A BILL

To amend sections 303.213, 519.213, 713.081, 3706.02, 3706.03, 4906.13, 4928.01, 4928.644, 4928.66, 4928.6610, and 5727.75; to enact sections 184.121, 3706.40, 3706.42, 3706.44, 3706.45, 3706.46, 3706.47, 3706.471, 3706.48, 3706.481, 3706.482, 3706.483, 3706.484, 3706.49, 3706.50, 4905.311, 4928.46, 4928.47, 4928.471, 4928.646, 4928.647, 4928.661, and 4928.75; and to repeal section 4928.6616 of the Revised Code to create the Ohio Clean Air Program, to facilitate and encourage electricity production and use from clean air resources, to facilitate investment to reduce the emissions from other generating technologies that can be readily dispatched to satisfy demand in real time, and proactively engage the buying power of consumers in this state for the purpose of improving air quality in this state.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:
Section 1. That sections 303.213, 519.213, 713.081, 3706.02, 3706.03, 4906.13, 4928.01, 4928.644, 4928.66, 4928.6610, and 5727.75 be amended and sections 184.121, 3706.40, 3706.44, 3706.45, 3706.46, 3706.47, 3706.471, 3706.48, 3706.481, 3706.482, 3706.483, 3706.484, 3706.49, 3706.50, 4905.311, 4928.46, 4928.47, 4928.471, 4928.646, 4928.647, 4928.661, and 4928.75 of the Revised Code be enacted to read as follows:

Sec. 184.121. (A) The third frontier commission shall create a program and pledge twenty-five million dollars for research of battery technology for electric grid storage.

(B) The pledged funds shall be used only for research in this state. Anything produced from the research shall be manufactured in this state.

Sec. 303.213. (A) As used in this section, "small wind farm" means wind turbines and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of less than five megawatts that are not subject to the jurisdiction of the power siting board under sections 4906.20 and 4906.201 of the Revised Code.

(B) Notwithstanding division (A) of section 303.211 of the Revised Code, sections 303.01 to 303.25 of the Revised Code confer power on a board of county commissioners or board of zoning appeals to adopt zoning regulations governing the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any small wind farm, whether publicly or privately owned, or the use of land for that purpose, which regulations may be more strict than the regulations prescribed in rules adopted under division
(B)(2) of section 4906.20 of the Revised Code.

(C) The designation under this section of a small wind farm as a public utility for purposes of sections 303.01 to 303.25 of the Revised Code shall not affect the classification of a small wind farm for purposes of state or local taxation.

(D) Nothing in division (C) of this section shall be construed as affecting the classification of a telecommunications tower as defined in division (B) or (E) of section 303.211 of the Revised Code or any other public utility for purposes of state and local taxation.

Sec. 519.213. (A) As used in this section, "small wind farm" means wind turbines and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of less than five megawatts that are not subject to the jurisdiction of the power siting board under sections 4906.20 and 4906.201 of the Revised Code.

(B) Notwithstanding division (A) of section 519.211 of the Revised Code, sections 519.02 to 519.25 of the Revised Code confer power on a board of township trustees or board of zoning appeals with respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any small wind farm, whether publicly or privately owned, or the use of land for that purpose, which regulations may be more strict than the regulations prescribed in rules adopted under division (B)(2) of section 4906.20 of the Revised Code.

(C) The designation under this section of a small wind farm as a public utility for purposes of sections 519.02 to
519.25 of the Revised Code shall not affect the classification of a small wind farm or any other public utility for purposes of state or local taxation.

(D) Nothing in division (C) of this section shall be construed as affecting the classification of a telecommunications tower as defined in division (B) or (E) of section 519.211 of the Revised Code or any other public utility for purposes of state and local taxation.

Sec. 713.081. (A) As used in this section, "small wind farm" means wind turbines and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of less than five megawatts that are not subject to the jurisdiction of the power siting board under sections 4906.20 and 4906.201 of the Revised Code.

(B) Sections 713.06 to 713.15 of the Revised Code confer power on the legislative authority of a municipal corporation with respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any small wind farm as a public utility, whether publicly or privately owned, or the use of land for that purpose, which regulations may be more strict than the regulations prescribed in rules adopted under division (B)(2) of section 4906.20 of the Revised Code.

(C) The designation under this section of a small wind farm as a public utility for purposes of sections 713.06 to 713.15 of the Revised Code shall not affect the classification of a small wind farm or any other public utility for purposes of state or local taxation.
Sec. 3706.02. (A) There is hereby created the Ohio air quality development authority. Such authority is a body both corporate and politic in this state, and the carrying out of its purposes and the exercise by it of the powers conferred by Chapter 3706. of the Revised Code shall be held to be, and are hereby determined to be, essential governmental functions and public purposes of the state, but the authority shall not be immune from liability by reason thereof.

