for non-low-income 1815  
customer energy efficiency programs, as of October 5, 1999, and 1816  
not contributed to the energy efficiency revolving loan fund 1817  
authorized under this section prior to the effective date of its 1818  
amendment by Sub. H.B. 251 of the 126th general assembly, 1819  
January 4, 2007, shall be used to continue to fund cost- 1820  
effective, residential energy efficiency programs, be 1821  
contributed into the universal service fund as a supplement to 1822  
that required under section 4928.53 of the Revised Code, or be 1823  
returned to ratepayers in the form of a rate reduction at the 1824  
option of the affected electric distribution utility. 1825

**Sec. 4928.621.** (A) Any Edison technology center in this 1826  
state is eligible to apply for and receive assistance pursuant 1827  
to section 4928.62 of the Revised Code for the purposes of 1828  
creating an advanced energy manufacturing center in this state 1829  
that will provide for the exchange of information and expertise 1830  
regarding advanced energy, assisting with the design of advanced 1831  
energy projects, developing workforce training programs for such 1832  
projects, and encouraging investment in advanced energy 1833  
manufacturing technologies for advanced energy products and 1834  
investment in sustainable manufacturing operations that create 1835  
high-paying jobs in this state. 1836

(B) Any university or group of universities in this state 1837  
that conducts research on any advanced energy resource or any 1838  
not-for-profit corporation formed to address issues affecting 1839  
the price and availability of electricity and having members 1840  
that are small businesses may apply for and receive assistance 1841  
pursuant to section 4928.62 of the Revised Code for the purpose 1842  
of encouraging research in this state that is directed at 1843  
innovation in or the refinement of those resources or for the 1844  
purpose of educational outreach regarding those resources and, 1845

to that end, shall use that assistance to establish such a 1846  
program of research or education outreach. Any such educational 1847  
outreach shall be directed at an increase in, innovation 1848  
regarding, or refinement of access by or of application or 1849  
understanding of businesses and consumers in this state 1850  
regarding, advanced energy resources. 1851

(C) Any independent group located in this state the 1852  
express objective of which is to educate small businesses in 1853  
this state regarding renewable energy resources and energy 1854  
~~efficiency~~ performance and waste reduction programs, or any 1855  
small business located in this state electing to utilize an 1856  
advanced energy project or participate in an energy ~~efficiency~~ 1857  
performance and waste reduction program, is eligible to apply 1858  
for and receive assistance pursuant to section 4928.62 of the 1859  
Revised Code. 1860

(D) Nothing in this section shall be construed as limiting 1861  
the eligibility of any qualifying entity to apply for or receive 1862  
assistance pursuant to section 4928.62 of the Revised Code. 1863

**Sec. 4928.64.** (A) (1) As used in this section, "qualifying 1864  
renewable energy resource" means a renewable energy resource, as 1865  
defined in section 4928.01 of the Revised Code that: 1866

(a) Has a placed-in-service date on or after January 1, 1867  
1998; 1868

(b) Is any run-of-the-river hydroelectric facility that 1869  
has an in-service date on or after January 1, 1980; 1870

(c) Is a small hydroelectric facility; 1871

(d) Is created on or after January 1, 1998, by the 1872  
modification or retrofit of any facility placed in service prior 1873  
to January 1, 1998; or 1874



(e) Is a mercantile customer-sited renewable energy resource, whether new or existing, that the mercantile customer commits for integration into the electric distribution utility's demand-response, energy-efficiency performance and waste reduction, or peak demand reduction programs as provided under division (A) (2) (c) of section 4928.66 of the Revised Code, including, but not limited to, any of the following:

(i) A resource that has the effect of improving the relationship between real and reactive power;

(ii) A resource that makes efficient use of waste heat or other thermal capabilities owned or controlled by a mercantile customer;

(iii) Storage technology that allows a mercantile customer more flexibility to modify its demand or load and usage characteristics;

(iv) Electric generation equipment owned or controlled by a mercantile customer that uses a renewable energy resource.

(2) "Consumer price index" means the consumer price index prepared by the United States bureau of labor statistics (U.S. city average for urban wage earners and clerical workers: all items, 1982-1984=100), or, if that index is no longer published, a generally available comparable index.

(3) For the purpose of this section and as it considers appropriate, the public utilities commission may classify any new technology as such a qualifying renewable energy resource.

(B) (1) By ~~2027~~2050 and thereafter, an electric distribution utility shall provide from qualifying renewable energy resources, including, at its discretion, qualifying renewable energy resources obtained pursuant to an electricity

supply contract, a portion of the electricity supply required 1904  
 for its standard service offer under section 4928.141 of the 1905  
 Revised Code, and an electric services company shall provide a 1906  
 portion of its electricity supply for retail consumers in this 1907  
 state from qualifying renewable energy resources, including, at 1908  
 its discretion, qualifying renewable energy resources obtained 1909  
 pursuant to an electricity supply contract. That portion shall 1910  
 equal ~~twelve and one-half~~ fifty per cent of the total number of 1911  
 kilowatt hours of electricity sold by the subject utility or 1912  
 company to any and all retail electric consumers whose electric 1913  
 load centers are served by that utility and are located within 1914  
 the utility's certified territory or, in the case of an electric 1915  
 services company, are served by the company and are located 1916  
 within this state. However, nothing in this section precludes a 1917  
 utility or company from providing a greater percentage. 1918

(2) The portion required under division (B)(1) of this 1919  
 section shall be generated from renewable energy resources, 1920  
 including ~~one-half~~ six per cent from solar energy resources, in 1921  
 accordance with the following benchmarks: 1922

By end of year	Renewable energy resources	Solar energy resources	
2009	0.25%	0.004%	1923
2010	0.50%	0.010%	1924
2011	1%	0.030%	1925
2012	1.5%	0.060%	1926
2013	2%	0.090%	1927
2014	2.5%	0.12%	1928
2015	2.5%	0.12%	1929
2016	2.5%	0.12%	1930
2017	3.5%	0.15%	1931
			1932
			1933

2018	4.5%	0.18%	1934
2019	5.5%	0.22%	1935
2020	6.5%	<del>0.26</del> <u>0.3</u> %	1936
2021	7.5%	<del>0.3</del> <u>0.4</u> %	1937
2022	8.5%	<del>0.34</del> <u>0.5</u> %	1938
2023	9.5%	<del>0.38</del> <u>0.6</u> %	1939
2024	10.5%	<del>0.42</del> <u>0.75</u> %	1940
2025	11.5%	<del>0.46</del> <u>0.9</u> %	1941
<del>2026 and each calendar</del>	<del>12.5</del> <u>12</u> %	<del>0.5</del> <u>1</u> %	1942
<del>year thereafter</del>			1943
2027	12.5%	1.2%	1944
2028	13.3%	1.4%	1945
2029	15%	1.6%	1946
2030	17.5%	1.8%	1947
2031	19.1%	2%	1948
2032	20%	2.2%	1949
2033	22.5%	2.4%	1950
2034	24.1%	2.6%	1951
2035	25%	2.8%	1952
2036	27.5%	3%	1953
2037	29.1%	3.2%	1954
2038	30%	3.4%	1955
2039	32.5%	3.6%	1956
2040	34.1%	3.8%	1957
2041	35%	4%	1958
2042	36.6%	4.2%	1959
2043	38.3%	4.4%	1960
2044	40%	4.6%	1961
2045	41.6%	4.8%	1962
2046	43.3%	5%	1963
2047	45%	5.25%	1964
2048	46.6%	5.5%	1965

