

H.B. 114  
As Introduced

**Topic:** Small hydroelectric facilities

\_\_\_\_\_ moved to amend as follows:

In line 1 of the title, after "sections" insert "4928.01," 1

In line 15, after "sections" insert "4928.01," 2

After line 19, insert: 3

**"Sec. 4928.01.** (A) As used in this chapter: 4

(1) "Ancillary service" means any function necessary to the 5  
provision of electric transmission or distribution service to a 6  
retail customer and includes, but is not limited to, scheduling, 7  
system control, and dispatch services; reactive supply from 8  
generation resources and voltage control service; reactive supply 9  
from transmission resources service; regulation service; frequency 10  
response service; energy imbalance service; operating 11  
reserve-spinning reserve service; operating reserve-supplemental 12  
reserve service; load following; back-up supply service; 13  
real-power loss replacement service; dynamic scheduling; system 14  
black start capability; and network stability service. 15

(2) "Billing and collection agent" means a fully independent 16  
agent, not affiliated with or otherwise controlled by an electric 17  
utility, electric services company, electric cooperative, or 18  
governmental aggregator subject to certification under section 19

4928.08 of the Revised Code, to the extent that the agent is under  
contract with such utility, company, cooperative, or aggregator  
solely to provide billing and collection for retail electric  
service on behalf of the utility company, cooperative, or  
aggregator.

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

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

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

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

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

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

(9) "Electric services company" means an electric light  
company that is engaged on a for-profit or not-for-profit basis in

the business of supplying or arranging for the supply of only a competitive retail electric service in this state. "Electric services company" includes a power marketer, power broker, aggregator, or independent power producer but excludes an electric cooperative, municipal electric utility, governmental aggregator, or billing and collection agent.

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

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

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

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

(14) A person acts "knowingly," regardless of the person's purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.

(15) "Level of funding for low-income customer energy efficiency programs provided through electric utility rates" means

the level of funds specifically included in an electric utility's 78  
 rates on October 5, 1999, pursuant to an order of the public 79  
 utilities commission issued under Chapter 4905. or 4909. of the 80  
 Revised Code and in effect on October 4, 1999, for the purpose of 81  
 improving the energy efficiency of housing for the utility's 82  
 low-income customers. The term excludes the level of any such 83  
 funds committed to a specific nonprofit organization or 84  
 organizations pursuant to a stipulation or contract. 85

(16) "Low-income customer assistance programs" means the 86  
 percentage of income payment plan program, the home energy 87  
 assistance program, the home weatherization assistance program, 88  
 and the targeted energy efficiency and weatherization program. 89

(17) "Market development period" for an electric utility 90  
 means the period of time beginning on the starting date of 91  
 competitive retail electric service and ending on the applicable 92  
 date for that utility as specified in section 4928.40 of the 93  
 Revised Code, irrespective of whether the utility applies to 94  
 receive transition revenues under this chapter. 95

(18) "Market power" means the ability to impose on customers 96  
 a sustained price for a product or service above the price that 97  
 would prevail in a competitive market. 98

(19) "Mercantile customer" means a commercial or industrial 99  
 customer if the electricity consumed is for nonresidential use and 100  
 the customer consumes more than seven hundred thousand kilowatt 101  
 hours per year or is part of a national account involving multiple 102  
 facilities in one or more states. 103

(20) "Municipal electric utility" means a municipal 104  
 corporation that owns or operates facilities to generate, 105  
 transmit, or distribute electricity. 106

(21) "Noncompetitive retail electric service" means a	107
component of retail electric service that is noncompetitive as	108
provided under division (B) of this section.	109
(22) "Nonfirm electric service" means electric service	110
provided pursuant to a schedule filed under section 4905.30 of the	111
Revised Code or pursuant to an arrangement under section 4905.31	112
of the Revised Code, which schedule or arrangement includes	113
conditions that may require the customer to curtail or interrupt	114
electric usage during nonemergency circumstances upon notification	115
by an electric utility.	116
(23) "Percentage of income payment plan arrears" means funds	117
eligible for collection through the percentage of income payment	118
plan rider, but uncollected as of July 1, 2000.	119
(24) "Person" has the same meaning as in section 1.59 of the	120
Revised Code.	121
(25) "Advanced energy project" means any technologies,	122
products, activities, or management practices or strategies that	123
facilitate the generation or use of electricity or energy and that	124
reduce or support the reduction of energy consumption or support	125
the production of clean, renewable energy for industrial,	126
distribution, commercial, institutional, governmental, research,	127
not-for-profit, or residential energy users, including, but not	128
limited to, advanced energy resources and renewable energy	129
resources. "Advanced energy project" also includes any project	130
described in division (A), (B), or (C) of section 4928.621 of the	131
Revised Code.	132
(26) "Regulatory assets" means the unamortized net regulatory	133
assets that are capitalized or deferred on the regulatory books of	134
the electric utility, pursuant to an order or practice of the	135
public utilities commission or pursuant to generally accepted	136