(B) The authority shall consist of twelve members as follows: five

(1) Five members appointed by the governor, with the advice and consent of the senate, no more than three of whom shall be members of the same political party, and the

(2) The director of environmental protection and the, who shall be a member ex officio without compensation;

(3) The director of health, who shall be a member ex officio without compensation;

(4) Four legislative members, who shall be nonvoting members ex officio without compensation. The speaker of the house of representatives, the president of the senate, and the minority leader of each house shall each appoint one of the legislative members. The legislative members may not vote but may otherwise participate fully in all the board's deliberations and activities. Each

(5) Two members of the general public, who shall be voting members without compensation. The speaker of the house of representatives and the president of the senate shall each appoint one member. These members' terms of office shall be for four years.
Each appointive member shall be a resident of the state, and a qualified elector therein. The members of the authority first appointed shall continue in office for terms expiring on June 30, 1971, June 30, 1973, June 30, 1975, June 30, 1977, and June 30, 1978, respectively, the term of each member to be designated by the governor. Except as provided in division (B)(5) of this section, appointed members' terms of office shall be for eight years, commencing on the first day of July and ending on the thirtieth day of June. Each appointed member shall hold office from the date of his appointment until the end of the term for which he was appointed. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall hold office for the remainder of such term. Any appointed member shall continue in office subsequent to the expiration date of his term until his successor takes office, or until a period of sixty days has elapsed, whichever occurs first. A member of the authority is eligible for reappointment. Each appointed member of the authority, before entering upon his official duties, shall take an oath as provided by Section 7 of Article XV, Ohio Constitution. The governor may at any time remove any member of the authority for misfeasance, nonfeasance, or malfeasance in office. The authority shall elect one of its appointed members as chairman and another as vice-chairman, and shall appoint a secretary-treasurer who need not be a member of the authority. Four members of the authority shall constitute a quorum, and the affirmative vote of four members shall be necessary for any action taken by vote of the authority. No vacancy in the membership of the authority shall impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the authority.
Before ... (D) of this section, each appointed member of the authority shall receive an annual salary of five thousand dollars, payable in monthly installments. Each member shall be reimbursed for his actual expenses necessarily incurred in the performance of his official duties. All expenses incurred in carrying out Chapter 3706. of the Revised Code shall be payable solely from funds provided under Chapter 3706. of the Revised Code, appropriated for such purpose by the general assembly, or provided by the controlling board. No liability or obligation shall be incurred by the authority beyond the extent to which moneys have been so provided or appropriated.

(D) The six members appointed under divisions (B)(4) and (5) of this section shall be exempt from the requirement under division (C) of this section to give a surety bond.

Sec. 3706.03. (A) It is hereby declared to be the public policy of the state through the operations of the Ohio air quality development authority under this chapter to contribute toward one or more of the following:

(1) To provide for the conservation of air as a natural
resource of the state, and to:

(2) To prevent or abate the pollution thereof, to:

(3) To provide for the comfort, health, safety, and general welfare of all employees, as well as all other inhabitants of the state, to:

(4) To assist in the financing of air quality facilities for industry, commerce, distribution, and research, including public utility companies, to:

(5) To create or preserve jobs and employment opportunities or improve the economic welfare of the people, or assist and cooperate with governmental agencies in achieving such purposes:

(6) To maintain operations of certified clean air resources, as defined in section 3706.40 of the Revised Code, that, through continued operation, are expected to provide the greatest quantity of carbon-dioxide-free electric energy generation, and to encourage the operation and development of other clean air resources that provide carbon-dioxide-free electric energy generation;

(7) To encourage reduced emissions resources, as defined in section 3706.40 of the Revised Code, to reduce the resources' emissions.

(B) In furtherance of such public policy the Ohio air quality development authority may initiate any of the following:

(1) Initiate, acquire, construct, maintain, repair, and operate air quality projects or cause the same to be operated pursuant to a lease, sublease, or agreement with any person or
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governmental agency; may make

(2) Make loans and grants to governmental agencies for the acquisition or construction of air quality facilities by such governmental agencies; may make

(3) Make loans to persons for the acquisition or construction of air quality facilities by such persons; may enter

(4) Enter into commodity contracts with, or make loans for the purpose of entering into commodity contracts to, any person, governmental agency, or entity located within or without the state in connection with the acquisition or construction of air quality facilities; and may issue

(5) Issue air quality revenue bonds of this state payable solely from revenues, to pay the cost of such projects, including any related commodity contracts.

(C) Any air quality project shall be determined by the authority to be not inconsistent with any applicable air quality standards duly established and then required to be met pursuant to the "Clean Air Act," 84 Stat. 1679 (1970), 42 U.S.C. § 1857, as amended. Any resolution of the authority providing for acquiring or constructing such projects or for making a loan or grant for such projects shall include a finding by the authority that such determination has been made. Determinations by resolution of the authority that a project is an air quality facility under this chapter and is consistent with the purposes of section 13 of Article VIII, Ohio Constitution, and this chapter, shall be conclusive as to the validity and enforceability of the air quality revenue bonds issued to finance such project and of the resolutions, trust agreements or
indentures, leases, subleases, sale agreements, loan agreements, and other agreements made in connection therewith, all in accordance with their terms.

Sec. 3706.40. As used in sections 3706.40 to 3706.50 of the Revised Code:

(A) "Clean air resource" means an electric generating facility that produces electricity from the utilization or consumption of any form of primary energy that emits zero carbon dioxide and that satisfies all of the following criteria:

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

(2) The facility is not used to supply customers of a wholly owned municipal or cooperative corporation or a group, association, or consortium of those corporations.

(3) Either of the following:

(a) The facility has made a significant historical contribution to the air quality of the state by minimizing emissions that result from electricity generated in this state.

(b) The facility will make a significant contribution toward minimizing emissions that result from electric generation in this state.

(4) If the facility is designed for, or capable of, operation at an aggregate capacity of twenty or more megawatts, the facility is interconnected with the transmission grid that is subject to the operational control of PJM interconnection, L.L.C., or its successor organization.

(5) Regardless of the location of the meter, the facility
is any of the following:

(a) A major utility facility in this state as defined in section 4906.01 of the Revised Code;

(b) An economically significant wind farm in this state as defined in section 4906.13 of the Revised Code;

(c) A small wind farm in this state as defined in section 303.213 of the Revised Code.