<u>2049</u>	<u>48.3%</u>	<u>5.75%</u>	1966
<u>2050 and each calendar</u>	<u>50%</u>	<u>6%</u>	1967
<u>year thereafter</u>			1968
(3) <del>The qualifying</del> <u>At least one-half of the</u> renewable			1969
energy resources implemented by the utility or company shall be			1970
met <del>either:</del>			1971
<del>(a) Through</del> <u>through</u> facilities located in this state; <del>or</del>			1972
<del>(b) With</del> <u>the remainder shall be met with</u> resources that			1973
can be shown to be deliverable into this state.			1974
<u>(4) At least half of the solar energy resources</u>			1975
<u>implemented by the utility or company shall be met through</u>			1976
<u>distributed solar projects of not more than twenty-five</u>			1977
<u>megawatts of base load capacity.</u>			1978
(C) (1) The commission annually shall review an electric			1979
distribution utility's or electric services company's compliance			1980
with the most recent applicable benchmark under division (B) (2)			1981
of this section and, in the course of that review, shall			1982
identify any undercompliance or noncompliance of the utility or			1983
company that it determines is weather-related, related to			1984
equipment or resource shortages for qualifying renewable energy			1985
resources as applicable, or is otherwise outside the utility's			1986
or company's control.			1987
(2) Subject to the cost cap provisions of division (C) (3)			1988
of this section, if the commission determines, after notice and			1989
opportunity for hearing, and based upon its findings in that			1990
review regarding avoidable undercompliance or noncompliance, but			1991
subject to division (C) (4) of this section, that the utility or			1992
company has failed to comply with any such benchmark, the			1993
commission shall impose a renewable energy compliance payment on			1994

the utility or company. 1995

(a) The compliance payment pertaining to the solar energy 1996  
resource benchmarks under division (B) (2) of this section shall 1997  
be an amount per megawatt hour of undercompliance or 1998  
noncompliance in the period under review, as follows: 1999

(i) Three hundred dollars for 2014, 2015, and 2016; 2000

(ii) Two hundred fifty dollars for 2017 and 2018; 2001

(iii) Two hundred dollars for 2019 and 2020; 2002

(iv) Similarly reduced every two years thereafter through 2003  
~~2026-2050~~ by fifty dollars, to a minimum of fifty dollars. 2004

(b) The compliance payment pertaining to the renewable 2005  
energy resource benchmarks under division (B) (2) of this section 2006  
shall equal the number of additional renewable energy credits 2007  
that the electric distribution utility or electric services 2008  
company would have needed to comply with the applicable 2009  
benchmark in the period under review times an amount that shall 2010  
begin at forty-five dollars and shall be adjusted annually by 2011  
the commission to reflect any change in the consumer price index 2012  
~~as defined in section 101.27 of the Revised Code~~, but shall not 2013  
be less than forty-five dollars. 2014

(c) The compliance payment shall not be passed through by 2015  
the electric distribution utility or electric services company 2016  
to consumers. The compliance payment shall be remitted to the 2017  
commission, for deposit to the credit of the advanced energy 2018  
fund created under section 4928.61 of the Revised Code. Payment 2019  
of the compliance payment shall be subject to such collection 2020  
and enforcement procedures as apply to the collection of a 2021  
forfeiture under sections 4905.55 to 4905.60 and 4905.64 of the 2022  
Revised Code. 2023

(3) An electric distribution utility or an electric services company need not comply with a benchmark under division (B) (2) of this section to the extent that its reasonably expected cost of that compliance exceeds its reasonably expected cost of otherwise producing or acquiring the requisite electricity by three per cent or more. The cost of compliance shall be calculated as though any exemption from taxes and assessments had not been granted under section 5727.75 of the Revised Code.

(4) (a) An electric distribution utility or electric services company may request the commission to make a force majeure determination pursuant to this division regarding all or part of the utility's or company's compliance with any minimum benchmark under division (B) (2) of this section during the period of review occurring pursuant to division (C) (2) of this section. The commission may require the electric distribution utility or electric services company to make solicitations for renewable energy resource credits as part of its default service before the utility's or company's request of force majeure under this division can be made.

(b) Within ninety days after the filing of a request by an electric distribution utility or electric services company under division (C) (4) (a) of this section, the commission shall determine if qualifying renewable energy resources are reasonably available in the marketplace in sufficient quantities for the utility or company to comply with the subject minimum benchmark during the review period. In making this determination, the commission shall consider whether the electric distribution utility or electric services company has made a good faith effort to acquire sufficient qualifying renewable energy or, as applicable, solar energy resources to so

comply, including, but not limited to, by banking or seeking 2055  
renewable energy resource credits or by seeking the resources 2056  
through long-term contracts. Additionally, the commission shall 2057  
consider the availability of qualifying renewable energy or 2058  
solar energy resources in this state and other jurisdictions in 2059  
the PJM interconnection regional transmission organization, 2060  
L.L.C., or its successor and the midcontinent independent system 2061  
operator or its successor. 2062

(c) If, pursuant to division (C) (4) (b) of this section, 2063  
the commission determines that qualifying renewable energy or 2064  
solar energy resources are not reasonably available to permit 2065  
the electric distribution utility or electric services company 2066  
to comply, during the period of review, with the subject minimum 2067  
benchmark prescribed under division (B) (2) of this section, the 2068  
commission shall modify that compliance obligation of the 2069  
utility or company as it determines appropriate to accommodate 2070  
the finding. Commission modification shall not automatically 2071  
reduce the obligation for the electric distribution utility's or 2072  
electric services company's compliance in subsequent years. If 2073  
it modifies the electric distribution utility or electric 2074  
services company obligation under division (C) (4) (c) of this 2075  
section, the commission may require the utility or company, if 2076  
sufficient renewable energy resource credits exist in the 2077  
marketplace, to acquire additional renewable energy resource 2078  
credits in subsequent years equivalent to the utility's or 2079  
company's modified obligation under division (C) (4) (c) of this 2080  
section. 2081

(5) The commission shall establish a process to provide 2082  
for at least an annual review of the renewable energy resource 2083  
market in this state and in the service territories of the 2084  
regional transmission organizations that manage transmission 2085

systems located in this state. The commission shall use the 2086  
results of this study to identify any needed changes to the 2087  
amount of the renewable energy compliance payment specified 2088  
under divisions (C) (2) (a) and (b) of this section. Specifically, 2089  
the commission may increase the amount to ensure that payment of 2090  
compliance payments is not used to achieve compliance with this 2091  
section in lieu of actually acquiring or realizing energy 2092  
derived from qualifying renewable energy resources. However, if 2093  
the commission finds that the amount of the compliance payment 2094  
should be otherwise changed, the commission shall present this 2095  
finding to the general assembly for legislative enactment. 2096

(D) The commission annually shall submit to the general 2097  
assembly in accordance with section 101.68 of the Revised Code a 2098  
report describing all of the following: 2099

(1) The compliance of electric distribution utilities and 2100  
electric services companies with division (B) of this section; 2101