accounting principles as a result of a prior commission 137  
 rate-making decision, and that would otherwise have been charged 138  
 to expense as incurred or would not have been capitalized or 139  
 otherwise deferred for future regulatory consideration absent 140  
 commission action. "Regulatory assets" includes, but is not 141  
 limited to, all deferred demand-side management costs; all 142  
 deferred percentage of income payment plan arrears; 143  
 post-in-service capitalized charges and assets recognized in 144  
 connection with statement of financial accounting standards no. 145  
 109 (receivables from customers for income taxes); future nuclear 146  
 decommissioning costs and fuel disposal costs as those costs have 147  
 been determined by the commission in the electric utility's most 148  
 recent rate or accounting application proceeding addressing such 149  
 costs; the undepreciated costs of safety and radiation control 150  
 equipment on nuclear generating plants owned or leased by an 151  
 electric utility; and fuel costs currently deferred pursuant to 152  
 the terms of one or more settlement agreements approved by the 153  
 commission. 154

(27) "Retail electric service" means any service involved in 155  
 supplying or arranging for the supply of electricity to ultimate 156  
 consumers in this state, from the point of generation to the point 157  
 of consumption. For the purposes of this chapter, retail electric 158  
 service includes one or more of the following "service 159  
 components": generation service, aggregation service, power 160  
 marketing service, power brokerage service, transmission service, 161  
 distribution service, ancillary service, metering service, and 162  
 billing and collection service. 163

(28) "Starting date of competitive retail electric service" 164  
 means January 1, 2001. 165

(29) "Customer-generator" means a user of a net metering 166

system.	167
(30) "Net metering" means measuring the difference in an applicable billing period between the electricity supplied by an electric service provider and the electricity generated by a customer-generator that is fed back to the electric service provider.	168 169 170 171 172
(31) "Net metering system" means a facility for the production of electrical energy that does all of the following:	173 174
(a) Uses as its fuel either solar, wind, biomass, landfill gas, or hydropower, or uses a microturbine or a fuel cell;	175 176
(b) Is located on a customer-generator's premises;	177
(c) Operates in parallel with the electric utility's transmission and distribution facilities;	178 179
(d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.	180 181
(32) "Self-generator" means an entity in this state that owns or hosts on its premises an electric generation facility that produces electricity primarily for the owner's consumption and that may provide any such excess electricity to another entity, whether the facility is installed or operated by the owner or by an agent under a contract.	182 183 184 185 186 187
(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.	188 189 190
(34) "Advanced energy resource" means any of the following:	191
(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	192 193 194

extent such efficiency is achieved without additional carbon	195
dioxide emissions by that facility;	196
(b) Any distributed generation system consisting of customer	197
cogeneration technology;	198
(c) Clean coal technology that includes a carbon-based	199
product that is chemically altered before combustion to	200
demonstrate a reduction, as expressed as ash, in emissions of	201
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or	202
sulfur trioxide in accordance with the American society of testing	203
and materials standard D1757A or a reduction of metal oxide	204
emissions in accordance with standard D5142 of that society, or	205
clean coal technology that includes the design capability to	206
control or prevent the emission of carbon dioxide, which design	207
capability the commission shall adopt by rule and shall be based	208
on economically feasible best available technology or, in the	209
absence of a determined best available technology, shall be of the	210
highest level of economically feasible design capability for which	211
there exists generally accepted scientific opinion;	212
(d) Advanced nuclear energy technology consisting of	213
generation III technology as defined by the nuclear regulatory	214
commission; other, later technology; or significant improvements	215
to existing facilities;	216
(e) Any fuel cell used in the generation of electricity,	217
including, but not limited to, a proton exchange membrane fuel	218
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or	219
solid oxide fuel cell;	220
(f) Advanced solid waste or construction and demolition	221
debris conversion technology, including, but not limited to,	222
advanced stoker technology, and advanced fluidized bed	223
gasification technology, that results in measurable greenhouse gas	224