(B) "Reduced emissions resource" means an electric generating facility that emits a reduced amount of carbon dioxide or any other regulated air pollutant under the "Clean Air Act," 84 Stat. 1679 (1970), 42 U.S.C. 1857, in the production of electricity from the utilization or consumption of any form of primary energy that satisfies all of the following criteria:

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

(2) The facility is not used to supply customers of a wholly owned municipal or cooperative corporation or a group, association, or consortium of those corporations.

(3) The facility will make a significant contribution toward minimizing emissions that result from electric generation in this state.

(4) The facility is interconnected with the transmission grid that is subject to the operational control of PJM interconnection, L.L.C., or its successor organization.

(5) The facility is a major utility facility in this state as defined in section 4906.01 of the Revised Code.
(C) "Program year" means the twelve-month period beginning
the first day of June of a given year of the Ohio clean air
program and ending the thirty-first day of May of the following
year.

(D) "Electric distribution utility" and "renewable energy
resource" have the same meanings as in section 4928.01 of the
Revised Code.

(E) "Annual capacity factor" means the actual energy
produced in a year divided by the energy that would have been
produced if the facility was operating continuously at the
maximum rating.

(F) "Clean air credit" means a credit that represents the
clean air attributes of one megawatt hour of electric energy
produced from a certified clean air resource.

Sec. 3706.42. (A)(1) There is hereby created the Ohio
clean air program.

(2)(a) In 2029, the Ohio air quality development authority
shall conduct an inquiry to determine whether it is in the
public interest to continue the Ohio clean air program after
2030.

(b) After the inquiry is complete, the authority shall
submit a report of its findings to the general assembly.

(B) Any person owning or controlling an electric
generating facility that meets the definition of a clean air
resource or reduced emissions resource in section 3706.40 of the
Revised Code may submit a written application with the Ohio air
quality development authority for certification as a clean air
resource or reduced emissions resource to be eligible to
participate in the Ohio clean air program. Applications shall be
submitted by the first day of February for any program year
beginning the first day of June of the same calendar year.

(C) Applications shall include all of the following
information:

(1) The in-service date and estimated remaining useful
life of the resource;

(2) For an existing resource, the quantity of megawatt
hours generated by the resource annually during each of the
previous five calendar years during which the resource was
generating, and the annual capacity factor for each of those
calendar years;

(3) A forecast estimate of the annual quantity of megawatt
hours to be generated by the resource and the projected annual
capacity factor over the remaining useful life of the resource;

(4) For a clean air resource, a forecast estimate of the
emissions that would occur in this state during the remaining
useful life of the resource if the resource discontinued
operations prior to the end of the resource's useful life;

(5) Verified documentation demonstrating all of the
following:

(a) That certification as a clean air resource or reduced
emissions resource and participation in the Ohio clean air
program will permit the resource to reduce future emissions per
unit of electrical energy generated in this state;

(b) That without certification as a clean air resource or
reduced emissions resource, the positive contributions to the
air quality of this state that the resource has made and is
capable of making in the future may be diminished or eliminated;
(c) That the clean air resource or reduced emissions resource meets the definition of a clean air resource or reduced emissions resource, as applicable, in section 3706.40 of the Revised Code;

(d) That the person seeking certification owns or controls the resource.

(6) The resource's nameplate capacity;

(7) For a reduced emissions resource, the level of funding requested from the Ohio clean air program;

(8) Any other data or information that the authority requests and determines is necessary to evaluate an application for certification as a clean air resource or reduced emissions resource or to demonstrate that certification would be in the public interest.

(D) The authority shall post on the authority's web site all applications and nonconfidential supporting materials submitted under this section.

(E) Interested persons may file comments not later than twenty days after the date that an application is posted on the authority's web site. All comments shall be posted on the authority's web site. An applicant may respond to those comments not later than ten days thereafter.

Sec. 3706.44. (A)(1) On or before the thirty-first day of March, the Ohio air quality development authority shall review all applications timely submitted under section 3706.42 of the Revised Code and issue an order certifying a clean air resource or reduced emissions resource that meets the definition of a clean air resource or reduced emissions resource, as applicable, in section 3706.40 of the Revised Code.
(2)(a) A clean air resource shall remain certified as a clean air resource as long as the resource continues to meet the definition of a clean air resource in section 3706.40 of the Revised Code.

(b) A reduced emissions resource may be certified for one or more program years. A reduced emissions resource shall be eligible to remain certified as a reduced emissions resource, provided that the resource continues to meet the definition of a reduced emissions resource in section 3706.40 of the Revised Code and any additional requirements set by the authority.

(B) In the event the authority does not issue an order under division (A) of this section by the thirty-first day of March, each electric generating facility included in a timely and properly filed application shall be deemed a clean air resource or reduced emissions resource, as applicable, that is eligible for participation in the Ohio clean air program.

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

(2) Before decertifying a clean air resource or reduced emissions resource, the authority shall do both of the following:

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

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

Sec. 3706.45. (A) During the last year in which certification as a reduced emissions resource is effective under section 3706.44 of the Revised Code, the Ohio air quality development authority shall reevaluate the eligibility of the
reduced emissions resource for participation in the Ohio clean air program. At the time of reevaluation, if the reduced emissions resource still meets the definition of a reduced emissions resource in section 3706.40 of the Revised Code and any additional requirements that were imposed by the authority when the resource was last certified, the authority shall recertify the resource for one or more program years.

(B)(1) If the authority recertifies the reduced emissions resource under division (A) of this section, the authority may impose requirements on the reduced emissions resource that are in addition to any requirements that were imposed when the resource was last certified. If additional requirements are imposed at the time of recertification, the resource shall comply with both the old requirements and the new requirements.