(2) The average annual cost of renewable energy credits 2102  
purchased by utilities and companies for the year covered in the 2103  
report; 2104

(3) Any strategy for utility and company compliance or for 2105  
encouraging the use of qualifying renewable energy resources in 2106  
supplying this state's electricity needs in a manner that 2107  
considers available technology, costs, job creation, and 2108  
economic impacts. 2109

The commission shall begin providing the information 2110  
described in division (D) (2) of this section in each report 2111  
submitted after September 10, 2012. The commission shall allow 2112  
and consider public comments on the report prior to its 2113  
submission to the general assembly. Nothing in the report shall 2114



be binding on any person, including any utility or company for 2115  
the purpose of its compliance with any benchmark under division 2116  
(B) of this section, or the enforcement of that provision under 2117  
division (C) of this section. 2118

(E) All costs incurred by an electric distribution utility 2119  
in complying with the ~~requirements-standards~~ of this section 2120  
shall be bypassable by any consumer that has exercised choice of 2121  
supplier under section 4928.03 of the Revised Code. 2122

(F) The provisions of this section shall collectively be 2123  
referred to as the Ohio generation and jobs incentive program. 2124

**Sec. 4928.643.** (A) Except as provided in division (B) of 2125  
this section and section 4928.644 of the Revised Code, the 2126  
baseline for an electric distribution utility's or an electric 2127  
services company's compliance with the ~~qualified renewable-~~ 2128  
~~energy resource requirements of Ohio generation and jobs~~ 2129  
incentive program under section 4928.64 of the Revised Code 2130  
shall be the average of total kilowatt hours sold by the utility 2131  
or company in the preceding three calendar years to the 2132  
following: 2133

(1) In the case of an electric distribution utility, any 2134  
and all retail electric consumers whose electric load centers 2135  
are served by that utility and are located within the utility's 2136  
certified territory; 2137

(2) In the case of an electric services company, any and 2138  
all retail electric consumers who are served by the company and 2139  
are located within this state. 2140

(B) Beginning with compliance year 2014, a utility or 2141  
company may choose for its baseline for compliance with the 2142  
~~qualified renewable energy resource requirements of Ohio~~ 2143

generation and jobs incentive program under section 4928.64 of 2144  
the Revised Code to be the total kilowatt hours sold to the 2145  
applicable consumers, as described in division (A) (1) or (2) of 2146  
this section, in the applicable compliance year. 2147

(C) A utility or company that uses the baseline permitted 2148  
under division (B) of this section may use the baseline 2149  
described in division (A) of this section in any subsequent 2150  
compliance year. A utility or company that makes this switch 2151  
shall use the baseline described in division (A) of this section 2152  
for at least three consecutive compliance years before again 2153  
using the baseline permitted under division (B) of this section. 2154

**Sec. 4928.645.** (A) An electric distribution utility or 2155  
electric services company may use, for the purpose of complying 2156  
with the ~~requirements~~ Ohio generation and jobs incentive program 2157  
under divisions (B) (1) and (2) of section 4928.64 of the Revised 2158  
Code, renewable energy credits any time in the five calendar 2159  
years following the date of their purchase or acquisition from 2160  
any entity, including, but not limited to, the following: 2161

(1) A mercantile customer; 2162

(2) An owner or operator of a hydroelectric generating 2163  
facility that is located at a dam on a river, or on any water 2164  
discharged to a river, that is within or bordering this state or 2165  
within or bordering an adjoining state, or that produces power 2166  
that can be shown to be deliverable into this state; 2167

(3) A seller of compressed natural gas that has been 2168  
produced from biologically derived methane gas, provided that 2169  
the seller may only provide renewable energy credits for metered 2170  
amounts of gas. 2171

(B) (1) The public utilities commission shall adopt rules 2172

specifying that one unit of credit shall equal one megawatt hour 2173  
of electricity derived from renewable energy resources, except 2174  
that, for a generating facility of seventy-five megawatts or 2175  
greater that is situated within this state and has committed by 2176  
December 31, 2009, to modify or retrofit its generating unit or 2177  
units to enable the facility to generate principally from 2178  
biomass energy by June 30, 2013, each megawatt hour of 2179  
electricity generated principally from that biomass energy shall 2180  
equal, in units of credit, the product obtained by multiplying 2181  
the actual percentage of biomass feedstock heat input used to 2182  
generate such megawatt hour by the quotient obtained by dividing 2183  
the then existing unit dollar amount used to determine a 2184  
~~renewable energy compliance~~ payment as provided under division 2185  
(C) (2) (b) of section 4928.64 of the Revised Code by the then 2186  
existing market value of one renewable energy credit, but such 2187  
megawatt hour shall not equal less than one unit of credit. 2188  
Renewable energy resources do not have to be converted to 2189  
electricity in order to be eligible to receive renewable energy 2190  
credits. The rules shall specify that, for purposes of 2191  
converting the quantity of energy derived from biologically 2192  
derived methane gas to an electricity equivalent, one megawatt 2193  
hour equals 3,412,142 British thermal units. 2194

(2) The rules also shall provide for this state a system 2195  
of registering renewable energy credits by specifying which of 2196  
any generally available registries shall be used for that 2197  
purpose and not by creating a registry. That selected system of 2198  
registering renewable energy credits shall allow a hydroelectric 2199  
generating facility to be eligible for obtaining renewable 2200  
energy credits and shall allow customer-sited projects or 2201  
actions the broadest opportunities to be eligible for obtaining 2202  
renewable energy credits. 2203

(3) The rules also shall require the commission to do all 2204  
of the following with regard to certifying renewable energy 2205  
credits: 2206

(a) Identify solar renewable energy credits sourced from 2207  
projects that are twenty-five megawatts or smaller; 2208

(b) Identify all other solar renewable energy credits; 2209

(c) Identify the renewable energy credits that are 2210  
projects located in this state. 2211

**Sec. 4928.65.** (A) Not later than January 1, 2015, the 2212  
public utilities commission shall adopt rules governing the 2213  
disclosure of the costs to customers of ~~the renewable energy~~ 2214  
~~resource,~~ compliance with the Ohio generation and jobs incentive 2215  
program under section 4928.64 of the Revised Code and the energy 2216  
efficiency savings performance and waste reduction program, and 2217  
peak demand reduction requirements of ~~sections 4928.64 and~~ 2218  
section 4928.66 of the Revised Code. The rules shall include 2219  
both of the following requirements: 2220

(1) That every electric distribution utility list, on all 2221  
customer bills sent by the utility, including utility 2222  
consolidated bills that include both electric distribution 2223  
utility and electric services company charges, the individual 2224  
customer cost of the utility's compliance with all of the 2225  
following for the applicable billing period: 2226

(a) ~~The renewable energy resource requirements~~ Compliance 2227  
with the Ohio generation and jobs incentive program under 2228  
section 4928.64 of the Revised Code, subject to division (B) of 2229  
this section; 2230

(b) The energy ~~efficiency savings requirements~~ performance 2231  
and waste reduction program under section 4928.66 of the Revised 2232

Code; 2233

(c) The peak demand reduction requirements under section 2234  
4928.66 of the Revised Code. 2235

