

**As Introduced**

**131st General Assembly  
Regular Session  
2015-2016**

**S. B. No. 325**

**Senator Jordan**

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**A BILL**

To amend sections 717.25, 4905.31, 4928.01, 1  
4928.02, 4928.142, 4928.143, 4928.20, 4928.61, 2  
4928.62, 5501.311, and 5727.75, to enact new 3  
section 4928.64, and to repeal sections 4  
1710.061, 4928.64, 4928.643, 4928.644, 4928.645, 5  
4928.65, 4928.66, 4928.662, 4928.6610, 6  
4928.6611, 4928.6612, 4928.6613, 4928.6614, 7  
4928.6615, and 4928.6616 of the Revised Code; 8  
and to amend Sections 3 and 4 and to repeal 9  
Sections 5, 6, 7, 8, 9, 10, and 11 of Sub. S.B. 10  
310 of the 130th General Assembly to repeal the 11  
requirement that electric distribution utilities 12  
and electric services companies provide 12.5% of 13  
their retail power supplies from qualifying 14  
renewable energy resources by 2027, to repeal 15  
energy efficiency and peak demand reduction 16  
requirements for electric distribution 17  
utilities, and to modify the topics included in 18  
the Energy Mandates Study Committee report. 19

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

**Section 1.** That sections 717.25, 4905.31, 4928.01, 20

4928.02, 4928.142, 4928.143, 4928.20, 4928.61, 4928.62, 21  
5501.311, and 5727.75 be amended and new section 4928.64 of the 22  
Revised Code be enacted to read as follows: 23

**Sec. 717.25.** (A) As used in this section: 24

(1) "Customer-generated energy project" means a wind, 25  
biomass, or gasification facility for the generation of 26  
electricity that meets either of the following requirements: 27

(a) The facility is designed to have a generating capacity 28  
of two hundred fifty kilowatts of electricity or less. 29

(b) The facility is: 30

(i) Designed to have a generating capacity of more than 31  
two hundred fifty kilowatts of electricity; 32

(ii) Operated in parallel with electric transmission and 33  
distribution facilities serving the real property at the site of 34  
the customer-generated energy project; 35

(iii) Intended primarily to offset part or all of the 36  
facility owner's requirements for electricity at the site of the 37  
customer-generated energy project and is located on the facility 38  
owner's real property; and 39

(iv) Not producing energy for direct sale by the facility 40  
owner to the public. 41

(2) ~~"Electric distribution utility" and "mercantile-~~ 42  
~~customer" have the same meanings as in section 4928.01 of the~~ 43  
~~Revised Code.~~ 44

~~(3)~~ "Reduction in demand" has the same meaning as in 45  
section 1710.01 of the Revised Code. 46

(B) The legislative authority of a municipal corporation 47

may establish a low-cost alternative energy revolving loan 48  
program to assist owners of real property within the municipal 49  
corporation with installing and implementing either of the 50  
following on their real property: 51

(1) Alternative energy technologies limited to solar 52  
photovoltaic projects, solar thermal energy projects, geothermal 53  
energy projects, and customer-generated energy projects; 54

(2) Energy efficiency technologies, products, and 55  
activities that reduce or support the reduction of energy 56  
consumption, allow for the reduction in demand, or support the 57  
production of clean, renewable energy. 58

(C) If the legislative authority decides to establish such 59  
a program, the legislative authority shall adopt an ordinance 60  
that provides for the following: 61

(1) Creation in the municipal treasury of an alternative 62  
energy revolving loan fund; 63

(2) A source of money, such as gifts, bond issues, real 64  
property assessments, or federal subsidies, to seed the 65  
alternative energy revolving loan fund; 66

(3) Facilities for making loans from the alternative 67  
energy revolving loan fund, including an explanation of how 68  
owners of real property within the municipal corporation may 69  
qualify for loans from the fund, a description of the 70  
alternative energy and energy efficiency technologies and 71  
related equipment for which a loan can be made from the fund, 72  
authorization of a municipal agency to process applications for 73  
loans and otherwise to administer the low-cost alternative 74  
energy revolving loan program, a procedure whereby loans can be 75  
applied for, criteria for reviewing and accepting or denying 76

applications for loans, criteria for determining the appropriate 77  
amount of a loan, the interest rate to be charged, the repayment 78  
schedule, and other terms and conditions of a loan, and 79  
procedures for collecting loans that are not repaid according to 80  
the repayment schedule; 81

(4) A specification that repayments of loans from the 82  
alternative energy revolving loan fund may be made in 83  
installments and, at the option of the real property owner 84  
repaying the loan, the installments may be paid and collected as 85  
if they were special assessments paid and collected in the 86  
manner specified in Chapter 727. of the Revised Code and as 87  
specified in the ordinance; 88

(5) A specification that repayments of loans from the 89  
alternative energy revolving loan fund are to be credited to the 90  
fund, that the money in the fund is to be invested pending its 91  
being lent out, and that investment earnings on the money in the 92  
fund are to be credited to the fund; and 93

(6) Other matters necessary and proper for efficient 94  
operation of the low-cost alternative energy revolving loan 95  
program as a means of encouraging use of alternative energy and 96  
energy efficiency technologies. 97

The interest rate charged on a loan from the alternative 98  
energy revolving loan fund shall be below prevailing market 99  
rates. The legislative authority may specify the interest rate 100  
in the ordinance or may, after establishing a standard in the 101  
ordinance whereby the interest rate can be specified, delegate 102  
authority to specify the interest rate to the administrator of 103  
loans from the alternative energy revolving loan fund. 104

The alternative energy revolving loan fund shall be seeded 105

with sufficient money to enable loans to be made until the fund 106  
accumulates sufficient reserves through investment and repayment 107  
of loans for revolving operation. 108

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

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

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

~~(1) The number and a description of each new and ongoing 130  
project utilizing alternative energy technologies or energy 131  
efficiency technologies, products, or activities located in the 132  
utility's certified territory that produces energy efficiency 133  
savings or reduction in demand and for which a loan has been 134  
made under this section; 135~~

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

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

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

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

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

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

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

light company, such other financial device may include a device 165  
to recover costs incurred in conjunction with any economic 166  
development and job retention program of the utility within its 167  
certified territory, including recovery of revenue foregone as a 168  
result of any such program; ~~any development and implementation~~ 169  
~~of peak demand reduction and energy efficiency programs under~~ 170  
~~section 4928.66 of the Revised Code;~~ any acquisition and 171  
deployment of advanced metering, including the costs of any 172  
meters prematurely retired as a result of the advanced metering 173  
implementation; and compliance with any government mandate. 174

No such schedule or arrangement is lawful unless it is 175  
filed with and approved by the commission pursuant to an 176  
application that is submitted by the public utility or the 177  
mercantile customer or group of mercantile customers of an 178  
electric distribution utility and is posted on the commission's 179  
docketing information system and is accessible through the 180  
internet. 181

Every such public utility is required to conform its 182  
schedules of rates, tolls, and charges to such arrangement, 183  
sliding scale, classification, or other device, and where 184  
variable rates are provided for in any such schedule or 185  
arrangement, the cost data or factors upon which such rates are 186  
based and fixed shall be filed with the commission in such form 187  
and at such times as the commission directs. 188

Every such schedule or reasonable arrangement shall be 189  
under the supervision and regulation of the commission, and is 190  
subject to change, alteration, or modification by the 191  
commission. 192

**Sec. 4928.01.** (A) As used in this chapter: 193

(1) "Ancillary service" means any function necessary to 194  
the provision of electric transmission or distribution service 195  
to a retail customer and includes, but is not limited to, 196  
scheduling, system control, and dispatch services; reactive 197  
supply from generation resources and voltage control service; 198  
reactive supply from transmission resources service; regulation 199  
service; frequency response service; energy imbalance service; 200  
operating reserve-spinning reserve service; operating reserve- 201  
supplemental reserve service; load following; back-up supply 202  
service; real-power loss replacement service; dynamic 203  
scheduling; system black start capability; and network stability 204  
service. 205

(2) "Billing and collection agent" means a fully 206  
independent agent, not affiliated with or otherwise controlled 207  
by an electric utility, electric services company, electric 208  
cooperative, or governmental aggregator subject to certification 209  
under section 4928.08 of the Revised Code, to the extent that 210  
the agent is under contract with such utility, company, 211  
cooperative, or aggregator solely to provide billing and 212  
collection for retail electric service on behalf of the utility 213  
company, cooperative, or aggregator. 214

(3) "Certified territory" means the certified territory 215  
established for an electric supplier under sections 4933.81 to 216  
4933.90 of the Revised Code. 217

(4) "Competitive retail electric service" means a 218  
component of retail electric service that is competitive as 219  
provided under division (B) of this section. 220

(5) "Electric cooperative" means a not-for-profit electric 221  
light company that both is or has been financed in whole or in 222  
part under the "Rural Electrification Act of 1936," 49 Stat. 223

1363, 7 U.S.C. 901, and owns or operates facilities in this 224  
state to generate, transmit, or distribute electricity, or a 225  
not-for-profit successor of such company. 226

(6) "Electric distribution utility" means an electric 227  
utility that supplies at least retail electric distribution 228  
service. 229

(7) "Electric light company" has the same meaning as in 230  
section 4905.03 of the Revised Code and includes an electric 231  
services company, but excludes any self-generator to the extent 232  
that it consumes electricity it so produces, sells that 233  
electricity for resale, or obtains electricity from a generating 234  
facility it hosts on its premises. 235

(8) "Electric load center" has the same meaning as in 236  
section 4933.81 of the Revised Code. 237

(9) "Electric services company" means an electric light 238  
company that is engaged on a for-profit or not-for-profit basis 239  
in the business of supplying or arranging for the supply of only 240  
a competitive retail electric service in this state. "Electric 241  
services company" includes a power marketer, power broker, 242  
aggregator, or independent power producer but excludes an 243  
electric cooperative, municipal electric utility, governmental 244  
aggregator, or billing and collection agent. 245

(10) "Electric supplier" has the same meaning as in 246  
section 4933.81 of the Revised Code. 247

(11) "Electric utility" means an electric light company 248  
that has a certified territory and is engaged on a for-profit 249  
basis either in the business of supplying a noncompetitive 250  
retail electric service in this state or in the businesses of 251  
supplying both a noncompetitive and a competitive retail 252

electric service in this state. "Electric utility" excludes a	253
municipal electric utility or a billing and collection agent.	254
(12) "Firm electric service" means electric service other	255
than nonfirm electric service.	256
(13) "Governmental aggregator" means a legislative	257
authority of a municipal corporation, a board of township	258
trustees, or a board of county commissioners acting as an	259
aggregator for the provision of a competitive retail electric	260
service under authority conferred under section 4928.20 of the	261
Revised Code.	262
(14) A person acts "knowingly," regardless of the person's	263
purpose, when the person is aware that the person's conduct will	264
probably cause a certain result or will probably be of a certain	265
nature. A person has knowledge of circumstances when the person	266
is aware that such circumstances probably exist.	267
(15) "Level of funding for low-income customer energy	268
efficiency programs provided through electric utility rates"	269
means the level of funds specifically included in an electric	270
utility's rates on October 5, 1999, pursuant to an order of the	271
public utilities commission issued under Chapter 4905. or 4909.	272
of the Revised Code and in effect on October 4, 1999, for the	273
purpose of improving the energy efficiency of housing for the	274
utility's low-income customers. The term excludes the level of	275
any such funds committed to a specific nonprofit organization or	276
organizations pursuant to a stipulation or contract.	277
(16) "Low-income customer assistance programs" means the	278
percentage of income payment plan program, the home energy	279
assistance program, the home weatherization assistance program,	280
and the targeted energy efficiency and weatherization program.	281