(2) The authority shall adopt rules to determine the amount of time during which a reduced emissions resource must come into compliance with the new requirements.

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

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

Sec. 3706.47. (A) Beginning January 1, 2020, each retail
electric customer of an electric distribution utility in this state shall pay a per-account monthly charge, which shall be billed and collected by each electric distribution utility and remitted to the state treasurer for deposit into the Ohio clean air program fund, created under section 3706.46 of the Revised Code.

(B) The monthly charges established under division (A) of this section shall be in accordance with the following:

(1) For customers classified by the utility as residential:

(a) For the year 2020, fifty cents;

(b) For the year 2021 and each year thereafter, two dollars and fifty cents.

(2) For customers classified by the utility as commercial, except as provided in division (B)(4) of this section, the public utilities commission shall, not later than October 1, 2019, establish the structure and design of a per-account monthly charge that is on average:

(a) For the year 2020, fifteen dollars;

(b) For the year 2021 and each year thereafter, twenty dollars.

(3) For customers classified by the utility as industrial, except as provided in division (B)(4) of this section, the commission shall, not later than October 1, 2019, establish the structure and design of a per-account monthly charge that is on average two hundred and fifty dollars;

(4) For customers classified by the utility as commercial or industrial that exceeded forty-five million kilowatt hours of
electricity at a single location in the preceding year, two thousand five hundred dollars.

(C) The commission shall comply with divisions (B)(2) and (3) of this section in a manner that avoids abrupt or excessive total electric bill impacts for typical customers with a classification of commercial or industrial.

(D) For purposes of division (B) of this section, the classification of residential, commercial, and industrial customers shall be consistent with the utility's reporting under its approved rate schedules.

(E) A customer required to pay the monthly charge under divisions (A) and (B) of this section shall be exempt from paying costs associated with the requirements under section 4928.64 of the Revised Code, unless the customer opts, in accordance with section 3706.471 of the Revised Code, to pay those costs in addition to the charge imposed under this section.

Sec. 3706.471. Any customer opting to pay costs associated with the requirements under section 4928.64 of the Revised Code shall do so by providing a written notice of intent to opt in to pay those costs to the electric distribution utility from which it receives service. The customer shall submit a complete copy of the opt-in notice to the secretary of the public utilities commission. The notice shall include all of the following:

(A) A statement indicating that the customer has elected to opt in;

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

(C) The account number for each customer account to which the opt in shall apply;
(D) The physical location of the customer's load center.

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

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

Sec. 3706.482. (A)(1) Not later than fourteen days after the close of each month during a program year, the Ohio air quality development authority shall direct the treasurer of state to remit money from the Ohio clean air program fund, as long as there is sufficient money in the fund, to each owner of a certified clean air resource in the amount equivalent to the number of credits earned by the resource during the previous month multiplied by the credit price.

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

(B)(1) The price for each clean air credit in the first program year shall be nine dollars.

(2) In subsequent program years, the price may be adjusted for inflation using the gross domestic product implicit price deflator as published by the United States department of commerce, bureau of economic analysis.

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

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

Sec. 3706.49. (A) To facilitate air quality development
related capital formation and investment by or in a certified
clean air resource or certified reduced emissions resource, the
Ohio air quality development authority may pledge a portion of
moneys that may, in the future, be accumulated in the Ohio clean
air program fund for the benefit of any certified clean air
resource or certified reduced emissions resource, provided the
resource agrees to be bound by the conditions the authority may
attach to the pledge.

(B) The authority shall not be required to direct
distribution of moneys in the Ohio clean air program fund unless
or until there are adequate moneys available in the Ohio clean
air program fund. Nothing herein shall cause any such pledge to
be construed or applied to create, directly or indirectly, a
general obligation of or for this state.

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

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

(1) Tracking the number of clean air credits earned by
each certified clean air resource during each month of a program
year, based on the information reported under section 3706.48 of
the Revised Code;

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

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

Sec. 4905.311. In order to promote job growth and
retention in this state, the public utilities commission, when
ruling on a reasonable arrangement application under section
4905.31 of the Revised Code, shall attempt to minimize electric
rates to the maximum amount possible on trade-exposed industrial
manufacturers.

Sec. 4906.13. (A) As used in this section and sections
4906.20 and 4906.98 of the Revised Code, "economically
significant wind farm" means wind turbines and associated
facilities with a single interconnection to the electrical grid
and designed for, or capable of, operation at an aggregate
capacity of five or more megawatts but less than fifty
megawatts. The term excludes any such wind farm in operation on
June 24, 2008. The term also excludes one or more wind turbines
and associated facilities that are primarily dedicated to
providing electricity to a single customer at a single location
and that are designed for, or capable of, operation at an
aggregate capacity of less than twenty megawatts, as measured at
the customer's point of interconnection to the electrical grid.

(B) No public agency or political subdivision of this
state may require any approval, consent, permit, certificate, or
other condition for the construction or operation of a major
utility facility or economically significant wind farm
authorized by a certificate issued pursuant to Chapter 4906. of
the Revised Code. Nothing herein shall prevent the application
of state laws for the protection of employees engaged in the
construction of such facility or wind farm nor of municipal
regulations that do not pertain to the location or design of, or
pollution control and abatement standards for, a major utility
facility or economically significant wind farm for which a
certificate has been granted under this chapter.

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

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

(2) "Billing and collection agent" means a fully
independent agent, not affiliated with or otherwise controlled
by an electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 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 rates on October 5, 1999, pursuant to an order of the public utilities commission issued under Chapter 4905. of 4909. of the Revised Code and in effect on October 4, 1999, for the purpose of improving the energy efficiency of housing for the utility's low-income customers. The term excludes the level of any such funds committed to a specific nonprofit organization or organizations pursuant to a stipulation or contract.