(2) That every electric services company list, on all 2236  
customer bills sent by the company, the individual customer 2237  
cost, subject to division (B) of this section, of the company's 2238  
compliance with the ~~renewable energy resource requirements~~ Ohio 2239  
generation and jobs incentive program under section 4928.64 of 2240  
the Revised Code for the applicable billing period. 2241

(B) (1) For purposes of division (A) (1) (a) of this section, 2242  
the cost of compliance with the ~~renewable energy resource~~ 2243  
~~requirements~~ Ohio generation and jobs incentive program shall be 2244  
calculated by multiplying the individual customer's monthly 2245  
usage by the combined weighted average of renewable-energy- 2246  
credit costs, including solar-renewable-energy-credit costs, 2247  
paid by all electric distribution utilities, as listed in the 2248  
commission's most recently available alternative energy 2249  
portfolio standard report. 2250

(2) For purposes of division (A) (2) of this section, the 2251  
cost of compliance with the ~~renewable energy resource~~ 2252  
~~requirements~~ Ohio generation and jobs incentive program shall be 2253  
calculated by multiplying the individual customer's monthly 2254  
usage by the combined weighted average of renewable-energy- 2255  
credit costs, including solar-renewable-energy-credit costs, 2256  
paid by all electric services companies, as listed in the 2257  
commission's most recently available alternative energy 2258  
portfolio standard report. 2259

(C) The costs required to be listed under division (A) (1) 2260  
of this section shall be listed on each customer's monthly bill 2261

as three distinct line items. The cost required to be listed 2262  
under division (A) (2) of this section shall be listed on each 2263  
customer's monthly bill as a distinct line item. 2264

**Sec. 4928.66.** (A) (1) (a) Beginning in 2009, an electric 2265  
distribution utility shall implement energy ~~efficiency~~ 2266  
performance and waste reduction programs that achieve energy 2267  
savings equivalent to at least three-tenths of one per cent of 2268  
the total, annual average, and normalized kilowatt-hour sales of 2269  
the electric distribution utility during the preceding three 2270  
calendar years to customers in this state. An energy ~~efficiency~~ 2271  
performance and waste reduction program may include a combined 2272  
heat and power system placed into service or retrofitted on or 2273  
after the effective date of the amendment of this section by 2274  
S.B. 315 of the 129th general assembly, September 10, 2012, or a 2275  
waste energy recovery system placed into service or retrofitted 2276  
on or after September 10, 2012, except that a waste energy 2277  
recovery system described in division (A) (38) (b) of section 2278  
4928.01 of the Revised Code may be included only if it was 2279  
placed into service between January 1, 2002, and December 31, 2280  
2004. For a waste energy recovery or combined heat and power 2281  
system, the savings shall be as estimated by the public 2282  
utilities commission. The savings requirement, using such a 2283  
three-year average, shall increase to an additional five-tenths 2284  
of one per cent in 2010, seven-tenths of one per cent in 2011, 2285  
eight-tenths of one per cent in 2012, nine-tenths of one per 2286  
cent in 2013, and one per cent in 2014. In 2015 and 2016, an 2287  
electric distribution utility shall achieve energy savings equal 2288  
to the result of subtracting the cumulative energy savings 2289  
achieved since 2009 from the product of multiplying the baseline 2290  
for energy savings, described in division (A) (2) (a) of this 2291  
section, by four and two-tenths of one per cent. If the result 2292

is zero or less for the year for which the calculation is being 2293  
made, the utility shall not be required to achieve additional 2294  
energy savings for that year, but may achieve additional energy 2295  
savings for that year. Thereafter, the annual savings 2296  
requirements shall be, for years 2017, 2018, 2019, and 2020, one 2297  
per cent of the baseline, and two per cent each year thereafter, 2298  
achieving cumulative energy savings in excess of twenty-two per 2299  
cent by the end of 2027. For purposes of a waste energy recovery 2300  
or combined heat and power system, an electric distribution 2301  
utility shall not apply more than the total annual percentage of 2302  
the electric distribution utility's industrial-customer load, 2303  
relative to the electric distribution utility's total load, to 2304  
the annual energy savings requirement. 2305

(b) Beginning in 2009, an electric distribution utility 2306  
shall implement peak demand reduction programs designed to 2307  
achieve a one per cent reduction in peak demand in 2009 and an 2308  
additional seventy-five hundredths of one per cent reduction 2309  
each year through 2014. In 2015 and 2016, an electric 2310  
distribution utility shall achieve a reduction in peak demand 2311  
equal to the result of subtracting the cumulative peak demand 2312  
reductions achieved since 2009 from the product of multiplying 2313  
the baseline for peak demand reduction, described in division 2314  
(A) (2) (a) of this section, by four and seventy-five hundredths 2315  
of one per cent. If the result is zero or less for the year for 2316  
which the calculation is being made, the utility shall not be 2317  
required to achieve an additional reduction in peak demand for 2318  
that year, but may achieve an additional reduction in peak 2319  
demand for that year. In 2017 and each year thereafter through 2320  
2020, the utility shall achieve an additional seventy-five 2321  
hundredths of one per cent reduction in peak demand. 2322

(2) For the purposes of divisions (A) (1) (a) and (b) of 2323

this section: 2324

(a) The baseline for energy savings under division (A) (1) 2325  
(a) of this section shall be the average of the total kilowatt 2326  
hours the electric distribution utility sold in the preceding 2327  
three calendar years. The baseline for a peak demand reduction 2328  
under division (A) (1) (b) of this section shall be the average 2329  
peak demand on the utility in the preceding three calendar 2330  
years, except that the commission may reduce either baseline to 2331  
adjust for new economic growth in the utility's certified 2332  
territory. Neither baseline shall include the load and usage of 2333  
any of the following customers: 2334

(i) Beginning January 1, 2017, a customer for which a 2335  
reasonable arrangement has been approved under section 4905.31 2336  
of the Revised Code; 2337

(ii) A customer that has opted out of the utility's 2338  
portfolio plan under section 4928.6611 of the Revised Code; 2339

(iii) A customer that has opted out of the utility's 2340  
portfolio plan under Section 8 of S.B. 310 of the 130th general 2341  
assembly. 2342

(b) The commission may amend the benchmarks set forth in 2343  
division (A) (1) (a) or (b) of this section if, after application 2344  
by the electric distribution utility, the commission determines 2345  
that the amendment is necessary because the utility cannot 2346  
reasonably achieve the benchmarks due to regulatory, economic, 2347  
or technological reasons beyond its reasonable control. 2348