(17) "Market development period" for an electric utility	282
means the period of time beginning on the starting date of	283
competitive retail electric service and ending on the applicable	284
date for that utility as specified in section 4928.40 of the	285
Revised Code, irrespective of whether the utility applies to	286
receive transition revenues under this chapter.	287
(18) "Market power" means the ability to impose on	288
customers a sustained price for a product or service above the	289
price that would prevail in a competitive market.	290
(19) "Mercantile customer" means a commercial or	291
industrial customer if the electricity consumed is for	292
nonresidential use and the customer consumes more than seven	293
hundred thousand kilowatt hours per year or is part of a	294
national account involving multiple facilities in one or more	295
states.	296
(20) "Municipal electric utility" means a municipal	297
corporation that owns or operates facilities to generate,	298
transmit, or distribute electricity.	299
(21) "Noncompetitive retail electric service" means a	300
component of retail electric service that is noncompetitive as	301
provided under division (B) of this section.	302
(22) "Nonfirm electric service" means electric service	303
provided pursuant to a schedule filed under section 4905.30 of	304
the Revised Code or pursuant to an arrangement under section	305
4905.31 of the Revised Code, which schedule or arrangement	306
includes conditions that may require the customer to curtail or	307
interrupt electric usage during nonemergency circumstances upon	308
notification by an electric utility.	309
(23) "Percentage of income payment plan arrears" means	310

funds eligible for collection through the percentage of income 311  
payment plan rider, but uncollected as of July 1, 2000. 312

(24) "Person" has the same meaning as in section 1.59 of 313  
the Revised Code. 314

(25) "Advanced energy project" means any technologies, 315  
products, activities, or management practices or strategies that 316  
facilitate the generation or use of electricity or energy and 317  
that reduce or support the reduction of energy consumption or 318  
support the production of clean, renewable energy for 319  
industrial, distribution, commercial, institutional, 320  
governmental, research, not-for-profit, or residential energy 321  
users, including, but not limited to, advanced energy resources 322  
and renewable energy resources. "Advanced energy project" also 323  
includes any project described in division (A), (B), or (C) of 324  
section 4928.621 of the Revised Code. 325

(26) "Regulatory assets" means the unamortized net 326  
regulatory assets that are capitalized or deferred on the 327  
regulatory books of the electric utility, pursuant to an order 328  
or practice of the public utilities commission or pursuant to 329  
generally accepted accounting principles as a result of a prior 330  
commission rate-making decision, and that would otherwise have 331  
been charged to expense as incurred or would not have been 332  
capitalized or otherwise deferred for future regulatory 333  
consideration absent commission action. "Regulatory assets" 334  
includes, but is not limited to, all deferred demand-side 335  
management costs; all deferred percentage of income payment plan 336  
arrears; post-in-service capitalized charges and assets 337  
recognized in connection with statement of financial accounting 338  
standards no. 109 (receivables from customers for income taxes); 339  
future nuclear decommissioning costs and fuel disposal costs as 340

those costs have been determined by the commission in the 341  
electric utility's most recent rate or accounting application 342  
proceeding addressing such costs; the undepreciated costs of 343  
safety and radiation control equipment on nuclear generating 344  
plants owned or leased by an electric utility; and fuel costs 345  
currently deferred pursuant to the terms of one or more 346  
settlement agreements approved by the commission. 347

(27) "Retail electric service" means any service involved 348  
in supplying or arranging for the supply of electricity to 349  
ultimate consumers in this state, from the point of generation 350  
to the point of consumption. For the purposes of this chapter, 351  
retail electric service includes one or more of the following 352  
"service components": generation service, aggregation service, 353  
power marketing service, power brokerage service, transmission 354  
service, distribution service, ancillary service, metering 355  
service, and billing and collection service. 356

(28) "Starting date of competitive retail electric 357  
service" means January 1, 2001. 358

(29) "Customer-generator" means a user of a net metering 359  
system. 360

(30) "Net metering" means measuring the difference in an 361  
applicable billing period between the electricity supplied by an 362  
electric service provider and the electricity generated by a 363  
customer-generator that is fed back to the electric service 364  
provider. 365

(31) "Net metering system" means a facility for the 366  
production of electrical energy that does all of the following: 367

(a) Uses as its fuel either solar, wind, biomass, landfill 368  
gas, or hydropower, or uses a microturbine or a fuel cell; 369

(b) Is located on a customer-generator's premises;	370
(c) Operates in parallel with the electric utility's transmission and distribution facilities;	371 372
(d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.	373 374
(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.	375 376 377 378 379 380
(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.	381 382 383
(34) "Advanced energy resource" means any of the following:	384 385
(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;	386 387 388 389 390
(b) Any distributed generation system consisting of customer cogeneration technology;	391 392
(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	393 394 395 396 397

testing and materials standard D1757A or a reduction of metal 398  
oxide emissions in accordance with standard D5142 of that 399  
society, or clean coal technology that includes the design 400  
capability to control or prevent the emission of carbon dioxide, 401  
which design capability the commission shall adopt by rule and 402  
shall be based on economically feasible best available 403  
technology or, in the absence of a determined best available 404  
technology, shall be of the highest level of economically 405  
feasible design capability for which there exists generally 406  
accepted scientific opinion; 407

(d) Advanced nuclear energy technology consisting of 408  
generation III technology as defined by the nuclear regulatory 409  
commission; other, later technology; or significant improvements 410  
to existing facilities; 411

(e) Any fuel cell used in the generation of electricity, 412  
including, but not limited to, a proton exchange membrane fuel 413  
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 414  
solid oxide fuel cell; 415

(f) Advanced solid waste or construction and demolition 416  
debris conversion technology, including, but not limited to, 417  
advanced stoker technology, and advanced fluidized bed 418  
gasification technology, that results in measurable greenhouse 419  
gas emissions reductions as calculated pursuant to the United 420  
States environmental protection agency's waste reduction model 421  
(WARM); 422

(g) Demand-side management and any energy efficiency 423  
improvement; 424

(h) Any new, retrofitted, refueled, or repowered 425  
generating facility located in Ohio, including a simple or 426

combined-cycle natural gas generating facility or a generating 427  
facility that uses biomass, coal, modular nuclear, or any other 428  
fuel as its input; 429

(i) Any uprated capacity of an existing electric 430  
generating facility if the uprated capacity results from the 431  
deployment of advanced technology. 432

"Advanced energy resource" does not include a waste energy 433  
recovery system that is, or has been, included in an energy 434  
efficiency program of an electric distribution utility pursuant 435  
to requirements under former section 4928.66 of the Revised 436  
Code. 437

(35) "Air contaminant source" has the same meaning as in 438  
section 3704.01 of the Revised Code. 439

(36) "Cogeneration technology" means technology that 440  
produces electricity and useful thermal output simultaneously. 441

(37) (a) "Renewable energy resource" means any of the 442  
following: 443

(i) Solar photovoltaic or solar thermal energy; 444

(ii) Wind energy; 445

(iii) Power produced by a hydroelectric facility; 446

(iv) Power produced by a run-of-the-river hydroelectric 447  
facility placed in service on or after January 1, 1980, that is 448  
located within this state, relies upon the Ohio river, and 449  
operates, or is rated to operate, at an aggregate capacity of 450  
forty or more megawatts; 451

(v) Geothermal energy; 452

(vi) Fuel derived from solid wastes, as defined in section 453

3734.01 of the Revised Code, through fractionation, biological 454  
decomposition, or other process that does not principally 455  
involve combustion; 456

(vii) Biomass energy; 457

(viii) Energy produced by cogeneration technology that is 458  
placed into service on or before December 31, 2015, and for 459  
which more than ninety per cent of the total annual energy input 460  
is from combustion of a waste or byproduct gas from an air 461  
contaminant source in this state, which source has been in 462  
operation since on or before January 1, 1985, provided that the 463  
cogeneration technology is a part of a facility located in a 464  
county having a population of more than three hundred sixty-five 465  
thousand but less than three hundred seventy thousand according 466  
to the most recent federal decennial census; 467

(ix) Biologically derived methane gas; 468

(x) Heat captured from a generator of electricity, boiler, 469  
or heat exchanger fueled by biologically derived methane gas; 470

(xi) Energy derived from nontreated by-products of the 471  
pulping process or wood manufacturing process, including bark, 472  
wood chips, sawdust, and lignin in spent pulping liquors. 473

"Renewable energy resource" includes, but is not limited 474  
to, any fuel cell used in the generation of electricity, 475  
including, but not limited to, a proton exchange membrane fuel 476  
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 477  
solid oxide fuel cell; wind turbine located in the state's 478  
territorial waters of Lake Erie; methane gas emitted from an 479  
abandoned coal mine; waste energy recovery system placed into 480  
service or retrofitted on or after the effective date of the 481  
amendment of this section by S.B. 315 of the 129th general 482

assembly, September 10, 2012, except that a waste energy 483  
recovery system described in division (A) (38) (b) of this section 484  
may be included only if it was placed into service between 485  
January 1, 2002, and December 31, 2004; storage facility that 486  
will promote the better utilization of a renewable energy 487  
resource; or distributed generation system used by a customer to 488  
generate electricity from any such energy. 489

"Renewable energy resource" does not include a waste 490  
energy recovery system that is, or was, on or after January 1, 491  
2012, included in an energy efficiency program of an electric 492  
distribution utility pursuant to requirements under former 493  
section 4928.66 of the Revised Code. 494

(b) As used in division (A) (37) of this section, 495  
"hydroelectric facility" means a hydroelectric generating 496  
facility that is located at a dam on a river, or on any water 497  
discharged to a river, that is within or bordering this state or 498  
within or bordering an adjoining state and meets all of the 499  
following standards: 500

(i) The facility provides for river flows that are not 501  
detrimental for fish, wildlife, and water quality, including 502  
seasonal flow fluctuations as defined by the applicable 503  
licensing agency for the facility. 504

(ii) The facility demonstrates that it complies with the 505  
water quality standards of this state, which compliance may 506  
consist of certification under Section 401 of the "Clean Water 507  
Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and 508  
demonstrates that it has not contributed to a finding by this 509  
state that the river has impaired water quality under Section 510  
303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 511  
U.S.C. 1313. 512

(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.	513 514 515 516
(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.	517 518 519 520 521
(v) The facility complies with provisions of the "Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 to 1544, as amended.	522 523 524
(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.	525 526 527 528 529 530
(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.	531 532 533 534 535 536 537 538
(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.	539 540 541