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

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

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

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

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

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

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

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

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

(25) "Advanced energy project" means any technologies, products, activities, or management practices or strategies that facilitate the generation or use of electricity or energy and that reduce or support the reduction of energy consumption or support the production of clean, renewable energy for industrial, distribution, commercial, institutional, governmental, research, not-for-profit, or residential energy users, including, but not limited to, advanced energy resources and renewable energy resources. "Advanced energy project" also
includes any project described in division (A), (B), or (C) of section 4928.621 of the Revised Code.

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

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

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

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

(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.

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

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

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

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

(d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity. For an industrial customer-generator with a net metering system that has a capacity of less than twenty megawatts and uses wind as energy, this means the net metering system was sized so as to not exceed one hundred per cent of the customer-generator's annual requirements for electric energy at the time of interconnection.

(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.

(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 to existing facilities;

(e) 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;

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

(g) Demand-side management and any energy efficiency improvement;

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

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

"Advanced energy resource" does not include a waste energy recovery system that is, or has been, included in an energy
efficiency program of an electric distribution utility pursuant to requirements under section 4928.66 of the Revised Code.

(35) "Air contaminant source" has the same meaning as in section 3704.01 of the Revised Code.

(36) "Cogeneration technology" means technology that produces electricity and useful thermal output simultaneously.

(37)(a) "Renewable energy resource" means any of the following:

(i) Solar photovoltaic or solar thermal energy;
(ii) Wind energy;
(iii) Power produced by a hydroelectric facility;
(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;
(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;
(vi) Geothermal energy;
(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;
(viii) Biomass energy;
(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
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, 2012, included in an energy efficiency program of an electric distribution utility pursuant to requirements under section 4928.66 of the Revised Code.

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

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

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

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

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


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

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

(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.

(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.

(38) "Waste energy recovery system" means either of the following:
(a) A facility that generates electricity through the conversion of energy from either of the following:

(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;

(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.

(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.

(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 automation of system functions.

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

(B) For the purposes of this chapter, a retail electric service component shall be deemed a competitive retail electric service if the service component is competitive pursuant to a
declaration by a provision of the Revised Code or pursuant to an order of the public utilities commission authorized under division (A) of section 4928.04 of the Revised Code. Otherwise, the service component shall be deemed a noncompetitive retail electric service.

**Sec. 4928.46.** (A) In the event that the federal energy regulatory commission authorizes a program by which this state may take action to satisfy any portion of the capacity resource obligation associated with the organized wholesale market that functions to meet the capacity, energy services, and ancillary services needs of consumers in this state, the public utilities commission shall promptly review the program and submit a report of its findings to the general assembly.

(B) The report shall include any recommendations for both of the following:

(1) Legislation that may be necessary to permit this state to beneficially participate in any such program:

(2) How to maintain participation by end-use customers in this state in the demand response program offered by PJM Interconnection, L.L.C., or its successor organization, including how the state may consider structuring procurement for demand response that would allow demand response to satisfy a portion of the state's capacity resource obligation.

(C) The report shall incorporate the policy of facilitating the state's effectiveness in the global economy by minimizing any adverse impact on trade-exposed industrial manufacturers.

**Sec. 4928.47.** (A) As used in this section, "clean air resource" means any of the following:
(1) A clean air resource as defined in section 3706.40 of the Revised Code;

(2) A customer-sited renewable energy resource;

(3) A renewable energy resource that is a self-generator.

(B)(1) Through its general supervision, ratemaking, cost assignment, allocation, rate schedule approval, and rulemaking authority, as well as its authority under section 4905.31 of the Revised Code, the public utilities commission shall facilitate and encourage the establishment of retail purchased power agreements having a term of three years or more through which mercantile customers of an electric distribution utility commit to satisfy a material portion of their electricity requirements from the output of a clean air resource.

(2) The commission's application and administration of this section shall be the same for all clean air resources regardless of whether the resource is certified or eligible for certification under the Ohio clean air program created under section 3706.42 of the Revised Code.

(3) In addition to any other benefits that may be available as a result of the commission's application of its authority under this section, on the effective date of a retail purchased power agreement, the commission may exempt such purchasing mercantile customer from both of the following, provided the customer agrees to forgo the benefits from compliance with the programs established in sections 3706.42 and 4928.64 of the Revised Code:

(a) The Ohio clean air program charge established in section 3706.47 of the Revised Code;

(b) The renewable energy charge for compliance with
(C) (1) Not later than ninety days after the effective date of this section, the commission shall promulgate rules as necessary to begin the implementation of this section.

(2) Not later than two hundred seventy-five days after the effective date of this section, the commission shall promulgate rules for further implementation and administration of this section.

Sec. 4928.471. (A) Except as provided in division (D) of this section, not earlier than thirty days after the effective date of this section, an electric distribution utility may file an application to implement a decoupling mechanism for the 2019 calendar year and each calendar year thereafter. For an electric distribution utility that applies for a decoupling mechanism under this section, the base distribution rates for residential and commercial customers shall be decoupled to the base distribution revenue and revenue resulting from implementation of section 4928.66 of the Revised Code, excluding program costs and shared savings, and recovered pursuant to an approved electric security plan under section 4928.143 of the Revised Code, as of the twelve-month period ending on December 31, 2018. An application under this division shall not be considered an application under section 4909.18 of the Revised Code.