(c) Compliance with divisions (A) (1) (a) and (b) of this 2349  
section shall be measured by including the effects of all 2350  
demand-response programs for mercantile customers of the subject 2351  
electric distribution utility, all waste energy recovery systems 2352



and all combined heat and power systems, and all such mercantile 2353  
customer-sited ~~energy-efficiency performance and waste~~ 2354  
reduction, including waste energy recovery and combined heat and 2355  
power, and peak demand reduction programs, adjusted upward by 2356  
the appropriate loss factors. Any mechanism designed to recover 2357  
the cost of ~~energy-efficiency performance and waste reduction~~, 2358  
including waste energy recovery and combined heat and power, and 2359  
peak demand reduction programs under divisions (A) (1) (a) and (b) 2360  
of this section may exempt mercantile customers that commit 2361  
their demand-response or other customer-sited capabilities, 2362  
whether existing or new, for integration into the electric 2363  
distribution utility's demand-response, ~~energy-efficiency-~~ 2364  
performance and waste reduction, including waste energy recovery 2365  
and combined heat and power, or peak demand reduction programs, 2366  
if the commission determines that that exemption reasonably 2367  
encourages such customers to commit those capabilities to those 2368  
programs. If a mercantile customer makes such existing or new 2369  
demand-response, ~~energy-efficiency performance or waste~~ 2370  
reduction, including waste energy recovery and combined heat and 2371  
power, or peak demand reduction capability available to an 2372  
electric distribution utility pursuant to division (A) (2) (c) of 2373  
this section, the electric utility's baseline under division (A) 2374  
(2) (a) of this section shall be adjusted to exclude the effects 2375  
of all such demand-response, ~~energy-efficiency performance and~~ 2376  
waste reduction, including waste energy recovery and combined 2377  
heat and power, or peak demand reduction programs that may have 2378  
existed during the period used to establish the baseline. The 2379  
baseline also shall be normalized for changes in numbers of 2380  
customers, sales, weather, peak demand, and other appropriate 2381  
factors so that the compliance measurement is not unduly 2382  
influenced by factors outside the control of the electric 2383  
distribution utility. 2384

(d) (i) Programs implemented by a utility may include the following:	2385 2386
(I) Demand-response programs;	2387
(II) Smart grid investment programs, provided that such programs are demonstrated to be cost-beneficial;	2388 2389
(III) Customer-sited programs, including waste energy recovery and combined heat and power systems;	2390 2391
(IV) Transmission and distribution infrastructure improvements that reduce line losses;	2392 2393
(V) Energy <del>efficiency</del> -savings and peak demand reduction that are achieved, in whole or in part, as a result of funding provided from the universal service fund established by section 4928.51 of the Revised Code to benefit low-income customers through programs that include, but are not limited to, energy audits, the installation of energy <del>efficiency</del> - <u>performance and waste reduction</u> insulation, appliances, and windows, and other weatherization measures.	2394 2395 2396 2397 2398 2399 2400 2401
(ii) No energy <del>efficiency</del> - <u>savings</u> or peak demand reduction achieved under divisions (A) (2) (d) (i) (IV) and (V) of this section shall qualify for shared savings.	2402 2403 2404
(iii) Division (A) (2) (c) of this section shall be applied to include facilitating efforts by a mercantile customer or group of those customers to offer customer-sited demand-response, energy <del>efficiency</del> - <u>performance and waste reduction</u> , including waste energy recovery and combined heat and power, or peak demand reduction capabilities to the electric distribution utility as part of a reasonable arrangement submitted to the commission pursuant to section 4905.31 of the Revised Code.	2405 2406 2407 2408 2409 2410 2411 2412

(e) No programs or improvements described in division (A) 2413  
(2) (d) of this section shall conflict with any statewide 2414  
building code adopted by the board of building standards. 2415

(B) In accordance with rules it shall adopt, the public 2416  
utilities commission shall produce and docket at the commission 2417  
an annual report containing the results of its verification of 2418  
the annual levels of energy ~~efficiency-savings~~ and of peak 2419  
demand reductions achieved by each electric distribution utility 2420  
pursuant to division (A) of this section. A copy of the report 2421  
shall be provided to the consumers' counsel. 2422

(C) If the commission determines, after notice and 2423  
opportunity for hearing and based upon its report under division 2424  
(B) of this section, that an electric distribution utility has 2425  
failed to comply with an energy ~~efficiency-performance and waste~~ 2426  
reduction standard or peak demand reduction requirement of 2427  
division (A) of this section, the commission shall assess a 2428  
forfeiture on the utility as provided under sections 4905.55 to 2429  
4905.60 and 4905.64 of the Revised Code, either in the amount, 2430  
per day per undercompliance or noncompliance, relative to the 2431  
period of the report, equal to that prescribed for 2432  
noncompliances under section 4905.54 of the Revised Code, or in 2433  
an amount equal to the then existing market value of one 2434  
renewable energy credit per megawatt hour of undercompliance or 2435  
noncompliance. Revenue from any forfeiture assessed under this 2436  
division shall be deposited to the credit of the advanced energy 2437  
fund created under section 4928.61 of the Revised Code. 2438

(D) The commission may establish rules regarding the 2439  
content of an application by an electric distribution utility 2440  
for commission approval of a revenue decoupling mechanism under 2441  
this division. Such an application shall not be considered an 2442

application to increase rates and may be included as part of a 2443  
proposal to establish, continue, or expand energy ~~efficiency-~~ 2444  
performance and waste reduction or conservation programs. The 2445  
commission by order may approve an application under this 2446  
division if it determines both that the revenue decoupling 2447  
mechanism provides for the recovery of revenue that otherwise 2448  
may be forgone by the utility as a result of or in connection 2449  
with the implementation by the electric distribution utility of 2450  
any energy ~~efficiency-performance and waste reduction~~ or energy 2451  
conservation programs and reasonably aligns the interests of the 2452  
utility and of its customers in favor of those programs. 2453

(E) The commission additionally shall adopt rules that 2454  
require an electric distribution utility to provide a customer 2455  
upon request with two years' consumption data in an accessible 2456  
form. 2457

**Sec. 4928.662.** (A) For the purpose of measuring and 2458  
determining compliance with the energy ~~efficiency-performance~~ 2459  
and waste reduction program and peak demand reduction 2460  
requirements under section 4928.66 of the Revised Code, the 2461  
public utilities commission shall count and recognize compliance 2462  
as follows: 2463

~~(A) Energy efficiency savings and peak demand reduction~~ 2464  
~~achieved through actions taken by customers or through electric~~ 2465  
~~distribution utility programs that comply with federal standards~~ 2466  
~~for either or both energy efficiency and peak demand reduction~~ 2467  
~~requirements, including resources associated with such savings~~ 2468  
~~or reduction that are recognized as capacity resources by the~~ 2469  
~~regional transmission organization operating in Ohio in~~ 2470  
~~compliance with section 4928.12 of the Revised Code, shall count~~ 2471  
~~toward compliance with the energy efficiency and peak demand~~ 2472

~~reduction requirements.~~ 2473

~~(B) Energy efficiency savings and peak demand reduction~~ 2474  
~~achieved on and after the effective date of S.B. 310 of the~~ 2475  
~~130th general assembly shall be measured on the higher of an as-~~ 2476  
~~found or deemed basis, except that, solely at the option of the~~ 2477  
~~electric distribution utility, such savings and reduction~~ 2478  
~~achieved since 2006 may also be measured using this method. For~~ 2479  
~~new construction, the energy efficiency savings and peak demand~~ 2480  
~~reduction shall be counted based on 2008 federal standards,~~ 2481  
~~provided that when new construction replaces an existing~~ 2482  
~~facility, the difference in energy consumed, energy intensity,~~ 2483  
~~and peak demand between the new and replaced facility shall be~~ 2484  
~~counted toward meeting the energy efficiency and peak demand~~ 2485  
~~reduction requirements.~~ 2486

~~(C) The commission shall count both the energy efficiency~~ 2487  
~~savings and peak demand reduction on an annualized basis.~~ 2488