(38) "Waste energy recovery system" means either of the following: 542  
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(a) A facility that generates electricity through the conversion of energy from either of the following: 544  
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(i) Exhaust heat from engines or manufacturing, industrial, commercial, or institutional sites, except for exhaust heat from a facility whose primary purpose is the generation of electricity; 546  
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(ii) Reduction of pressure in gas pipelines before gas is distributed through the pipeline, provided that the conversion of energy to electricity is achieved without using additional fossil fuels. 550  
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(b) A facility at a state institution of higher education as defined in section 3345.011 of the Revised Code that recovers waste heat from electricity-producing engines or combustion turbines and that simultaneously uses the recovered heat to produce steam, provided that the facility was placed into service between January 1, 2002, and December 31, 2004. 554  
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(39) "Smart grid" means capital improvements to an electric distribution utility's distribution infrastructure that improve reliability, efficiency, resiliency, or reduce energy demand or use, including, but not limited to, advanced metering and automation of system functions. 560  
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~~(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.~~ 565  
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(B) For the purposes of this chapter, a retail electric 570

service component shall be deemed a competitive retail electric 571  
service if the service component is competitive pursuant to a 572  
declaration by a provision of the Revised Code or pursuant to an 573  
order of the public utilities commission authorized under 574  
division (A) of section 4928.04 of the Revised Code. Otherwise, 575  
the service component shall be deemed a noncompetitive retail 576  
electric service. 577

**Sec. 4928.02.** It is the policy of this state to do the 578  
following throughout this state: 579

(A) Ensure the availability to consumers of adequate, 580  
reliable, safe, efficient, nondiscriminatory, and reasonably 581  
priced retail electric service; 582

(B) Ensure the availability of unbundled and comparable 583  
retail electric service that provides consumers with the 584  
supplier, price, terms, conditions, and quality options they 585  
elect to meet their respective needs; 586

(C) Ensure diversity of electricity supplies and 587  
suppliers, by giving consumers effective choices over the 588  
selection of those supplies and suppliers and by encouraging the 589  
development of distributed and small generation facilities; 590

(D) Encourage innovation and market access for cost- 591  
effective supply- and demand-side retail electric service 592  
including, but not limited to, demand-side management, time- 593  
differentiated pricing, waste energy recovery systems, smart 594  
grid programs, and implementation of advanced metering 595  
infrastructure; 596

(E) Encourage cost-effective and efficient access to 597  
information regarding the operation of the transmission and 598  
distribution systems of electric utilities in order to promote 599

both effective customer choice of retail electric service and 600  
the development of performance standards and targets for service 601  
quality for all consumers, including annual achievement reports 602  
written in plain language; 603

(F) Ensure that an electric utility's transmission and 604  
distribution systems are available to a customer-generator or 605  
owner of distributed generation, so that the customer-generator 606  
or owner can market and deliver the electricity it produces; 607

(G) Recognize the continuing emergence of competitive 608  
electricity markets through the development and implementation 609  
of flexible regulatory treatment; 610

(H) Ensure effective competition in the provision of 611  
retail electric service by avoiding anticompetitive subsidies 612  
flowing from a noncompetitive retail electric service to a 613  
competitive retail electric service or to a product or service 614  
other than retail electric service, and vice versa, including by 615  
prohibiting the recovery of any generation-related costs through 616  
distribution or transmission rates; 617

(I) Ensure retail electric service consumers protection 618  
against unreasonable sales practices, market deficiencies, and 619  
market power; 620

(J) Provide coherent, transparent means of giving 621  
appropriate incentives to technologies that can adapt 622  
successfully to potential environmental mandates; 623

(K) Encourage implementation of distributed generation 624  
across customer classes through regular review and updating of 625  
administrative rules governing critical issues such as, but not 626  
limited to, interconnection standards, standby charges, and net 627  
metering; 628

(L) Protect at-risk populations, including, but not 629  
limited to, when considering the implementation of any new 630  
advanced energy or renewable energy resource; 631

(M) Encourage the education of small business owners in 632  
this state regarding the use of, and encourage the use of, 633  
energy efficiency programs and ~~alternative-advanced energy~~ 634  
resources and renewable energy resources in their businesses; 635

(N) Facilitate the state's effectiveness in the global 636  
economy. 637

In carrying out this policy, the commission shall consider 638  
rules as they apply to the costs of electric distribution 639  
infrastructure, including, but not limited to, line extensions, 640  
for the purpose of development in this state. 641

**Sec. 4928.142.** (A) For the purpose of complying with 642  
section 4928.141 of the Revised Code and subject to division (D) 643  
of this section and, as applicable, subject to the rate plan 644  
requirement of division (A) of section 4928.141 of the Revised 645  
Code, an electric distribution utility may establish a standard 646  
service offer price for retail electric generation service that 647  
is delivered to the utility under a market-rate offer. 648

(1) The market-rate offer shall be determined through a 649  
competitive bidding process that provides for all of the 650  
following: 651

(a) Open, fair, and transparent competitive solicitation; 652

(b) Clear product definition; 653

(c) Standardized bid evaluation criteria; 654

(d) Oversight by an independent third party that shall 655  
design the solicitation, administer the bidding, and ensure that 656

the criteria specified in ~~division~~divisions (A) (1) (a) to (c) of 657  
this section are met; 658

(e) Evaluation of the submitted bids prior to the 659  
selection of the least-cost bid winner or winners. 660

No generation supplier shall be prohibited from 661  
participating in the bidding process. 662

(2) The public utilities commission shall modify rules, or 663  
adopt new rules as necessary, concerning the conduct of the 664  
competitive bidding process and the qualifications of bidders, 665  
which rules shall foster supplier participation in the bidding 666  
process and shall be consistent with the requirements of 667  
division (A) (1) of this section. 668

(B) Prior to initiating a competitive bidding process for 669  
a market-rate offer under division (A) of this section, the 670  
electric distribution utility shall file an application with the 671  
commission. An electric distribution utility may file its 672  
application with the commission prior to the effective date of 673  
the commission rules required under division (A) (2) of this 674  
section, and, as the commission determines necessary, the 675  
utility shall immediately conform its filing to the rules upon 676  
their taking effect. 677

An application under this division shall detail the 678  
electric distribution utility's proposed compliance with the 679  
requirements of division (A) (1) of this section and with 680  
commission rules under division (A) (2) of this section and 681  
demonstrate that all of the following requirements are met: 682

(1) The electric distribution utility or its transmission 683  
service affiliate belongs to at least one regional transmission 684  
organization that has been approved by the federal energy 685

regulatory commission; or there otherwise is comparable and 686  
nondiscriminatory access to the electric transmission grid. 687

(2) Any such regional transmission organization has a 688  
market-monitor function and the ability to take actions to 689  
identify and mitigate market power or the electric distribution 690  
utility's market conduct; or a similar market monitoring 691  
function exists with commensurate ability to identify and 692  
monitor market conditions and mitigate conduct associated with 693  
the exercise of market power. 694

(3) A published source of information is available 695  
publicly or through subscription that identifies pricing 696  
information for traded electricity on- and off-peak energy 697  
products that are contracts for delivery beginning at least two 698  
years from the date of the publication and is updated on a 699  
regular basis. 700

The commission shall initiate a proceeding and, within 701  
ninety days after the application's filing date, shall determine 702  
by order whether the electric distribution utility and its 703  
market-rate offer meet all of the foregoing requirements. If the 704  
finding is positive, the electric distribution utility may 705  
initiate its competitive bidding process. If the finding is 706  
negative as to one or more requirements, the commission in the 707  
order shall direct the electric distribution utility regarding 708  
how any deficiency may be remedied in a timely manner to the 709  
commission's satisfaction; otherwise, the electric distribution 710  
utility shall withdraw the application. However, if such remedy 711  
is made and the subsequent finding is positive and also if the 712  
electric distribution utility made a simultaneous filing under 713  
this section and section 4928.143 of the Revised Code, the 714  
utility shall not initiate its competitive bid until at least 715

one hundred fifty days after the filing date of those 716  
applications. 717

(C) Upon the completion of the competitive bidding process 718  
authorized by divisions (A) and (B) of this section, including 719  
for the purpose of division (D) of this section, the commission 720  
shall select the least-cost bid winner or winners of that 721  
process, and such selected bid or bids, as prescribed as retail 722  
rates by the commission, shall be the electric distribution 723  
utility's standard service offer unless the commission, by order 724  
issued before the third calendar day following the conclusion of 725  
the competitive bidding process for the market rate offer, 726  
determines that one or more of the following criteria were not 727  
met: 728

(1) Each portion of the bidding process was 729  
oversubscribed, such that the amount of supply bid upon was 730  
greater than the amount of the load bid out. 731

(2) There were four or more bidders. 732

(3) At least twenty-five per cent of the load is bid upon 733  
by one or more persons other than the electric distribution 734  
utility. 735

All costs incurred by the electric distribution utility as 736  
a result of or related to the competitive bidding process or to 737  
procuring generation service to provide the standard service 738  
offer, including the costs of energy and capacity and the costs 739  
of all other products and services procured as a result of the 740  
competitive bidding process, shall be timely recovered through 741  
the standard service offer price, and, for that purpose, the 742  
commission shall approve a reconciliation mechanism, other 743  
recovery mechanism, or a combination of such mechanisms for the 744

utility. 745

(D) The first application filed under this section by an 746  
electric distribution utility that, as of July 31, 2008, 747  
directly owns, in whole or in part, operating electric 748  
generating facilities that had been used and useful in this 749  
state shall require that a portion of that utility's standard 750  
service offer load for the first five years of the market rate 751  
offer be competitively bid under division (A) of this section as 752  
follows: ten per cent of the load in year one, not more than 753  
twenty per cent in year two, thirty per cent in year three, 754  
forty per cent in year four, and fifty per cent in year five. 755  
Consistent with those percentages, the commission shall 756  
determine the actual percentages for each year of years one 757  
through five. The standard service offer price for retail 758  
electric generation service under this first application shall 759  
be a proportionate blend of the bid price and the generation 760  
service price for the remaining standard service offer load, 761  
which latter price shall be equal to the electric distribution 762  
utility's most recent standard service offer price, adjusted 763  
upward or downward as the commission determines reasonable, 764  
relative to the jurisdictional portion of any known and 765  
measurable changes from the level of any one or more of the 766  
following costs as reflected in that most recent standard 767  
service offer price: 768

(1) The electric distribution utility's prudently incurred 769  
cost of fuel used to produce electricity; 770

(2) Its prudently incurred purchased power costs; 771

~~(3) Its prudently incurred costs of satisfying the supply 772  
and demand portfolio requirements of this state, including, but 773  
not limited to, renewable energy resource and energy efficiency 774~~

~~requirements;~~ 775

~~(4)~~—Its costs prudently incurred to comply with 776  
environmental laws and regulations, with consideration of the 777  
derating of any facility associated with those costs. 778

In making any adjustment to the most recent standard 779  
service offer price on the basis of costs described in division 780  
(D) of this section, the commission shall include the benefits 781  
that may become available to the electric distribution utility 782  
as a result of or in connection with the costs included in the 783  
adjustment, including, but not limited to, the utility's receipt 784  
of emissions credits or its receipt of tax benefits or of other 785  
benefits, and, accordingly, the commission may impose such 786  
conditions on the adjustment to ensure that any such benefits 787  
are properly aligned with the associated cost responsibility. 788  
The commission shall also determine how such adjustments will 789  
affect the electric distribution utility's return on common 790  
equity that may be achieved by those adjustments. The commission 791  
shall not apply its consideration of the return on common equity 792  
to reduce any adjustments authorized under this division unless 793  
the adjustments will cause the electric distribution utility to 794  
earn a return on common equity that is significantly in excess 795  
of the return on common equity that is earned by publicly traded 796  
companies, including utilities, that face comparable business 797  
and financial risk, with such adjustments for capital structure 798  
as may be appropriate. The burden of proof for demonstrating 799  
that significantly excessive earnings will not occur shall be on 800  
the electric distribution utility. 801