(B) The commission shall issue an order approving an application for a decoupling mechanism filed under division (A) of this section not later than sixty days after the application is filed. In determining that an application is not unjust and unreasonable, the commission shall verify that the rate schedule or schedules are designed to recover the electric distribution utility's 2018 annual revenues as described in division (A) of
this section and that the decoupling rate design is aligned with
the rate design of the electric distribution utility's existing
base distribution rates. The decoupling mechanism shall recover
an amount equal to the base distribution revenue and revenue
resulting from implementation of section 4928.66 of the Revised
Code, excluding program costs and shared savings, and recovered
pursuant to an approved electric security plan under section
4928.143 of the Revised Code, as of the twelve-month period
ending on December 31, 2018. The decoupling mechanism shall be
adjusted annually thereafter to reconcile any over recovery or
under recovery from the prior year and to enable an electric
distribution utility to recover the same level of revenues
described in division (A) of this section in each year.

(C) The commission's approval of a decoupling mechanism
under this section shall not affect any other rates, riders,
charges, schedules, classifications, or services previously
approved by the commission. The decoupling mechanism shall
remain in effect until the next time that the electric
distribution utility applies for and the commission approves
base distribution rates for the utility under section 4909.18 of
the Revised Code.

(D) If the commission determines that approving a
dcoupling mechanism will result in a double recovery by the
electric distribution utility, the commission shall not approve
the decoupling mechanism.

(E) Divisions (A), (B), and (C) of this section shall not
apply to an electric distribution utility that has base
distribution rates that became effective between December 31,
2018, and the effective date of this section pursuant to an
application for an increase in base distribution rates filed
Sec. 4928.644. (A) The public utilities commission may reduce either baseline described in section 4928.643 of the Revised Code to adjust for new economic growth in the electric distribution utility's certified territory or in the electric services company's service area in this state.

(B) For an electric distribution utility and an electric services company, neither baseline shall include the load and usage of a customer who is subject to the monthly charge established under section 3706.47 of the Revised Code unless or until the customer opts to pay the charge associated with compliance with section 4928.64 of the Revised Code.

Sec. 4928.646. (A) As used in this section, "clean air resource" has the same meaning as in section 3706.40 of the Revised Code.

(B) The Ohio air quality development authority may annually purchase, sell, hold, or retire any renewable energy credits produced by a renewable energy resource in this state with any funds remaining in the Ohio clean air program fund, created under section 3706.46 of the Revised Code, after the funds are used to provide the required benefits to clean air resources.

Sec. 4928.647. Subject to approval by the public utilities commission and regardless of any limitations set forth in any other section of Chapter 4928. of the Revised Code, an electric distribution utility may offer a customer the opportunity to purchase renewable energy services on a nondiscriminatory basis, by doing either of the following:

(A)(1) An electric distribution utility may seek approval
from the commission to establish a schedule or schedules applicable to residential, commercial, industrial, or other customers and provide a customer the opportunity to purchase renewable energy credits for any purpose the customer elects.

(2) The commission shall not approve any schedule unless it determines both of the following:

(a) The proposed schedule or schedules do not create an undue burden or unreasonable preference or disadvantage to nonparticipating customers.

(b) The electric distribution utility seeking approval commits to comply with any conditions the commission may impose to ensure that the electric distribution utility and any participating customers are solely responsible for the risks, costs, and benefits of any schedule or schedules.

(B) (1) Consistent with section 4905.31 of the Revised Code, an electric distribution utility, a customer, or a group of customers may seek approval of a nondiscriminatory schedule or reasonable arrangement involving the production and supply of renewable energy, including long-term renewable energy purchase agreements through which an electric distribution utility may construct, lease, finance, or operate renewable energy resources dedicated to that customer or customers.

(2) The commission shall not approve any schedule or arrangement unless it determines both of the following:

(a) The proposed schedule or arrangement does not create an undue burden or unreasonable preference or disadvantage to nonparticipating customers.

(b) The electric distribution utility seeking approval commits to comply with any conditions the commission may impose
to ensure that the electric distribution utility and any participating customers are solely responsible for the risks, costs, and benefits of any schedule or reasonable arrangement.

Sec. 4928.66. (A)(1)(a) Beginning in 2009, an electric distribution utility shall implement energy efficiency programs that achieve energy savings equivalent to at least three-tenths of one per cent of the total, annual average, and normalized kilowatt-hour sales of the electric distribution utility during the preceding three calendar years to customers in this state. An energy efficiency program may include a combined heat and power 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, or a waste energy recovery system placed into service or retrofitted on or after September 10, 2012, except that a waste energy recovery system described in division (A)(3)(b) of section 4928.01 of the Revised Code may be included only if it was placed into service between January 1, 2002, and December 31, 2004. For a waste energy recovery or combined heat and power system, the savings shall be as estimated by the public utilities commission. The savings requirement, using such a three-year average, shall increase to an additional five-tenths of one per cent in 2010, seven-tenths of one per cent in 2011, eight-tenths of one per cent in 2012, nine-tenths of one per cent in 2013, and one per cent in 2014. In 2015 and 2016, an electric distribution utility shall achieve energy savings equal to the result of subtracting the cumulative energy savings achieved since 2009 from the product of multiplying the baseline for energy savings, described in division (A)(2)(a) of this section, by four and two-tenths of one per cent. If the result is zero or less for the year for which the calculation is being made, the
utility shall not be required to achieve additional energy savings for that year, but may achieve additional energy savings for that year. Thereafter, the annual savings requirements shall be, for years 2017, 2018, 2019, and 2020, an additional one per cent of the baseline, and two per cent each year thereafter, achieving cumulative energy savings in excess of twenty-two per cent by the end of 2027. For purposes of a waste energy recovery or combined heat and power system, an electric distribution utility shall not apply more than the total annual percentage of the electric distribution utility's industrial-customer load, relative to the electric distribution utility's total load, to the annual energy savings requirement.