~~(D) The commission shall count both the energy efficiency~~ 2489  
~~savings and peak demand reduction on a gross savings basis.~~ 2490

~~(E)~~ (1) The commission shall count energy ~~efficiency~~ 2491  
savings and peak demand reductions associated with transmission 2492  
and distribution infrastructure improvements that reduce line 2493  
losses. No energy ~~efficiency savings~~ or peak demand reduction 2494  
achieved under division ~~(E)~~ (A) (1) of this section shall qualify 2495  
for shared savings. 2496

~~(F)~~ (2) Energy ~~efficiency~~ savings and peak demand 2497  
reduction amounts approved by the commission shall continue to 2498  
be counted toward achieving the energy ~~efficiency performance~~ 2499  
and waste reduction standards and peak demand reduction 2500  
requirements as long as ~~the requirements~~ they remain in effect. 2501

~~(G)~~ (3) Any energy ~~efficiency~~-savings or peak demand 2502  
reduction amount achieved in excess of the energy performance 2503  
and waste reduction standards and peak demand reduction 2504  
requirements may, at the discretion of the electric distribution 2505  
utility, be banked and applied toward achieving the energy 2506  
~~efficiency~~performance and waste reduction standards or peak 2507  
demand reduction requirements in future years. 2508

(B) The commission shall adopt rules to develop methods 2509  
for determining compliance with the energy performance and waste 2510  
reduction program and peak demand reduction requirements. The 2511  
methods shall involve calculating energy savings and peak demand 2512  
reduction based on the latest best practices. 2513

**Sec. 4928.663.** (A) As used in this section, "cost- 2514  
effective program" means a program that delivers savings to 2515  
customers participating in the program in an amount that exceeds 2516  
the customers' costs for the program. 2517

(B) The public utilities commission shall ensure that 2518  
energy performance and waste reduction programs and peak demand 2519  
reduction programs administered by an electric distribution 2520  
utility under section 4928.66 of the Revised Code are cost- 2521  
effective programs. The commission shall not limit the amount 2522  
that an electric distribution utility may spend on cost- 2523  
effective programs. 2524

**Sec. 4928.6612.** Any customer electing to opt out under 2525  
section 4928.6611 of the Revised Code shall do so by providing a 2526  
verified written notice of intent to opt out to the electric 2527  
distribution utility from which it receives service and 2528  
submitting a complete copy of the opt-out notice to the 2529  
secretary of the public utilities commission. 2530

The notice provided to the utility shall include all of 2531  
the following: 2532

(A) A statement indicating that the customer has elected 2533  
to opt out; 2534

(B) The effective date of the election to opt out; 2535

(C) The account number for each customer account to which 2536  
the opt out shall apply; 2537

(D) The physical location of the customer's load center; 2538

(E) The date upon which the customer established, or plans 2539  
to establish a process and implement, cost-effective measures to 2540  
improve its energy ~~efficiency~~-savings and peak demand 2541  
reductions. 2542

**Sec. 5727.75.** (A) For purposes of this section: 2543

(1) "Qualified energy project" means an energy project 2544  
certified by the director of development services pursuant to 2545  
this section. 2546

(2) "Energy project" means a project to provide electric 2547  
power through the construction, installation, and use of an 2548  
energy facility. 2549

(3) "Alternative energy zone" means a county declared as 2550  
such by the board of county commissioners under division (E) (1) 2551  
(b) or (c) of this section. 2552

(4) "Full-time equivalent employee" means the total number 2553  
of employee-hours for which compensation was paid to individuals 2554  
employed at a qualified energy project for services performed at 2555  
the project during the calendar year divided by two thousand 2556  
eighty hours. 2557

(5) "Solar energy project" means an energy project 2558  
composed of an energy facility using solar panels to generate 2559  
electricity. 2560

(6) "Internet identifier of record" has the same meaning 2561  
as in section 9.312 of the Revised Code. 2562

(B) (1) Tangible personal property of a qualified energy 2563  
project using renewable energy resources is exempt from taxation 2564  
for tax years 2011 through 2021 if all of the following 2565  
conditions are satisfied: 2566

(a) On or before December 31, 2020, the owner or a lessee 2567  
pursuant to a sale and leaseback transaction of the project 2568  
submits an application to the power siting board for a 2569  
certificate under section 4906.20 of the Revised Code, or if 2570  
that section does not apply, submits an application for any 2571  
approval, consent, permit, or certificate or satisfies any 2572  
condition required by a public agency or political subdivision 2573  
of this state for the construction or initial operation of an 2574  
energy project. 2575

(b) Construction or installation of the energy facility 2576  
begins on or after January 1, 2009, and before January 1, 2021. 2577  
For the purposes of this division, construction begins on the 2578  
earlier of the date of application for a certificate or other 2579  
approval or permit described in division (B) (1) (a) of this 2580  
section, or the date the contract for the construction or 2581  
installation of the energy facility is entered into. 2582

(c) For a qualified energy project with a nameplate 2583  
capacity of five megawatts or greater, a board of county 2584  
commissioners of a county in which property of the project is 2585  
located has adopted a resolution under division (E) (1) (b) or (c) 2586



of this section to approve the application submitted under 2587  
division (E) of this section to exempt the property located in 2588  
that county from taxation. A board's adoption of a resolution 2589  
rejecting an application or its failure to adopt a resolution 2590  
approving the application does not affect the tax-exempt status 2591  
of the qualified energy project's property that is located in 2592  
another county. 2593

(2) If tangible personal property of a qualified energy 2594  
project using renewable energy resources was exempt from 2595  
taxation under this section beginning in any of tax years 2011 2596  
through 2021, and the certification under division (E) (2) of 2597  
this section has not been revoked, the tangible personal 2598  
property of the qualified energy project is exempt from taxation 2599  
for tax year 2022 and all ensuing tax years if the property was 2600  
placed into service before January 1, 2022, as certified in the 2601  
construction progress report required under division (F) (2) of 2602  
this section. Tangible personal property that has not been 2603  
placed into service before that date is taxable property subject 2604  
to taxation. An energy project for which certification has been 2605  
revoked is ineligible for further exemption under this section. 2606  
Revocation does not affect the tax-exempt status of the 2607  
project's tangible personal property for the tax year in which 2608  
revocation occurs or any prior tax year. 2609

(C) Tangible personal property of a qualified energy 2610  
project using clean coal technology, advanced nuclear 2611  
technology, or cogeneration technology is exempt from taxation 2612  
for the first tax year that the property would be listed for 2613  
taxation and all subsequent years if all of the following 2614  
circumstances are met: 2615

(1) The property was placed into service before January 1, 2616

2021. Tangible personal property that has not been placed into 2617  
service before that date is taxable property subject to 2618  
taxation. 2619

(2) For such a qualified energy project with a nameplate 2620  
capacity of five megawatts or greater, a board of county 2621  
commissioners of a county in which property of the qualified 2622  
energy project is located has adopted a resolution under 2623  
division (E) (1) (b) or (c) of this section to approve the 2624  
application submitted under division (E) of this section to 2625  
exempt the property located in that county from taxation. A 2626  
board's adoption of a resolution rejecting the application or 2627  
its failure to adopt a resolution approving the application does 2628  
not affect the tax-exempt status of the qualified energy 2629  
project's property that is located in another county. 2630