Additionally, the commission may adjust the electric 802  
distribution utility's most recent standard service offer price 803  
by such just and reasonable amount that the commission 804

determines necessary to address any emergency that threatens the 805  
utility's financial integrity or to ensure that the resulting 806  
revenue available to the utility for providing the standard 807  
service offer is not so inadequate as to result, directly or 808  
indirectly, in a taking of property without compensation 809  
pursuant to Section 19 of Article I, Ohio Constitution. The 810  
electric distribution utility has the burden of demonstrating 811  
that any adjustment to its most recent standard service offer 812  
price is proper in accordance with this division. 813

(E) Beginning in the second year of a blended price under 814  
division (D) of this section and notwithstanding any other 815  
requirement of this section, the commission may alter 816  
prospectively the proportions specified in that division to 817  
mitigate any effect of an abrupt or significant change in the 818  
electric distribution utility's standard service offer price 819  
that would otherwise result in general or with respect to any 820  
rate group or rate schedule but for such alteration. Any such 821  
alteration shall be made not more often than annually, and the 822  
commission shall not, by altering those proportions and in any 823  
event, including because of the length of time, as authorized 824  
under division (C) of this section, taken to approve the market 825  
rate offer, cause the duration of the blending period to exceed 826  
ten years as counted from the effective date of the approved 827  
market rate offer. Additionally, any such alteration shall be 828  
limited to an alteration affecting the prospective proportions 829  
used during the blending period and shall not affect any 830  
blending proportion previously approved and applied by the 831  
commission under this division. 832

(F) An electric distribution utility that has received 833  
commission approval of its first application under division (C) 834  
of this section shall not, nor ever shall be authorized or 835

required by the commission to, file an application under section 836  
4928.143 of the Revised Code. 837

**Sec. 4928.143.** (A) For the purpose of complying with 838  
section 4928.141 of the Revised Code, an electric distribution 839  
utility may file an application for public utilities commission 840  
approval of an electric security plan as prescribed under 841  
division (B) of this section. The utility may file that 842  
application prior to the effective date of any rules the 843  
commission may adopt for the purpose of this section, and, as 844  
the commission determines necessary, the utility immediately 845  
shall conform its filing to those rules upon their taking 846  
effect. 847

(B) Notwithstanding any other provision of Title XLIX of 848  
the Revised Code to the contrary except division (D) of this 849  
section, divisions (I), (J), and (K) of section 4928.20, 850  
~~division (E) of section 4928.64,~~ and section 4928.69 of the 851  
Revised Code: 852

(1) An electric security plan shall include provisions 853  
relating to the supply and pricing of electric generation 854  
service. In addition, if the proposed electric security plan has 855  
a term longer than three years, it may include provisions in the 856  
plan to permit the commission to test the plan pursuant to 857  
division (E) of this section and any transitional conditions 858  
that should be adopted by the commission if the commission 859  
terminates the plan as authorized under that division. 860

(2) The plan may provide for or include, without 861  
limitation, any of the following: 862

(a) Automatic recovery of any of the following costs of 863  
the electric distribution utility, provided the cost is 864

prudently incurred: the cost of fuel used to generate the 865  
electricity supplied under the offer; the cost of purchased 866  
power supplied under the offer, including the cost of energy and 867  
capacity, and including purchased power acquired from an 868  
affiliate; the cost of emission allowances; and the cost of 869  
federally mandated carbon or energy taxes; 870

(b) A reasonable allowance for construction work in 871  
progress for any of the electric distribution utility's cost of 872  
constructing an electric generating facility or for an 873  
environmental expenditure for any electric generating facility 874  
of the electric distribution utility, provided the cost is 875  
incurred or the expenditure occurs on or after January 1, 2009. 876  
Any such allowance shall be subject to the construction work in 877  
progress allowance limitations of division (A) of section 878  
4909.15 of the Revised Code, except that the commission may 879  
authorize such an allowance upon the incurrence of the cost or 880  
occurrence of the expenditure. No such allowance for generating 881  
facility construction shall be authorized, however, unless the 882  
commission first determines in the proceeding that there is need 883  
for the facility based on resource planning projections 884  
submitted by the electric distribution utility. Further, no such 885  
allowance shall be authorized unless the facility's construction 886  
was sourced through a competitive bid process, regarding which 887  
process the commission may adopt rules. An allowance approved 888  
under division (B) (2) (b) of this section shall be established as 889  
a nonbypassable surcharge for the life of the facility. 890

(c) The establishment of a nonbypassable surcharge for the 891  
life of an electric generating facility that is owned or 892  
operated by the electric distribution utility, was sourced 893  
through a competitive bid process subject to any such rules as 894  
the commission adopts under division (B) (2) (b) of this section, 895

and is newly used and useful on or after January 1, 2009, which 896  
surcharge shall cover all costs of the utility specified in the 897  
application, excluding costs recovered through a surcharge under 898  
division (B) (2) (b) of this section. However, no surcharge shall 899  
be authorized unless the commission first determines in the 900  
proceeding that there is need for the facility based on resource 901  
planning projections submitted by the electric distribution 902  
utility. Additionally, if a surcharge is authorized for a 903  
facility pursuant to plan approval under division (C) of this 904  
section and as a condition of the continuation of the surcharge, 905  
the electric distribution utility shall dedicate to Ohio 906  
consumers the capacity and energy and the rate associated with 907  
the cost of that facility. Before the commission authorizes any 908  
surcharge pursuant to this division, it may consider, as 909  
applicable, the effects of any decommissioning, deratings, and 910  
retirements. 911

(d) Terms, conditions, or charges relating to limitations 912  
on customer shopping for retail electric generation service, 913  
bypassability, standby, back-up, or supplemental power service, 914  
default service, carrying costs, amortization periods, and 915  
accounting or deferrals, including future recovery of such 916  
deferrals, as would have the effect of stabilizing or providing 917  
certainty regarding retail electric service; 918

(e) Automatic increases or decreases in any component of 919  
the standard service offer price; 920

(f) Consistent with sections 4928.23 to 4928.2318 of the 921  
Revised Code, both of the following: 922

(i) Provisions for the electric distribution utility to 923  
securitize any phase-in, inclusive of carrying charges, of the 924  
utility's standard service offer price, which phase-in is 925

authorized in accordance with section 4928.144 of the Revised Code;	926 927
(ii) Provisions for the recovery of the utility's cost of securitization.	928 929
(g) Provisions relating to transmission, ancillary, congestion, or any related service required for the standard service offer, including provisions for the recovery of any cost of such service that the electric distribution utility incurs on or after that date pursuant to the standard service offer;	930 931 932 933 934
(h) Provisions regarding the utility's distribution service, including, without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary, provisions regarding single issue ratemaking, a revenue decoupling mechanism or any other incentive ratemaking, and provisions regarding distribution infrastructure and modernization incentives for the electric distribution utility. The latter may include a long-term energy delivery infrastructure modernization plan for that utility or any plan providing for the utility's recovery of costs, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on such infrastructure modernization. As part of its determination as to whether to allow in an electric distribution utility's electric security plan inclusion of any provision described in division (B)(2)(h) of this section, the commission shall examine the reliability of the electric distribution utility's distribution system and ensure that customers' and the electric distribution utility's expectations are aligned and that the electric distribution utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution	935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955

system. 956

(i) Provisions under which the electric distribution 957  
utility may implement economic development, job retention, and 958  
energy efficiency programs, which provisions may allocate 959  
program costs across all classes of customers of the utility and 960  
those of electric distribution utilities in the same holding 961  
company system. 962

(C) (1) The burden of proof in the proceeding shall be on 963  
the electric distribution utility. The commission shall issue an 964  
order under this division for an initial application under this 965  
section not later than one hundred fifty days after the 966  
application's filing date and, for any subsequent application by 967  
the utility under this section, not later than two hundred 968  
seventy-five days after the application's filing date. Subject 969  
to division (D) of this section, the commission by order shall 970  
approve or modify and approve an application filed under 971  
division (A) of this section if it finds that the electric 972  
security plan so approved, including its pricing and all other 973  
terms and conditions, including any deferrals and any future 974  
recovery of deferrals, is more favorable in the aggregate as 975  
compared to the expected results that would otherwise apply 976  
under section 4928.142 of the Revised Code. Additionally, if the 977  
commission so approves an application that contains a surcharge 978  
under division (B) (2) (b) or (c) of this section, the commission 979  
shall ensure that the benefits derived for any purpose for which 980  
the surcharge is established are reserved and made available to 981  
those that bear the surcharge. Otherwise, the commission by 982  
order shall disapprove the application. 983

(2) (a) If the commission modifies and approves an 984  
application under division (C) (1) of this section, the electric 985

distribution utility may withdraw the application, thereby 986  
terminating it, and may file a new standard service offer under 987  
this section or a standard service offer under section 4928.142 988  
of the Revised Code. 989

(b) If the utility terminates an application pursuant to 990  
division (C) (2) (a) of this section or if the commission 991  
disapproves an application under division (C) (1) of this 992  
section, the commission shall issue such order as is necessary 993  
to continue the provisions, terms, and conditions of the 994  
utility's most recent standard service offer, along with any 995  
expected increases or decreases in fuel costs from those 996  
contained in that offer, until a subsequent offer is authorized 997  
pursuant to this section or section 4928.142 of the Revised 998  
Code, respectively. 999

(D) Regarding the rate plan requirement of division (A) of 1000  
section 4928.141 of the Revised Code, if an electric 1001  
distribution utility that has a rate plan that extends beyond 1002  
December 31, 2008, files an application under this section for 1003  
the purpose of its compliance with division (A) of section 1004  
4928.141 of the Revised Code, that rate plan and its terms and 1005  
conditions are hereby incorporated into its proposed electric 1006  
security plan and shall continue in effect until the date 1007  
scheduled under the rate plan for its expiration, and that 1008  
portion of the electric security plan shall not be subject to 1009  
commission approval or disapproval under division (C) of this 1010  
section, and the earnings test provided for in division (F) of 1011  
this section shall not apply until after the expiration of the 1012  
rate plan. However, that utility may include in its electric 1013  
security plan under this section, and the commission may 1014  
approve, modify and approve, or disapprove subject to division 1015  
(C) of this section, provisions for the incremental recovery or 1016

the deferral of any costs that are not being recovered under the 1017  
rate plan and that the utility incurs during that continuation 1018  
period to comply with section 4928.141, ~~division (B) of section~~ 1019  
~~4928.64, or division (A) of section 4928.66~~ of the Revised Code. 1020