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

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

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

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

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

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

(c) Compliance with divisions (A)(1)(a) and (b) of this section shall be measured by including the effects of all demand-response programs for mercantile customers of the subject electric distribution utility, all waste energy recovery systems and all combined heat and power systems, and all such mercantile
customer-sited energy efficiency, including waste energy recovery and combined heat and power, and peak demand reduction programs, adjusted upward by the appropriate loss factors. Any mechanism designed to recover the cost of energy efficiency, including waste energy recovery and combined heat and power, and peak demand reduction programs under divisions (A)(1)(a) and (b) of this section may exempt mercantile customers that commit their demand-response or other customer-sited capabilities, whether existing or new, for integration into the electric distribution utility's demand-response, energy efficiency, including waste energy recovery and combined heat and power, or peak demand reduction programs, if the commission determines that that exemption reasonably encourages such customers to commit those capabilities to those programs. If a mercantile customer makes such existing or new demand-response, energy efficiency, including waste energy recovery and combined heat and power, or peak demand reduction capability available to an electric distribution utility pursuant to division (A)(2)(c) of this section, the electric utility's baseline under division (A) (2)(a) of this section shall be adjusted to exclude the effects of all such demand-response, energy efficiency, including waste energy recovery and combined heat and power, or peak demand reduction programs that may have existed during the period used to establish the baseline. The baseline also shall be normalized for changes in numbers of customers, sales, weather, peak demand, and other appropriate factors so that the compliance measurement is not unduly influenced by factors outside the control of the electric distribution utility.

(d)(i) Programs implemented by a utility may include the following:

(I) Demand-response programs;
(II) Smart grid investment programs, provided that such programs are demonstrated to be cost-beneficial;

(III) Customer-sited programs, including waste energy recovery and combined heat and power systems;

(IV) Transmission and distribution infrastructure improvements that reduce line losses;

(V) Energy efficiency 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 efficiency insulation, appliances, and windows, and other weatherization measures.

(ii) No energy efficiency or peak demand reduction achieved under divisions (A)(2)(d)(i)(IV) and (V) of this section shall qualify for shared savings.

(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 efficiency, 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.

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

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

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

(D) The commission may establish rules regarding the
content of an application by an electric distribution utility
for commission approval of a revenue decoupling mechanism under
this division. Such an application shall not be considered an
application to increase rates and may be included as part of a
proposal to establish, continue, or expand energy efficiency or
conservation programs. The commission by order may approve an
application under this division if it determines both that the
revenue decoupling mechanism provides for the recovery of
revenue that otherwise may be forgone by the utility as a result
of or in connection with the implementation by the electric distribution utility of any energy efficiency or energy conservation programs and reasonably aligns the interests of the utility and of its customers in favor of those programs.

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

(F)(1) All the terms and conditions of an electric distribution utility's portfolio plan in effect as of the effective date of the amendments to this section by H.B. 6 of the 133rd general assembly shall remain in place through December 31, 2020, and terminate on that date.

(2) If a portfolio plan is extended beyond its commission-approved term by division (F)(1) of this section, the existing plan's budget shall be increased for the extended term to include an amount equal to the annual average of the approved budget for all years of the portfolio plan in effect as of the effective date of the amendments to this section by H.B. 6 of the 133rd general assembly.

(3) All other terms and conditions of a portfolio plan extended beyond its commission-approved term by division (F)(1) of this section shall remain the same unless changes are authorized by the commission upon the electric distribution utility's request.

(G) All requirements imposed and all programs implemented under this section shall terminate on December 31, 2020, provided an electric distribution utility recovers in the following year all remaining program costs incurred or to be
incurred, including costs incurred for contractual obligations and any costs to discontinue the portfolio plan programs, through applicable tariff schedules or riders in effect on the effective date of the amendments to this section by H.B. 6 of the 133rd general assembly.

Sec. 4928.661. (A) Not earlier than January 1, 2020, an electric distribution utility may submit an application to the public utilities commission for approval of programs to encourage energy efficiency or peak demand reduction. The application may include descriptions of the proposed programs including all of the following:

(1) The size and scope of the programs;

(2) Applicability of the programs to specific customer classes;

(3) Recovery of costs and incentives;

(4) Any other information determined by the electric distribution utility to be appropriate for the commission's review.

(B) The commission shall issue an order approving or modifying and approving an application if it finds that the proposed programs will be cost-effective, in the public interest, and consistent with state policy as specified in section 4928.02 of the Revised Code.

(C) Applications submitted and approved under this section shall not take effect earlier than January 1, 2021.

Sec. 4928.6610. As used in sections 4928.6611 to 4928.6615 of the Revised Code:

(A) "Customer" means any either of the following:
(1) Effective January 1, 2020, a mercantile customer as defined in section 4928.01 of the Revised Code;

(2) Any customer of an electric distribution utility to which either of the following applies:

(1) (a) The customer receives service above the primary voltage level as determined by the utility's tariff classification.

(2) (b) The customer is a commercial or industrial customer to which both of the following apply:

(a) (i) The customer receives electricity through a meter of an end user or through more than one meter at a single location in a quantity that exceeds forty-five million kilowatt hours of electricity for the preceding calendar year.

(ii) The customer has made a written request for registration as a self-assessing purchaser pursuant to section 5727.81 of the Revised Code.