(3) The certification for the qualified energy project 2631  
issued under division (E) (2) of this section has not been 2632  
revoked. An energy project for which certification has been 2633  
revoked is ineligible for exemption under this section. 2634  
Revocation does not affect the tax-exempt status of the 2635  
project's tangible personal property for the tax year in which 2636  
revocation occurs or any prior tax year. 2637

(D) Except as otherwise provided in this section, real 2638  
property of a qualified energy project is exempt from taxation 2639  
for any tax year for which the tangible personal property of the 2640  
qualified energy project is exempted under this section. 2641

(E) (1) (a) A person may apply to the director of 2642  
development services for certification of an energy project as a 2643  
qualified energy project on or before the following dates: 2644

(i) December 31, 2020, for an energy project using 2645

renewable energy resources; 2646

(ii) December 31, 2017, for an energy project using clean 2647  
coal technology, advanced nuclear technology, or cogeneration 2648  
technology. 2649

(b) The director shall forward a copy of each application 2650  
for certification of an energy project with a nameplate capacity 2651  
of five megawatts or greater to the board of county 2652  
commissioners of each county in which the project is located and 2653  
to each taxing unit with territory located in each of the 2654  
affected counties. Any board that receives from the director a 2655  
copy of an application submitted under this division shall adopt 2656  
a resolution approving or rejecting the application unless it 2657  
has adopted a resolution under division (E) (1) (c) of this 2658  
section. A resolution adopted under division (E) (1) (b) or (c) of 2659  
this section may require an annual service payment to be made in 2660  
addition to the service payment required under division (G) of 2661  
this section. The sum of the service payment required in the 2662  
resolution and the service payment required under division (G) 2663  
of this section shall not exceed nine thousand dollars per 2664  
megawatt of nameplate capacity located in the county. The 2665  
resolution shall specify the time and manner in which the 2666  
payments required by the resolution shall be paid to the county 2667  
treasurer. The county treasurer shall deposit the payment to the 2668  
credit of the county's general fund to be used for any purpose 2669  
for which money credited to that fund may be used. 2670

The board shall send copies of the resolution to the owner 2671  
of the facility and the director by certified mail or, if the 2672  
board has record of an internet identifier of record associated 2673  
with the owner or director, by ordinary mail and by that 2674  
internet identifier of record. The board shall send such notice 2675

within thirty days after receipt of the application, or a longer 2676  
period of time if authorized by the director. 2677

(c) A board of county commissioners may adopt a resolution 2678  
declaring the county to be an alternative energy zone and 2679  
declaring all applications submitted to the director of 2680  
development services under this division after the adoption of 2681  
the resolution, and prior to its repeal, to be approved by the 2682  
board. 2683

All tangible personal property and real property of an 2684  
energy project with a nameplate capacity of five megawatts or 2685  
greater is taxable if it is located in a county in which the 2686  
board of county commissioners adopted a resolution rejecting the 2687  
application submitted under this division or failed to adopt a 2688  
resolution approving the application under division (E) (1) (b) or 2689  
(c) of this section. 2690

(2) The director shall certify an energy project if all of 2691  
the following circumstances exist: 2692

(a) The application was timely submitted. 2693

(b) For an energy project with a nameplate capacity of 2694  
five megawatts or greater, a board of county commissioners of at 2695  
least one county in which the project is located has adopted a 2696  
resolution approving the application under division (E) (1) (b) or 2697  
(c) of this section. 2698

(c) No portion of the project's facility was used to 2699  
supply electricity before December 31, 2009. 2700

(3) The director shall deny a certification application if 2701  
the director determines the person has failed to comply with any 2702  
requirement under this section. The director may revoke a 2703  
certification if the director determines the person, or 2704

subsequent owner or lessee pursuant to a sale and leaseback 2705  
transaction of the qualified energy project, has failed to 2706  
comply with any requirement under this section. Upon 2707  
certification or revocation, the director shall notify the 2708  
person, owner, or lessee, the tax commissioner, and the county 2709  
auditor of a county in which the project is located of the 2710  
certification or revocation. Notice shall be provided in a 2711  
manner convenient to the director. 2712

(F) The owner or a lessee pursuant to a sale and leaseback 2713  
transaction of a qualified energy project shall do each of the 2714  
following: 2715

(1) Comply with all applicable regulations; 2716

(2) File with the director of development services a 2717  
certified construction progress report before the first day of 2718  
March of each year during the energy facility's construction or 2719  
installation indicating the percentage of the project completed, 2720  
and the project's nameplate capacity, as of the preceding 2721  
thirty-first day of December. Unless otherwise instructed by the 2722  
director of development services, the owner or lessee of an 2723  
energy project shall file a report with the director on or 2724  
before the first day of March each year after completion of the 2725  
energy facility's construction or installation indicating the 2726  
project's nameplate capacity as of the preceding thirty-first 2727  
day of December. Not later than sixty days after June 17, 2010, 2728  
the owner or lessee of an energy project, the construction of 2729  
which was completed before June 17, 2010, shall file a 2730  
certificate indicating the project's nameplate capacity. 2731

(3) File with the director of development services, in a 2732  
manner prescribed by the director, a report of the total number 2733  
of full-time equivalent employees, and the total number of full- 2734

time equivalent employees domiciled in Ohio, who are employed in 2735  
the construction or installation of the energy facility; 2736

(4) For energy projects with a nameplate capacity of five 2737  
megawatts or greater, repair all roads, bridges, and culverts 2738  
affected by construction as reasonably required to restore them 2739  
to their preconstruction condition, as determined by the county 2740  
engineer in consultation with the local jurisdiction responsible 2741  
for the roads, bridges, and culverts. In the event that the 2742  
county engineer deems any road, bridge, or culvert to be 2743  
inadequate to support the construction or decommissioning of the 2744  
energy facility, the road, bridge, or culvert shall be rebuilt 2745  
or reinforced to the specifications established by the county 2746  
engineer prior to the construction or decommissioning of the 2747  
facility. The owner or lessee of the facility shall post a bond 2748  
in an amount established by the county engineer and to be held 2749  
by the board of county commissioners to ensure funding for 2750  
repairs of roads, bridges, and culverts affected during the 2751  
construction. The bond shall be released by the board not later 2752  
than one year after the date the repairs are completed. The 2753  
energy facility owner or lessee pursuant to a sale and leaseback 2754  
transaction shall post a bond, as may be required by the Ohio 2755  
power siting board in the certificate authorizing commencement 2756  
of construction issued pursuant to section 4906.10 of the 2757  
Revised Code, to ensure funding for repairs to roads, bridges, 2758  
and culverts resulting from decommissioning of the facility. The 2759  
energy facility owner or lessee and the county engineer may 2760  
enter into an agreement regarding specific transportation plans, 2761  
reinforcements, modifications, use and repair of roads, 2762  
financial security to be provided, and any other relevant issue. 2763

(5) Provide or facilitate training for fire and emergency 2764  
responders for response to emergency situations related to the 2765

energy project and, for energy projects with a nameplate 2766  
capacity of five megawatts or greater, at the person's expense, 2767  
equip the fire and emergency responders with proper equipment as 2768  
reasonably required to enable them to respond to such emergency 2769  
situations; 2770