(E) If an electric security plan approved under division 1021  
(C) of this section, except one withdrawn by the utility as 1022  
authorized under that division, has a term, exclusive of phase- 1023  
ins or deferrals, that exceeds three years from the effective 1024  
date of the plan, the commission shall test the plan in the 1025  
fourth year, and if applicable, every fourth year thereafter, to 1026  
determine whether the plan, including its then-existing pricing 1027  
and all other terms and conditions, including any deferrals and 1028  
any future recovery of deferrals, continues to be more favorable 1029  
in the aggregate and during the remaining term of the plan as 1030  
compared to the expected results that would otherwise apply 1031  
under section 4928.142 of the Revised Code. The commission shall 1032  
also determine the prospective effect of the electric security 1033  
plan to determine if that effect is substantially likely to 1034  
provide the electric distribution utility with a return on 1035  
common equity that is significantly in excess of the return on 1036  
common equity that is likely to be earned by publicly traded 1037  
companies, including utilities, that face comparable business 1038  
and financial risk, with such adjustments for capital structure 1039  
as may be appropriate. The burden of proof for demonstrating 1040  
that significantly excessive earnings will not occur shall be on 1041  
the electric distribution utility. If the test results are in 1042  
the negative or the commission finds that continuation of the 1043  
electric security plan will result in a return on equity that is 1044  
significantly in excess of the return on common equity that is 1045  
likely to be earned by publicly traded companies, including 1046  
utilities, that will face comparable business and financial 1047

risk, with such adjustments for capital structure as may be 1048  
appropriate, during the balance of the plan, the commission may 1049  
terminate the electric security plan, but not until it shall 1050  
have provided interested parties with notice and an opportunity 1051  
to be heard. The commission may impose such conditions on the 1052  
plan's termination as it considers reasonable and necessary to 1053  
accommodate the transition from an approved plan to the more 1054  
advantageous alternative. In the event of an electric security 1055  
plan's termination pursuant to this division, the commission 1056  
shall permit the continued deferral and phase-in of any amounts 1057  
that occurred prior to that termination and the recovery of 1058  
those amounts as contemplated under that electric security plan. 1059

(F) With regard to the provisions that are included in an 1060  
electric security plan under this section, the commission shall 1061  
consider, following the end of each annual period of the plan, 1062  
if any such adjustments resulted in excessive earnings as 1063  
measured by whether the earned return on common equity of the 1064  
electric distribution utility is significantly in excess of the 1065  
return on common equity that was earned during the same period 1066  
by publicly traded companies, including utilities, that face 1067  
comparable business and financial risk, with such adjustments 1068  
for capital structure as may be appropriate. Consideration also 1069  
shall be given to the capital requirements of future committed 1070  
investments in this state. The burden of proof for demonstrating 1071  
that significantly excessive earnings did not occur shall be on 1072  
the electric distribution utility. If the commission finds that 1073  
such adjustments, in the aggregate, did result in significantly 1074  
excessive earnings, it shall require the electric distribution 1075  
utility to return to consumers the amount of the excess by 1076  
prospective adjustments; provided that, upon making such 1077  
prospective adjustments, the electric distribution utility shall 1078

have the right to terminate the plan and immediately file an 1079  
application pursuant to section 4928.142 of the Revised Code. 1080  
Upon termination of a plan under this division, rates shall be 1081  
set on the same basis as specified in division (C) (2) (b) of this 1082  
section, and the commission shall permit the continued deferral 1083  
and phase-in of any amounts that occurred prior to that 1084  
termination and the recovery of those amounts as contemplated 1085  
under that electric security plan. In making its determination 1086  
of significantly excessive earnings under this division, the 1087  
commission shall not consider, directly or indirectly, the 1088  
revenue, expenses, or earnings of any affiliate or parent 1089  
company. 1090

**Sec. 4928.20.** (A) The legislative authority of a municipal 1091  
corporation may adopt an ordinance, or the board of township 1092  
trustees of a township or the board of county commissioners of a 1093  
county may adopt a resolution, under which, on or after the 1094  
starting date of competitive retail electric service, it may 1095  
aggregate in accordance with this section the retail electrical 1096  
loads located, respectively, within the municipal corporation, 1097  
township, or unincorporated area of the county and, for that 1098  
purpose, may enter into service agreements to facilitate for 1099  
those loads the sale and purchase of electricity. The 1100  
legislative authority or board also may exercise such authority 1101  
jointly with any other such legislative authority or board. For 1102  
customers that are not mercantile customers, an ordinance or 1103  
resolution under this division shall specify whether the 1104  
aggregation will occur only with the prior, affirmative consent 1105  
of each person owning, occupying, controlling, or using an 1106  
electric load center proposed to be aggregated or will occur 1107  
automatically for all such persons pursuant to the opt-out 1108  
requirements of division (D) of this section. The aggregation of 1109

mercantile customers shall occur only with the prior, 1110  
affirmative consent of each such person owning, occupying, 1111  
controlling, or using an electric load center proposed to be 1112  
aggregated. Nothing in this division, however, authorizes the 1113  
aggregation of the retail electric loads of an electric load 1114  
center, as defined in section 4933.81 of the Revised Code, that 1115  
is located in the certified territory of a nonprofit electric 1116  
supplier under sections 4933.81 to 4933.90 of the Revised Code 1117  
or an electric load center served by transmission or 1118  
distribution facilities of a municipal electric utility. 1119

(B) If an ordinance or resolution adopted under division 1120  
(A) of this section specifies that aggregation of customers that 1121  
are not mercantile customers will occur automatically as 1122  
described in that division, the ordinance or resolution shall 1123  
direct the board of elections to submit the question of the 1124  
authority to aggregate to the electors of the respective 1125  
municipal corporation, township, or unincorporated area of a 1126  
county at a special election on the day of the next primary or 1127  
general election in the municipal corporation, township, or 1128  
county. The legislative authority or board shall certify a copy 1129  
of the ordinance or resolution to the board of elections not 1130  
less than ninety days before the day of the special election. No 1131  
ordinance or resolution adopted under division (A) of this 1132  
section that provides for an election under this division shall 1133  
take effect unless approved by a majority of the electors voting 1134  
upon the ordinance or resolution at the election held pursuant 1135  
to this division. 1136

(C) Upon the applicable requisite authority under 1137  
divisions (A) and (B) of this section, the legislative authority 1138  
or board shall develop a plan of operation and governance for 1139  
the aggregation program so authorized. Before adopting a plan 1140

under this division, the legislative authority or board shall 1141  
hold at least two public hearings on the plan. Before the first 1142  
hearing, the legislative authority or board shall publish notice 1143  
of the hearings once a week for two consecutive weeks in a 1144  
newspaper of general circulation in the jurisdiction or as 1145  
provided in section 7.16 of the Revised Code. The notice shall 1146  
summarize the plan and state the date, time, and location of 1147  
each hearing. 1148

(D) No legislative authority or board, pursuant to an 1149  
ordinance or resolution under divisions (A) and (B) of this 1150  
section that provides for automatic aggregation of customers 1151  
that are not mercantile customers as described in division (A) 1152  
of this section, shall aggregate the electrical load of any 1153  
electric load center located within its jurisdiction unless it 1154  
in advance clearly discloses to the person owning, occupying, 1155  
controlling, or using the load center that the person will be 1156  
enrolled automatically in the aggregation program and will 1157  
remain so enrolled unless the person affirmatively elects by a 1158  
stated procedure not to be so enrolled. The disclosure shall 1159  
state prominently the rates, charges, and other terms and 1160  
conditions of enrollment. The stated procedure shall allow any 1161  
person enrolled in the aggregation program the opportunity to 1162  
opt out of the program every three years, without paying a 1163  
switching fee. Any such person that opts out before the 1164  
commencement of the aggregation program pursuant to the stated 1165  
procedure shall default to the standard service offer provided 1166  
under section 4928.14 or division (D) of section 4928.35 of the 1167  
Revised Code until the person chooses an alternative supplier. 1168

(E) (1) With respect to a governmental aggregation for a 1169  
municipal corporation that is authorized pursuant to divisions 1170  
(A) to (D) of this section, resolutions may be proposed by 1171

initiative or referendum petitions in accordance with sections 1172  
731.28 to 731.41 of the Revised Code. 1173

(2) With respect to a governmental aggregation for a 1174  
township or the unincorporated area of a county, which 1175  
aggregation is authorized pursuant to divisions (A) to (D) of 1176  
this section, resolutions may be proposed by initiative or 1177  
referendum petitions in accordance with sections 731.28 to 1178  
731.40 of the Revised Code, except that: 1179

(a) The petitions shall be filed, respectively, with the 1180  
township fiscal officer or the board of county commissioners, 1181  
who shall perform those duties imposed under those sections upon 1182  
the city auditor or village clerk. 1183

(b) The petitions shall contain the signatures of not less 1184  
than ten per cent of the total number of electors in, 1185  
respectively, the township or the unincorporated area of the 1186  
county who voted for the office of governor at the preceding 1187  
general election for that office in that area. 1188

(F) A governmental aggregator under division (A) of this 1189  
section is not a public utility engaging in the wholesale 1190  
purchase and resale of electricity, and provision of the 1191  
aggregated service is not a wholesale utility transaction. A 1192  
governmental aggregator shall be subject to supervision and 1193  
regulation by the public utilities commission only to the extent 1194  
of any competitive retail electric service it provides and 1195  
commission authority under this chapter. 1196

(G) This section does not apply in the case of a municipal 1197  
corporation that supplies such aggregated service to electric 1198  
load centers to which its municipal electric utility also 1199  
supplies a noncompetitive retail electric service through 1200

transmission or distribution facilities the utility singly or 1201  
jointly owns or operates. 1202

(H) A governmental aggregator shall not include in its 1203  
aggregation the accounts of any of the following: 1204

(1) A customer that has opted out of the aggregation; 1205

(2) A customer in contract with a certified electric 1206  
services company; 1207

(3) A customer that has a special contract with an 1208  
electric distribution utility; 1209

(4) A customer that is not located within the governmental 1210  
aggregator's governmental boundaries; 1211

(5) Subject to division (C) of section 4928.21 of the 1212  
Revised Code, a customer who appears on the "do not aggregate" 1213  
list maintained under that section. 1214

(I) Customers that are part of a governmental aggregation 1215  
under this section shall be responsible only for such portion of 1216  
a surcharge under section 4928.144 of the Revised Code that is 1217  
proportionate to the benefits, as determined by the commission, 1218  
that electric load centers within the jurisdiction of the 1219  
governmental aggregation as a group receive. The proportionate 1220  
surcharge so established shall apply to each customer of the 1221  
governmental aggregation while the customer is part of that 1222  
aggregation. If a customer ceases being such a customer, the 1223  
otherwise applicable surcharge shall apply. Nothing in this 1224  
section shall result in less than full recovery by an electric 1225  
distribution utility of any surcharge authorized under section 1226  
4928.144 of the Revised Code. Nothing in this section shall 1227  
result in less than the full and timely imposition, charging, 1228  
collection, and adjustment by an electric distribution utility, 1229

its assignee, or any collection agent, of the phase-in-recovery 1230  
charges authorized pursuant to a final financing order issued 1231  
pursuant to sections 4928.23 to 4928.2318 of the Revised Code. 1232