emissions reductions as calculated pursuant to the United States	225
environmental protection agency's waste reduction model (WARM);	226
(g) Demand-side management and any energy efficiency	227
improvement;	228
(h) Any new, retrofitted, refueled, or repowered generating	229
facility located in Ohio, including a simple or combined-cycle	230
natural gas generating facility or a generating facility that uses	231
biomass, coal, modular nuclear, or any other fuel as its input;	232
(i) Any uprated capacity of an existing electric generating	233
facility if the uprated capacity results from the deployment of	234
advanced technology.	235
"Advanced energy resource" does not include a waste energy	236
recovery system that is, or has been, included in an energy	237
efficiency program of an electric distribution utility pursuant to	238
requirements under section 4928.66 of the Revised Code.	239
(35) "Air contaminant source" has the same meaning as in	240
section 3704.01 of the Revised Code.	241
(36) "Cogeneration technology" means technology that produces	242
electricity and useful thermal output simultaneously.	243
(37)(a) "Renewable energy resource" means any of the	244
following:	245
(i) Solar photovoltaic or solar thermal energy;	246
(ii) Wind energy;	247
(iii) Power produced by a hydroelectric facility;	248
(iv) <u>Power produced by a small hydroelectric facility, which</u>	249
<u>is a facility that operates, or is rated to operate, at an</u>	250
<u>aggregate capacity of less than six megawatts;</u>	251

<u>(v)</u> 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;	252 253 254 255 256
<del>(v)</del> <u>(vi)</u> Geothermal energy;	257
<del>(vi)</del> <u>(vii)</u> 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;	258 259 260 261
<del>(vii)</del> <u>(viii)</u> Biomass energy;	262
<del>(viii)</del> <u>(ix)</u> 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 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;	263 264 265 266 267 268 269 270 271 272
<del>(ix)</del> <u>(x)</u> Biologically derived methane gas;	273
<del>(x)</del> <u>(xi)</u> Heat captured from a generator of electricity, boiler, or heat exchanger fueled by biologically derived methane gas;	274 275 276
<del>(xi)</del> <u>(xii)</u> 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.	277 278 279
"Renewable energy resource" includes, but is not limited to,	280

any fuel cell used in the generation of electricity, including, 281  
but not limited to, a proton exchange membrane fuel cell, 282  
phosphoric acid fuel cell, molten carbonate fuel cell, or solid 283  
oxide fuel cell; wind turbine located in the state's territorial 284  
waters of Lake Erie; methane gas emitted from an abandoned coal 285  
mine; waste energy recovery system placed into service or 286  
retrofitted on or after the effective date of the amendment of 287  
this section by S.B. 315 of the 129th general assembly, September 288  
10, 2012, except that a waste energy recovery system described in 289  
division (A)(38)(b) of this section may be included only if it was 290  
placed into service between January 1, 2002, and December 31, 291  
2004; storage facility that will promote the better utilization of 292  
a renewable energy resource; or distributed generation system used 293  
by a customer to generate electricity from any such energy. 294

"Renewable energy resource" does not include a waste energy 295  
recovery system that is, or was, on or after January 1, 2012, 296  
included in an energy efficiency program of an electric 297  
distribution utility pursuant to requirements under section 298  
4928.66 of the Revised Code. 299

(b) As used in division (A)(37) of this section, 300  
"hydroelectric facility" means a hydroelectric generating facility 301  
that is located at a dam on a river, or on any water discharged to 302  
a river, that is within or bordering this state or within or 303  
bordering an adjoining state and meets all of the following 304  
standards: 305

(i) The facility provides for river flows that are not 306  
detrimental for fish, wildlife, and water quality, including 307  
seasonal flow fluctuations as defined by the applicable licensing 308  
agency for the facility. 309

(ii) The facility demonstrates that it complies with the 310

water quality standards of this state, which compliance may 311  
 consist of certification under Section 401 of the "Clean Water Act 312  
 of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and demonstrates 313  
 that it has not contributed to a finding by this state that the 314  
 river has impaired water quality under Section 303(d) of the 315  
 "Clean Water Act of 1977," 114 Stat. 870, 33 U.S.C. 1313. 316