(6) Maintain a ratio of Ohio-domiciled full-time 2771  
equivalent employees employed in the construction or 2772  
installation of the energy project to total full-time equivalent 2773  
employees employed in the construction or installation of the 2774  
energy project of not less than eighty per cent in the case of a 2775  
solar energy project, and not less than fifty per cent in the 2776  
case of any other energy project. In the case of an energy 2777  
project for which certification from the power siting board is 2778  
required under section 4906.20 of the Revised Code, the number 2779  
of full-time equivalent employees employed in the construction 2780  
or installation of the energy project equals the number actually 2781  
employed or the number projected to be employed in the 2782  
certificate application, if such projection is required under 2783  
regulations adopted pursuant to section 4906.03 of the Revised 2784  
Code, whichever is greater. For all other energy projects, the 2785  
number of full-time equivalent employees employed in the 2786  
construction or installation of the energy project equals the 2787  
number actually employed or the number projected to be employed 2788  
by the director of development services, whichever is greater. 2789  
To estimate the number of employees to be employed in the 2790  
construction or installation of an energy project, the director 2791  
shall use a generally accepted job-estimating model in use for 2792  
renewable energy projects, including but not limited to the job 2793  
and economic development impact model. The director may adjust 2794  
an estimate produced by a model to account for variables not 2795  
accounted for by the model. 2796

(7) For energy projects with a nameplate capacity in excess of two megawatts, establish a relationship with a member of the university system of Ohio as defined in section 3345.011 of the Revised Code or with a person offering an apprenticeship program registered with the employment and training administration within the United States department of labor or with the apprenticeship council created by section 4139.02 of the Revised Code, to educate and train individuals for careers in the wind or solar energy industry. The relationship may include endowments, cooperative programs, internships, apprenticeships, research and development projects, and curriculum development.

(8) Offer to sell power or renewable energy credits from the energy project to electric distribution utilities or electric service companies subject to ~~renewable energy resource requirements~~ standards for the Ohio generation and jobs incentive program under section 4928.64 of the Revised Code that have issued requests for proposal for such power or renewable energy credits. If no electric distribution utility or electric service company issues a request for proposal on or before December 31, 2010, or accepts an offer for power or renewable energy credits within forty-five days after the offer is submitted, power or renewable energy credits from the energy project may be sold to other persons. Division (F)(8) of this section does not apply if:

(a) The owner or lessee is a rural electric company or a municipal power agency as defined in section 3734.058 of the Revised Code.

(b) The owner or lessee is a person that, before completion of the energy project, contracted for the sale of



power or renewable energy credits with a rural electric company 2827  
or a municipal power agency. 2828

(c) The owner or lessee contracts for the sale of power or 2829  
renewable energy credits from the energy project before June 17, 2830  
2010. 2831

(9) Make annual service payments as required by division 2832  
(G) of this section and as may be required in a resolution 2833  
adopted by a board of county commissioners under division (E) of 2834  
this section. 2835

(G) The owner or a lessee pursuant to a sale and leaseback 2836  
transaction of a qualified energy project shall make annual 2837  
service payments in lieu of taxes to the county treasurer on or 2838  
before the final dates for payments of taxes on public utility 2839  
personal property on the real and public utility personal 2840  
property tax list for each tax year for which property of the 2841  
energy project is exempt from taxation under this section. The 2842  
county treasurer shall allocate the payment on the basis of the 2843  
project's physical location. Upon receipt of a payment, or if 2844  
timely payment has not been received, the county treasurer shall 2845  
certify such receipt or non-receipt to the director of 2846  
development services and tax commissioner in a form determined 2847  
by the director and commissioner, respectively. Each payment 2848  
shall be in the following amount: 2849

(1) In the case of a solar energy project, seven thousand 2850  
dollars per megawatt of nameplate capacity located in the county 2851  
as of December 31, 2010, for tax year 2011, as of December 31, 2852  
2011, for tax year 2012, as of December 31, 2012, for tax year 2853  
2013, as of December 31, 2013, for tax year 2014, as of December 2854  
31, 2014, for tax year 2015, as of December 31, 2015, for tax 2855  
year 2016, and as of December 31, 2016, for tax year 2017 and 2856

each tax year thereafter; 2857

(2) In the case of any other energy project using 2858  
renewable energy resources, the following: 2859

(a) If the project maintains during the construction or 2860  
installation of the energy facility a ratio of Ohio-domiciled 2861  
full-time equivalent employees to total full-time equivalent 2862  
employees of not less than seventy-five per cent, six thousand 2863  
dollars per megawatt of nameplate capacity located in the county 2864  
as of the thirty-first day of December of the preceding tax 2865  
year; 2866

(b) If the project maintains during the construction or 2867  
installation of the energy facility a ratio of Ohio-domiciled 2868  
full-time equivalent employees to total full-time equivalent 2869  
employees of less than seventy-five per cent but not less than 2870  
sixty per cent, seven thousand dollars per megawatt of nameplate 2871  
capacity located in the county as of the thirty-first day of 2872  
December of the preceding tax year; 2873

(c) If the project maintains during the construction or 2874  
installation of the energy facility a ratio of Ohio-domiciled 2875  
full-time equivalent employees to total full-time equivalent 2876  
employees of less than sixty per cent but not less than fifty 2877  
per cent, eight thousand dollars per megawatt of nameplate 2878  
capacity located in the county as of the thirty-first day of 2879  
December of the preceding tax year. 2880

(3) In the case of an energy project using clean coal 2881  
technology, advanced nuclear technology, or cogeneration 2882  
technology, the following: 2883

(a) If the project maintains during the construction or 2884  
installation of the energy facility a ratio of Ohio-domiciled 2885

full-time equivalent employees to total full-time equivalent 2886  
employees of not less than seventy-five per cent, six thousand 2887  
dollars per megawatt of nameplate capacity located in the county 2888  
as of the thirty-first day of December of the preceding tax 2889  
year; 2890

(b) If the project maintains during the construction or 2891  
installation of the energy facility a ratio of Ohio-domiciled 2892  
full-time equivalent employees to total full-time equivalent 2893  
employees of less than seventy-five per cent but not less than 2894  
sixty per cent, seven thousand dollars per megawatt of nameplate 2895  
capacity located in the county as of the thirty-first day of 2896  
December of the preceding tax year; 2897

(c) If the project maintains during the construction or 2898  
installation of the energy facility a ratio of Ohio-domiciled 2899  
full-time equivalent employees to total full-time equivalent 2900  
employees of less than sixty per cent but not less than fifty 2901  
per cent, eight thousand dollars per megawatt of nameplate 2902  
capacity located in the county as of the thirty-first day of 2903  
December of the preceding tax year. 2904

(H) The director of development services in consultation 2905  
with the tax commissioner shall adopt rules pursuant to Chapter 2906  
119. of the Revised Code to implement and enforce this section. 2907

**Section 2.** That existing sections 717.25, 1710.061, 2908  
3706.03, 4905.31, 4906.20, 4906.201, 4928.01, 4928.02, 4928.142, 2909  
4928.143, 4928.20, 4928.61, 4928.621, 4928.64, 4928.643, 2910  
4928.645, 4928.65, 4928.66, 4928.662, 4928.6612, and 5727.75 of 2911  
the Revised Code are hereby repealed. 2912