(J) On behalf of the customers that are part of a 1233  
governmental aggregation under this section and by filing 1234  
written notice with the public utilities commission, the 1235  
legislative authority that formed or is forming that 1236  
governmental aggregation may elect not to receive standby 1237  
service within the meaning of division (B) (2) (d) of section 1238  
4928.143 of the Revised Code from an electric distribution 1239  
utility in whose certified territory the governmental 1240  
aggregation is located and that operates under an approved 1241  
electric security plan under that section. Upon the filing of 1242  
that notice, the electric distribution utility shall not charge 1243  
any such customer to whom competitive retail electric generation 1244  
service is provided by another supplier under the governmental 1245  
aggregation for the standby service. Any such consumer that 1246  
returns to the utility for competitive retail electric service 1247  
shall pay the market price of power incurred by the utility to 1248  
serve that consumer ~~plus any amount attributable to the~~ 1249  
~~utility's cost of compliance with the renewable energy resource~~ 1250  
~~provisions of section 4928.64 of the Revised Code to serve the~~ 1251  
~~consumer~~. Such market price shall include, but not be limited 1252  
to, capacity and energy charges; all charges associated with the 1253  
provision of that power supply through the regional transmission 1254  
organization, including, but not limited to, transmission, 1255  
ancillary services, congestion, and settlement and 1256  
administrative charges; and all other costs incurred by the 1257  
utility that are associated with the procurement, provision, and 1258  
administration of that power supply, as such costs may be 1259  
approved by the commission. The period of time during which the 1260

market price ~~and renewable energy resource amount~~ shall be so 1261  
assessed on the consumer shall be from the time the consumer so 1262  
returns to the electric distribution utility until the 1263  
expiration of the electric security plan. However, if that 1264  
period of time is expected to be more than two years, the 1265  
commission may reduce the time period to a period of not less 1266  
than two years. 1267

(K) The commission shall adopt rules to encourage and 1268  
promote large-scale governmental aggregation in this state. For 1269  
that purpose, the commission shall conduct an immediate review 1270  
of any rules it has adopted for the purpose of this section that 1271  
are in effect on the effective date of the amendment of this 1272  
section by S.B. 221 of the 127th general assembly, July 31, 1273  
2008. Further, within the context of an electric security plan 1274  
under section 4928.143 of the Revised Code, the commission shall 1275  
consider the effect on large-scale governmental aggregation of 1276  
any nonbypassable generation charges, however collected, that 1277  
would be established under that plan, except any nonbypassable 1278  
generation charges that relate to any cost incurred by the 1279  
electric distribution utility, the deferral of which has been 1280  
authorized by the commission prior to the effective date of the 1281  
amendment of this section by S.B. 221 of the 127th general 1282  
assembly, July 31, 2008. 1283

**Sec. 4928.61.** (A) There is hereby established in the state 1284  
treasury the advanced energy fund, into which shall be deposited 1285  
all advanced energy revenues remitted to the director of 1286  
development services under division (B) of this section, for the 1287  
exclusive purposes of funding the advanced energy program 1288  
created under section 4928.62 of the Revised Code and paying the 1289  
program's administrative costs. Interest on the fund shall be 1290  
credited to the fund. 1291

(B) Advanced energy revenues shall include all of the 1292  
following: 1293

(1) Revenues remitted to the director after collection by 1294  
each electric distribution utility in this state of a temporary 1295  
rider on retail electric distribution service rates as such 1296  
rates are determined by the public utilities commission pursuant 1297  
to this chapter. The rider shall be a uniform amount statewide, 1298  
determined by the director ~~of development~~, after consultation 1299  
with the public benefits advisory board created by section 1300  
4928.58 of the Revised Code. The amount shall be determined by 1301  
dividing an aggregate revenue target for a given year as 1302  
determined by the director, after consultation with the advisory 1303  
board, by the number of customers of electric distribution 1304  
utilities in this state in the prior year. Such aggregate 1305  
revenue target shall not exceed more than fifteen million 1306  
dollars in any year through 2005 and shall not exceed more than 1307  
five million dollars in any year after 2005. The rider shall be 1308  
imposed beginning on the effective date of the amendment of this 1309  
section by Sub. H.B. 251 of the 126th general assembly, January 1310  
4, 2007, and shall terminate at the end of ten years following 1311  
the starting date of competitive retail electric service or 1312  
until the advanced energy fund, including interest, reaches one 1313  
hundred million dollars, whichever is first. 1314

(2) Revenues from payments, repayments, and collections 1315  
under the advanced energy program and from program income; 1316

(3) Revenues remitted to the director after collection by 1317  
a municipal electric utility or electric cooperative in this 1318  
state upon the utility's or cooperative's decision to 1319  
participate in the advanced energy fund; 1320

~~(4) Revenues from renewable energy compliance payments as~~ 1321

~~provided under division (C) (2) of section 4928.64 of the Revised Code;~~ 1322  
1323

~~(5) Revenue from forfeitures under division (C) of section 4928.66 of the Revised Code;~~ 1324  
1325

~~(6) Funds transferred pursuant to division (B) of Section 512.10 of S.B. 315 of the 129th general assembly;~~ 1326  
1327

~~(7)~~ (5) Interest earnings on the advanced energy fund. 1328

(C) (1) Each electric distribution utility in this state 1329  
shall remit to the director on a quarterly basis the revenues 1330  
described in divisions (B) (1) and (2) of this section. Such 1331  
remittances shall occur within thirty days after the end of each 1332  
calendar quarter. 1333

(2) Each participating electric cooperative and 1334  
participating municipal electric utility shall remit to the 1335  
director on a quarterly basis the revenues described in division 1336  
(B) (3) of this section. Such remittances shall occur within 1337  
thirty days after the end of each calendar quarter. For the 1338  
purpose of division (B) (3) of this section, the participation of 1339  
an electric cooperative or municipal electric utility in the 1340  
energy efficiency revolving loan program as it existed 1341  
immediately prior to the effective date of the amendment of this 1342  
section by Sub. H.B. 251 of the 126th general assembly, January 1343  
4, 2007, does not constitute a decision to participate in the 1344  
advanced energy fund under this section as so amended. 1345

(3) All remittances under divisions (C) (1) and (2) of this 1346  
section shall continue only until the end of ten years following 1347  
the starting date of competitive retail electric service or 1348  
until the advanced energy fund, including interest, reaches one 1349  
hundred million dollars, whichever is first. 1350

(D) Any moneys collected in rates for non-low-income customer energy efficiency programs, as of October 5, 1999, and not contributed to the energy efficiency revolving loan fund authorized under this section prior to the effective date of its amendment by Sub. H.B. 251 of the 126th general assembly, January 4, 2007, shall be used to continue to fund cost-effective, residential energy efficiency programs, be contributed into the universal service fund as a supplement to that required under section 4928.53 of the Revised Code, or be returned to ratepayers in the form of a rate reduction at the option of the affected electric distribution utility.

**Sec. 4928.62.** (A) There is hereby created the advanced energy program, which shall be administered by the director of development services. Under the program, the director may authorize the use of moneys in the advanced energy fund for financial, technical, and related assistance for advanced energy projects in this state or for economic development assistance, in furtherance of the purposes set forth in section 4928.63 of the Revised Code.

(1) To the extent feasible given approved applications for assistance, the assistance shall be distributed among the certified territories of electric distribution utilities and participating electric cooperatives, and among the service areas of participating municipal electric utilities, in amounts proportionate to the remittances of each utility and cooperative under divisions (B) (1) and (3) of section 4928.61 of the Revised Code.

(2) The funds described in division (B) ~~(6)~~ (4) of section 4928.61 of the Revised Code shall not be subject to the territorial requirements of division (A) (1) of this section.

(3) The director shall not authorize financial assistance 1381  
for an advanced energy project under the program unless the 1382  
director first determines that the project will create new jobs 1383  
or preserve existing jobs in this state or use innovative 1384  
technologies or materials. 1385

(B) In carrying out sections 4928.61 to 4928.63 of the 1386  
Revised Code, the director may do all of the following to 1387  
further the public interest in advanced energy projects and 1388  
economic development: 1389

(1) Award grants, contracts, loans, loan participation 1390  
agreements, linked deposits, and energy production incentives; 1391

(2) Acquire in the name of the director any property of 1392  
any kind or character in accordance with this section, by 1393  
purchase, purchase at foreclosure, or exchange, on such terms 1394  
and in such manner as the director considers proper; 1395

(3) Make and enter into all contracts and agreements 1396  
necessary or incidental to the performance of the director's 1397  
duties and the exercise of the director's powers under sections 1398  
4928.61 to 4928.63 of the Revised Code; 1399

(4) Employ or enter into contracts with financial 1400  
consultants, marketing consultants, consulting engineers, 1401  
architects, managers, construction experts, attorneys, technical 1402  
monitors, energy evaluators, or other employees or agents as the 1403  
director considers necessary, and fix their compensation; 1404

(5) Adopt rules prescribing the application procedures for 1405  
financial assistance under the advanced energy program; the 1406  
fees, charges, interest rates, payment schedules, local match 1407  
requirements, and other terms and conditions of any grants, 1408  
contracts, loans, loan participation agreements, linked 1409

deposits, and energy production incentives; criteria pertaining 1410  
to the eligibility of participating lending institutions; and 1411  
any other matters necessary for the implementation of the 1412  
program; 1413

(6) Do all things necessary and appropriate for the 1414  
operation of the program. 1415

(C) The ~~department of~~ development services agency may hold 1416  
ownership to any unclaimed energy efficiency and renewable 1417  
energy emission allowances provided for in Chapter 3745-14 of 1418  
the Administrative Code or otherwise, that result from advanced 1419  
energy projects that receive funding from the advanced energy 1420  
fund, and it may use the allowances to further the public 1421  
interest in advanced energy projects or for economic 1422  
development. 1423

(D) Financial statements, financial data, and trade 1424  
secrets submitted to or received by the director from an 1425  
applicant or recipient of financial assistance under sections 1426  
4928.61 to 4928.63 of the Revised Code, or any information taken 1427  
from those statements, data, or trade secrets for any purpose, 1428  
are not public records for the purpose of section 149.43 of the 1429  
Revised Code. 1430

(E) Nothing in the amendments of sections 4928.61, 1431  
4928.62, and 4928.63 of the Revised Code by Sub. H.B. 251 of the 1432  
126th general assembly shall affect any pending or effected 1433  
assistance, pending or effected purchases or exchanges of 1434  
property made, or pending or effected contracts or agreements 1435  
entered into pursuant to division (A) or (B) of this section as 1436  
the section existed prior to the effective date of those 1437  
amendments, January 4, 2007, or shall affect the exemption 1438  
provided under division (C) of this section as the section 1439

existed prior to that effective date. 1440

(F) Any assistance a school district receives for an 1441  
advanced energy project, including a geothermal heating, 1442  
ventilating, and air conditioning system, shall be in addition 1443  
to any assistance provided under Chapter 3318. of the Revised 1444  
Code and shall not be included as part of the district or state 1445  
portion of the basic project cost under that chapter. 1446

Sec. 4928.64. All contracts for the provision of advanced 1447  
energy resources, renewable energy resources, and energy 1448  
efficiency and demand response energy savings under the 1449  
requirements of former sections 4928.64, 4928.645, and 4928.66 1450  
of the Revised Code that were entered into prior to the 1451  
effective date of ...B... of the 131st general assembly remain 1452  
in effect until the expiration of the contracts. 1453

Sec. 5501.311. (A) As used in this section, "alternative 1454  
energy generating facility" means a facility that uses advanced 1455  
energy or renewable energy resources to produce electricity. 1456  
"Advanced energy resource" and "renewable energy resource" have 1457  
the same meanings as in section 4928.01 of the Revised Code. 1458