(iii) The facility complies with mandatory prescriptions 317  
 regarding fish passage as required by the federal energy 318  
 regulatory commission license issued for the project, regarding 319  
 fish protection for riverine, anadromous, and catadromous fish. 320

(iv) The facility complies with the recommendations of the 321  
 Ohio environmental protection agency and with the terms of its 322  
 federal energy regulatory commission license regarding watershed 323  
 protection, mitigation, or enhancement, to the extent of each 324  
 agency's respective jurisdiction over the facility. 325

(v) The facility complies with provisions of the "Endangered 326  
 Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 to 1544, as 327  
 amended. 328

(vi) The facility does not harm cultural resources of the 329  
 area. This can be shown through compliance with the terms of its 330  
 federal energy regulatory commission license or, if the facility 331  
 is not regulated by that commission, through development of a plan 332  
 approved by the Ohio historic preservation office, to the extent 333  
 it has jurisdiction over the facility. 334

(vii) The facility complies with the terms of its federal 335  
 energy regulatory commission license or exemption that are related 336  
 to recreational access, accommodation, and facilities or, if the 337  
 facility is not regulated by that commission, the facility 338  
 complies with similar requirements as are recommended by resource 339  
 agencies, to the extent they have jurisdiction over the facility; 340

and the facility provides access to water to the public without  
fee or charge. 341  
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(viii) The facility is not recommended for removal by any  
federal agency or agency of any state, to the extent the  
particular agency has jurisdiction over the facility. 343  
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(c) The standards in divisions (A)(37)(b)(i) to (viii) of  
this section do not apply to a small hydroelectric facility under  
division (A)(37)(a)(iv) of this section. 346  
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(38) "Waste energy recovery system" means either of the  
following: 349  
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(a) A facility that generates electricity through the  
conversion of energy from either of the following: 351  
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(i) Exhaust heat from engines or manufacturing, industrial,  
commercial, or institutional sites, except for exhaust heat from a  
facility whose primary purpose is the generation of electricity; 353  
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(ii) Reduction of pressure in gas pipelines before gas is  
distributed through the pipeline, provided that the conversion of  
energy to electricity is achieved without using additional fossil  
fuels. 356  
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(b) A facility at a state institution of higher education as  
defined in section 3345.011 of the Revised Code that recovers  
waste heat from electricity-producing engines or combustion  
turbines and that simultaneously uses the recovered heat to  
produce steam, provided that the facility was placed into service  
between January 1, 2002, and December 31, 2004. 360  
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(39) "Smart grid" means capital improvements to an electric  
distribution utility's distribution infrastructure that improve  
reliability, efficiency, resiliency, or reduce energy demand or  
use, including, but not limited to, advanced metering and 366  
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automation of system functions.	370
(40) "Combined heat and power system" means the coproduction	371
of electricity and useful thermal energy from the same fuel source	372
designed to achieve thermal-efficiency levels of at least sixty	373
per cent, with at least twenty per cent of the system's total	374
useful energy in the form of thermal energy.	375
(B) For the purposes of this chapter, a retail electric	376
service component shall be deemed a competitive retail electric	377
service if the service component is competitive pursuant to a	378
declaration by a provision of the Revised Code or pursuant to an	379
order of the public utilities commission authorized under division	380
(A) of section 4928.04 of the Revised Code. Otherwise, the service	381
component shall be deemed a noncompetitive retail electric	382
service."	383
In line 841, strike through "has" and insert ":	384
<u>(a) Has</u> "; strike through ", or"	385
In line 842, strike through "with respect to" and insert ";	386
<u>(b) Is</u> "; strike through the comma and insert " <u>that has</u> "	387
In line 843, strike through "a renewable energy"	388
In line 844, strike through "resource" and insert:	389
<u>"(c) Is a small hydroelectric facility;</u>	390
<u>(d) Is"</u>	391
In line 846, after "or" insert:	392
<u>"(e) Is"</u>	393
In line 853, strike through "(a)" and insert " <u>(i)</u> "	394
In line 855, strike through "(b)" and insert " <u>(ii)</u> "	395
In line 858, strike through "(c)" and insert " <u>(iii)</u> "	396

In line 861, strike through "(d)" and insert "(iv)" 397

In line 2042, after "sections" insert "4928.01," 398

The motion was \_\_\_\_\_ agreed to.