(B) "Energy intensity" means the amount of energy, from electricity, used or consumed per unit of production.

(C) "Portfolio plan" means either of the following:

(1) The comprehensive energy efficiency and peak-demand reduction program portfolio plan required under rules adopted by the public utilities commission and codified in Chapter 4901:1-39 of the Administrative Code or hereafter recodified or amended;

(2) A plan approved under section 4928.661 of the Revised Code or under rules adopted under that section.

Sec. 4928.75. Beginning in fiscal year 2021 and each
fiscal year thereafter, the director of development services shall, in each fiscal year, submit a completed waiver request in accordance with section 96.83 of Title 45 of the Code of Federal Regulations to the United States department of health and human services and any other applicable federal agencies for the state to expend twenty-five per cent of federal low-income home energy assistance programs funds from the home energy assistance block grants for weatherization services allowed by section 96.83(a) of Title 45 of the Code of Federal Regulations to the United States department of health and human services.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The property was placed into service before January 1, 2021. Tangible personal property that has not been placed into service before that date is taxable property subject to taxation.

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

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

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

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

(i) December 31, 2020, for an energy project using renewable energy resources;

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

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

The board shall send copies of the resolution to the owner of the facility and the director by certified mail or, if the board has record of an internet identifier of record associated with the owner or director, by ordinary mail and by that internet identifier of record. The board shall send such notice within thirty days after receipt of the application, or a longer period of time if authorized by the director.

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

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

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

(a) The application was timely submitted.

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

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

(3) The director shall deny a certification application if the director determines the person has failed to comply with any requirement under this section. The director may revoke a certification if the director determines the person, or subsequent owner or lessee pursuant to a sale and leaseback transaction of the qualified energy project, has failed to comply with any requirement under this section. Upon certification or revocation, the director shall notify the person, owner, or lessee, the tax commissioner, and the county auditor of a county in which the project is located of the
certification or revocation. Notice shall be provided in a manner convenient to the director.

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

(1) Comply with all applicable regulations;

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

(3) File with the director of development services, in a manner prescribed by the director, a report of the total number of full-time equivalent employees, and the total number of full-time equivalent employees domiciled in Ohio, who are employed in the construction or installation of the energy facility;

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

(5) Provide or facilitate training for fire and emergency responders for response to emergency situations related to the energy project and, for energy projects with a nameplate capacity of five twenty megawatts or greater, at the person's expense, equip the fire and emergency responders with proper equipment as reasonably required to enable them to respond to
such emergency situations;

(6) Maintain a ratio of Ohio-domiciled full-time equivalent employees employed in the construction or installation of the energy project to total full-time equivalent employees employed in the construction or installation of the energy project of not less than eighty per cent in the case of a solar energy project, and not less than fifty per cent in the case of any other energy project. In the case of an energy project for which certification from the power siting board is required under section 4906.20 of the Revised Code, the number of full-time equivalent employees employed in the construction or installation of the energy project equals the number actually employed or the number projected to be employed in the certificate application, if such projection is required under regulations adopted pursuant to section 4906.03 of the Revised Code, whichever is greater. For all other energy projects, the number of full-time equivalent employees employed in the construction or installation of the energy project equals the number actually employed or the number projected to be employed by the director of development services, whichever is greater. To estimate the number of employees to be employed in the construction or installation of an energy project, the director shall use a generally accepted job-estimating model in use for renewable energy projects, including but not limited to the job and economic development impact model. The director may adjust an estimate produced by a model to account for variables not accounted for by the model.

(7) For energy projects with a nameplate capacity in excess of twenty 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 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 or a municipal power agency.

(c) The owner or lessee contracts for the sale of power or renewable energy credits from the energy project before June 17, 2010.
(9) Make annual service payments as required by division (G) of this section and as may be required in a resolution adopted by a board of county commissioners under division (E) of this section.

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

(1) In the case of a solar energy project, seven thousand dollars per megawatt of nameplate capacity located in the county as of December 31, 2010, for tax year 2011, as of December 31, 2011, for tax year 2012, as of December 31, 2012, for tax year 2013, as of December 31, 2013, for tax year 2014, as of December 31, 2014, for tax year 2015, as of December 31, 2015, for tax year 2016, and as of December 31, 2016, for tax year 2017 and each tax year thereafter;

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

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

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

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

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

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

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

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

Section 2. That existing sections 303.213, 519.213, 713.081, 3706.02, 3706.03, 4906.13, 4928.01, 4928.644, 4928.66, 4928.6610, and 5727.75 of the Revised Code are hereby repealed.

Section 3. That section 4928.6616 of the Revised Code is hereby repealed.

Section 4. (A) Not earlier than two years after the effective date of this section, the Director of Environmental Protection may apply to the Administrator of the United States Environmental Protection Agency for an exemption from the requirement to implement the decentralized motor vehicle inspection and maintenance program established under section 3704.14 of the Revised Code. In making the application and for
purposes of complying with the "Federal Clean Air Act," the Director shall request the Administrator to authorize the implementation of the Ohio Clean Air Program established by this act as an alternative to the decentralized program in those areas of the state where the program is currently operating.

(B) As used in this section, "Federal Clean Air Act" has the same meaning as in section 3704.01 of the Revised Code.

Section 5. If any provisions of a section as amended or enacted by this act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section or related sections that can be given effect without the invalid provision or application, and to this end the provisions are severable.

Section 6. The amendment by this act of section 5725.75 of the Revised Code applies to both of the following:

(A) Energy projects certified by the Director of Development Services on or after the effective date of this section;

(B) Existing qualified energy projects that, on the effective date of this section, have a nameplate capacity of fewer than five megawatts.