(B) Notwithstanding sections 123.01 and 127.16 of the 1459  
Revised Code the director of transportation may lease or lease- 1460  
purchase all or any part of a transportation facility to or from 1461  
one or more persons, one or more governmental agencies, a 1462  
transportation improvement district, or any combination thereof, 1463  
and may grant leases, easements, or licenses for lands under the 1464  
control of the department of transportation. The director may 1465  
adopt rules necessary to give effect to this section. 1466

~~(B)~~ (C) Plans and specifications for the construction of a 1467  
transportation facility under a lease or lease-purchase 1468

agreement are subject to approval of the director and must meet 1469  
or exceed all applicable standards of the department. 1470

~~(C)~~ (D) Any lease or lease-purchase agreement under which 1471  
the department is the lessee shall be for a period not exceeding 1472  
the then current two-year period for which appropriations have 1473  
been made by the general assembly to the department, and such 1474  
agreement may contain such other terms as the department and the 1475  
other parties thereto agree, notwithstanding any other provision 1476  
of law, including provisions that rental payments in amounts 1477  
sufficient to pay bond service charges payable during the 1478  
current two-year lease term shall be an absolute and 1479  
unconditional obligation of the department independent of all 1480  
other duties under the agreement without set-off or deduction or 1481  
any other similar rights or defenses. Any such agreement may 1482  
provide for renewal of the agreement at the end of each term for 1483  
another term, not exceeding two years, provided that no renewal 1484  
shall be effective until the effective date of an appropriation 1485  
enacted by the general assembly from which the department may 1486  
lawfully pay rentals under such agreement. Any such agreement 1487  
may include, without limitation, any agreement by the department 1488  
with respect to any costs of transportation facilities to be 1489  
included prior to acquisition and construction of such 1490  
transportation facilities. Any such agreement shall not 1491  
constitute a debt or pledge of the faith and credit of the 1492  
state, or of any political subdivision of the state, and the 1493  
lessor shall have no right to have taxes or excises levied by 1494  
the general assembly, or the taxing authority of any political 1495  
subdivision of the state, for the payment of rentals thereunder. 1496  
Any such agreement shall contain a statement to that effect. 1497

~~(D)~~ (E) A municipal corporation, township, or county may 1498  
use service payments in lieu of taxes credited to special funds 1499

or accounts pursuant to sections 5709.43, 5709.75, and 5709.80 1500  
of the Revised Code to provide its contribution to the cost of a 1501  
transportation facility, provided such facility was among the 1502  
purposes for which such service payments were authorized. The 1503  
contribution may be in the form of a lump sum or periodic 1504  
payments. 1505

~~(E)~~-(F) Pursuant to the "Telecommunications Act of 1996," 1506  
110 Stat. 152, 47 U.S.C. 332 note, the director may grant a 1507  
lease, easement, or license in a transportation facility to a 1508  
telecommunications service provider for construction, placement, 1509  
or operation of a telecommunications facility. An interest 1510  
granted under this division is subject to all of the following 1511  
conditions: 1512

(1) The transportation facility is owned in fee simple or 1513  
easement by this state at the time the lease, easement, or 1514  
license is granted to the telecommunications provider. 1515

(2) The lease, easement, or license shall be granted on a 1516  
competitive basis in accordance with policies and procedures to 1517  
be determined by the director. The policies and procedures may 1518  
include provisions for master leases for multiple sites. 1519

(3) The telecommunications facility shall be designed to 1520  
accommodate the state's multi-agency radio communication system, 1521  
the intelligent transportation system, and the department's 1522  
communication system as the director may determine is necessary 1523  
for highway or other departmental purposes. 1524

(4) The telecommunications facility shall be designed to 1525  
accommodate such additional telecommunications equipment as may 1526  
feasibly be co-located thereon as determined in the discretion 1527  
of the director. 1528

(5) The telecommunications service providers awarded the 1529  
lease, easement, or license, agree to permit other 1530  
telecommunications service providers to co-locate on the 1531  
telecommunications facility, and agree to the terms and 1532  
conditions of the co-location as determined in the discretion of 1533  
the director. 1534

(6) The director shall require indemnity agreements in 1535  
favor of the department as a condition of any lease, easement, 1536  
or license granted under this division. Each indemnity agreement 1537  
shall secure this state and its agents from liability for 1538  
damages arising out of safety hazards, zoning, and any other 1539  
matter of public interest the director considers necessary. 1540

(7) The telecommunications service provider fully complies 1541  
with any permit issued under section 5515.01 of the Revised Code 1542  
pertaining to land that is the subject of the lease, easement, 1543  
or license. 1544

(8) All plans and specifications shall meet with the 1545  
director's approval. 1546

(9) Any other conditions the director determines 1547  
necessary. 1548

~~(F)~~(G) In accordance with section 5501.031 of the Revised 1549  
Code, to further efforts to promote energy conservation and 1550  
energy efficiency, the director may grant a lease, easement, or 1551  
license in a transportation facility to a utility service 1552  
provider that has received its certificate from the Ohio power 1553  
siting board or appropriate local entity for construction, 1554  
placement, or operation of an alternative energy generating 1555  
facility ~~service provider as defined in section 4928.64 of the~~ 1556  
~~Revised Code.~~ An interest granted under this division is subject 1557

to all of the following conditions: 1558

(1) The transportation facility is owned in fee simple or 1559  
in easement by this state at the time the lease, easement, or 1560  
license is granted to the utility service provider. 1561

(2) The lease, easement, or license shall be granted on a 1562  
competitive basis in accordance with policies and procedures to 1563  
be determined by the director. The policies and procedures may 1564  
include provisions for master leases for multiple sites. 1565

(3) The alternative energy generating facility shall be 1566  
designed to provide energy for the department's transportation 1567  
facilities with the potential for selling excess power on the 1568  
power grid, as the director may determine is necessary for 1569  
highway or other departmental purposes. 1570

(4) The director shall require indemnity agreements in 1571  
favor of the department as a condition of any lease, easement, 1572  
or license granted under this division. Each indemnity agreement 1573  
shall secure this state from liability for damages arising out 1574  
of safety hazards, zoning, and any other matter of public 1575  
interest the director considers necessary. 1576

(5) The alternative energy ~~service-generating facility and~~ 1577  
utility provider fully ~~complies-comply~~ with any permit issued by 1578  
the Ohio power siting board under Chapter 4906. of the Revised 1579  
Code and ~~complies-comply~~ with section 5515.01 of the Revised 1580  
Code pertaining to land that is the subject of the lease, 1581  
easement, or license. 1582

(6) All plans and specifications shall meet with the 1583  
director's approval. 1584

(7) Any other conditions the director determines 1585  
necessary. 1586

~~(G)~~ (H) Money the department receives under this section 1587  
shall be deposited into the state treasury to the credit of the 1588  
highway operating fund. 1589

~~(H)~~ (I) A lease, easement, or license granted under 1590  
division ~~(E)~~ (F) or ~~(F)~~ (G) of this section, and any 1591  
telecommunications facility or alternative energy generating 1592  
facility relating to such interest in a transportation facility, 1593  
is hereby deemed to further the essential highway purpose of 1594  
building and maintaining a safe, energy-efficient, and 1595  
accessible transportation system. 1596

**Sec. 5727.75.** (A) For purposes of this section: 1597

(1) "Qualified energy project" means an energy project 1598  
certified by the director of development services pursuant to 1599  
this section. 1600

(2) "Energy project" means a project to provide electric 1601  
power through the construction, installation, and use of an 1602  
energy facility. 1603

(3) "Alternative energy zone" means a county declared as 1604  
such by the board of county commissioners under division (E) (1) 1605  
(b) or (c) of this section. 1606

(4) "Full-time equivalent employee" means the total number 1607  
of employee-hours for which compensation was paid to individuals 1608  
employed at a qualified energy project for services performed at 1609  
the project during the calendar year divided by two thousand 1610  
eighty hours. 1611

(5) "Solar energy project" means an energy project 1612  
composed of an energy facility using solar panels to generate 1613  
electricity. 1614

(B) (1) Tangible personal property of a qualified energy project using renewable energy resources is exempt from taxation for tax years 2011 through 2016 if all of the following conditions are satisfied:

(a) On or before December 31, 2015, 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, 2016. 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 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. 1645

(2) If tangible personal property of a qualified energy 1646  
project using renewable energy resources was exempt from 1647  
taxation under this section beginning in any of tax years 2011, 1648  
2012, 2013, 2014, 2015, or 2016, and the certification under 1649  
division (E) (2) of this section has not been revoked, the 1650  
tangible personal property of the qualified energy project is 1651  
exempt from taxation for tax year 2017 and all ensuing tax years 1652  
if the property was placed into service before January 1, 2017, 1653  
as certified in the construction progress report required under 1654  
division (F) (2) of this section. Tangible personal property that 1655  
has not been placed into service before that date is taxable 1656  
property subject to taxation. An energy project for which 1657  
certification has been revoked is ineligible for further 1658  
exemption under this section. Revocation does not affect the 1659  
tax-exempt status of the project's tangible personal property 1660  
for the tax year in which revocation occurs or any prior tax 1661  
year. 1662

(C) Tangible personal property of a qualified energy 1663  
project using clean coal technology, advanced nuclear 1664  
technology, or cogeneration technology is exempt from taxation 1665  
for the first tax year that the property would be listed for 1666  
taxation and all subsequent years if all of the following 1667  
circumstances are met: 1668

(1) The property was placed into service before January 1, 1669  
2021. Tangible personal property that has not been placed into 1670  
service before that date is taxable property subject to 1671  
taxation. 1672

(2) For such a qualified energy project with a nameplate 1673  
capacity of five megawatts or greater, a board of county 1674

commissioners of a county in which property of the qualified 1675  
energy project is located has adopted a resolution under 1676  
division (E) (1) (b) or (c) of this section to approve the 1677  
application submitted under division (E) of this section to 1678  
exempt the property located in that county from taxation. A 1679  
board's adoption of a resolution rejecting the application or 1680  
its failure to adopt a resolution approving the application does 1681  
not affect the tax-exempt status of the qualified energy 1682  
project's property that is located in another county. 1683

(3) The certification for the qualified energy project 1684  
issued under division (E) (2) of this section has not been 1685  
revoked. An energy project for which certification has been 1686  
revoked is ineligible for exemption under this section. 1687  
Revocation does not affect the tax-exempt status of the 1688  
project's tangible personal property for the tax year in which 1689  
revocation occurs or any prior tax year. 1690

(D) Except as otherwise provided in this section, real 1691  
property of a qualified energy project is exempt from taxation 1692  
for any tax year for which the tangible personal property of the 1693  
qualified energy project is exempted under this section. 1694

(E) (1) (a) A person may apply to the director of 1695  
development services for certification of an energy project as a 1696  
qualified energy project on or before the following dates: 1697

(i) December 31, 2015, for an energy project using 1698  
renewable energy resources; 1699

(ii) December 31, 2017, for an energy project using clean 1700  
coal technology, advanced nuclear technology, or cogeneration 1701  
technology. 1702

(b) The director shall forward a copy of each application 1703

for certification of an energy project with a nameplate capacity 1704  
of five megawatts or greater to the board of county 1705  
commissioners of each county in which the project is located and 1706  
to each taxing unit with territory located in each of the 1707  
affected counties. Any board that receives from the director a 1708  
copy of an application submitted under this division shall adopt 1709  
a resolution approving or rejecting the application unless it 1710  
has adopted a resolution under division (E) (1) (c) of this 1711  
section. A resolution adopted under division (E) (1) (b) or (c) of 1712  
this section may require an annual service payment to be made in 1713  
addition to the service payment required under division (G) of 1714  
this section. The sum of the service payment required in the 1715  
resolution and the service payment required under division (G) 1716  
of this section shall not exceed nine thousand dollars per 1717  
megawatt of nameplate capacity located in the county. The 1718  
resolution shall specify the time and manner in which the 1719  
payments required by the resolution shall be paid to the county 1720  
treasurer. The county treasurer shall deposit the payment to the 1721  
credit of the county's general fund to be used for any purpose 1722  
for which money credited to that fund may be used. 1723

The board shall send copies of the resolution by certified 1724  
mail to the owner of the facility and the director within thirty 1725  
days after receipt of the application, or a longer period of 1726  
time if authorized by the director. 1727

(c) A board of county commissioners may adopt a resolution 1728  
declaring the county to be an alternative energy zone and 1729  
declaring all applications submitted to the director of 1730  
development services under this division after the adoption of 1731  
the resolution, and prior to its repeal, to be approved by the 1732  
board. 1733

All tangible personal property and real property of an energy project with a nameplate capacity of five 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 five 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 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 1793  
inadequate to support the construction or decommissioning of the 1794  
energy facility, the road, bridge, or culvert shall be rebuilt 1795  
or reinforced to the specifications established by the county 1796  
engineer prior to the construction or decommissioning of the 1797  
facility. The owner or lessee of the facility shall post a bond 1798  
in an amount established by the county engineer and to be held 1799  
by the board of county commissioners to ensure funding for 1800  
repairs of roads, bridges, and culverts affected during the 1801  
construction. The bond shall be released by the board not later 1802  
than one year after the date the repairs are completed. The 1803  
energy facility owner or lessee pursuant to a sale and leaseback 1804  
transaction shall post a bond, as may be required by the Ohio 1805  
power siting board in the certificate authorizing commencement 1806  
of construction issued pursuant to section 4906.10 of the 1807  
Revised Code, to ensure funding for repairs to roads, bridges, 1808  
and culverts resulting from decommissioning of the facility. The 1809  
energy facility owner or lessee and the county engineer may 1810  
enter into an agreement regarding specific transportation plans, 1811  
reinforcements, modifications, use and repair of roads, 1812  
financial security to be provided, and any other relevant issue. 1813

(5) Provide or facilitate training for fire and emergency 1814  
responders for response to emergency situations related to the 1815  
energy project and, for energy projects with a nameplate 1816  
capacity of five megawatts or greater, at the person's expense, 1817  
equip the fire and emergency responders with proper equipment as 1818  
reasonably required to enable them to respond to such emergency 1819  
situations; 1820

(6) Maintain a ratio of Ohio-domiciled full-time 1821  
equivalent employees employed in the construction or 1822  
installation of the energy project to total full-time equivalent 1823

employees employed in the construction or installation of the 1824  
energy project of not less than eighty per cent in the case of a 1825  
solar energy project, and not less than fifty per cent in the 1826  
case of any other energy project. In the case of an energy 1827  
project for which certification from the power siting board is 1828  
required under section 4906.20 of the Revised Code, the number 1829  
of full-time equivalent employees employed in the construction 1830  
or installation of the energy project equals the number actually 1831  
employed or the number projected to be employed in the 1832  
certificate application, if such projection is required under 1833  
regulations adopted pursuant to section 4906.03 of the Revised 1834  
Code, whichever is greater. For all other energy projects, the 1835  
number of full-time equivalent employees employed in the 1836  
construction or installation of the energy project equals the 1837  
number actually employed or the number projected to be employed 1838  
by the director of development services, whichever is greater. 1839  
To estimate the number of employees to be employed in the 1840  
construction or installation of an energy project, the director 1841  
shall use a generally accepted job-estimating model in use for 1842  
renewable energy projects, including but not limited to the job 1843  
and economic development impact model. The director may adjust 1844  
an estimate produced by a model to account for variables not 1845  
accounted for by the model. 1846

(7) For energy projects with a nameplate capacity in 1847  
excess of two megawatts, establish a relationship with a member 1848  
of the university system of Ohio as defined in section 3345.011 1849  
of the Revised Code or with a person offering an apprenticeship 1850  
program registered with the employment and training 1851  
administration within the United States department of labor or 1852  
with the apprenticeship council created by section 4139.02 of 1853  
the Revised Code, to educate and train individuals for careers 1854

in the wind or solar energy industry. The relationship may 1855  
include endowments, cooperative programs, internships, 1856  
apprenticeships, research and development projects, and 1857  
curriculum development. 1858

~~(8) Offer to sell power or renewable energy credits from 1859  
the energy project to electric distribution utilities or 1860  
electric service companies subject to renewable energy resource 1861  
requirements under section 4928.64 of the Revised Code that have 1862  
issued requests for proposal for such power or renewable energy 1863  
credits. If no electric distribution utility or electric service 1864  
company issues a request for proposal on or before December 31, 1865  
2010, or accepts an offer for power or renewable energy credits 1866  
within forty five days after the offer is submitted, power or 1867  
renewable energy credits from the energy project may be sold to 1868  
other persons. Division (F) (8) of this section does not apply 1869  
if: 1870~~

~~(a) The owner or lessee is a rural electric company or a 1871  
municipal power agency as defined in section 3734.058 of the 1872  
Revised Code. 1873~~

~~(b) The owner or lessee is a person that, before 1874  
completion of the energy project, contracted for the sale of 1875  
power or renewable energy credits with a rural electric company 1876  
or a municipal power agency. 1877~~

~~(c) The owner or lessee contracts for the sale of power or 1878  
renewable energy credits from the energy project before June 17, 1879  
2010. 1880~~

~~(9) Make annual service payments as required by division 1881  
(G) of this section and as may be required in a resolution 1882  
adopted by a board of county commissioners under division (E) of 1883~~

this section. 1884

(G) The owner or a lessee pursuant to a sale and leaseback 1885  
transaction of a qualified energy project shall make annual 1886  
service payments in lieu of taxes to the county treasurer on or 1887  
before the final dates for payments of taxes on public utility 1888  
personal property on the real and public utility personal 1889  
property tax list for each tax year for which property of the 1890  
energy project is exempt from taxation under this section. The 1891  
county treasurer shall allocate the payment on the basis of the 1892  
project's physical location. Upon receipt of a payment, or if 1893  
timely payment has not been received, the county treasurer shall 1894  
certify such receipt or non-receipt to the director of 1895  
development services and tax commissioner in a form determined 1896  
by the director and commissioner, respectively. Each payment 1897  
shall be in the following amount: 1898

(1) In the case of a solar energy project, seven thousand 1899  
dollars per megawatt of nameplate capacity located in the county 1900  
as of December 31, 2010, for tax year 2011, as of December 31, 1901  
2011, for tax year 2012, as of December 31, 2012, for tax year 1902  
2013, as of December 31, 2013, for tax year 2014, as of December 1903  
31, 2014, for tax year 2015, as of December 31, 2015, for tax 1904  
year 2016, and as of December 31, 2016, for tax year 2017 and 1905  
each tax year thereafter; 1906

(2) In the case of any other energy project using 1907  
renewable energy resources, the following: 1908

(a) If the project maintains during the construction or 1909  
installation of the energy facility a ratio of Ohio-domiciled 1910  
full-time equivalent employees to total full-time equivalent 1911  
employees of not less than seventy-five per cent, six thousand 1912  
dollars per megawatt of nameplate capacity located in the county 1913

as of the thirty-first day of December of the preceding tax 1914  
year; 1915

(b) If the project maintains during the construction or 1916  
installation of the energy facility a ratio of Ohio-domiciled 1917  
full-time equivalent employees to total full-time equivalent 1918  
employees of less than seventy-five per cent but not less than 1919  
sixty per cent, seven thousand dollars per megawatt of nameplate 1920  
capacity located in the county as of the thirty-first day of 1921  
December of the preceding tax year; 1922

(c) If the project maintains during the construction or 1923  
installation of the energy facility a ratio of Ohio-domiciled 1924  
full-time equivalent employees to total full-time equivalent 1925  
employees of less than sixty per cent but not less than fifty 1926  
per cent, eight thousand dollars per megawatt of nameplate 1927  
capacity located in the county as of the thirty-first day of 1928  
December of the preceding tax year. 1929

(3) In the case of an energy project using clean coal 1930  
technology, advanced nuclear technology, or cogeneration 1931  
technology, the following: 1932

(a) If the project maintains during the construction or 1933  
installation of the energy facility a ratio of Ohio-domiciled 1934  
full-time equivalent employees to total full-time equivalent 1935  
employees of not less than seventy-five per cent, six thousand 1936  
dollars per megawatt of nameplate capacity located in the county 1937  
as of the thirty-first day of December of the preceding tax 1938  
year; 1939

(b) If the project maintains during the construction or 1940  
installation of the energy facility a ratio of Ohio-domiciled 1941  
full-time equivalent employees to total full-time equivalent 1942

employees of less than seventy-five per cent but not less than 1943  
sixty per cent, seven thousand dollars per megawatt of nameplate 1944  
capacity located in the county as of the thirty-first day of 1945  
December of the preceding tax year; 1946

(c) If the project maintains during the construction or 1947  
installation of the energy facility a ratio of Ohio-domiciled 1948  
full-time equivalent employees to total full-time equivalent 1949  
employees of less than sixty per cent but not less than fifty 1950  
per cent, eight thousand dollars per megawatt of nameplate 1951  
capacity located in the county as of the thirty-first day of 1952  
December of the preceding tax year. 1953

(H) The director of development services in consultation 1954  
with the tax commissioner shall adopt rules pursuant to Chapter 1955  
119. of the Revised Code to implement and enforce this section. 1956

**Section 2.** That existing sections 717.25, 4905.31, 1957  
4928.01, 4928.02, 4928.142, 4928.143, 4928.20, 4928.61, 4928.62, 1958  
5501.311, and 5727.75 and sections 1710.061, 4928.64, 4928.643, 1959  
4928.644, 4928.645, 4928.65, 4928.66, 4928.662, 4928.6610, 1960  
4928.6611, 4928.6612, 4928.6613, 4928.6614, 4928.6615, and 1961  
4928.6616 of the Revised Code are hereby repealed. 1962

**Section 3.** That Sections 3 and 4 of Sub. S.B. 310 of the 1963  
130th General Assembly be amended to read as follows: 1964

**Sec. 3.** It is the intent of the General Assembly to ensure 1965  
that customers in Ohio have access to affordable energy. It is 1966  
the intent of the General Assembly to incorporate as many forms 1967  
of inexpensive, reliable energy sources in the state of Ohio as 1968  
possible. It is also the intent of the General Assembly to get a 1969  
better understanding of how energy mandates impact jobs and the 1970  
economy in Ohio and to minimize government mandates. Because ~~the~~ 1971

energy mandates ~~in current law~~ may be unrealistic and 1972  
unattainable, it is the intent of the General Assembly to review 1973  
all energy resources as part of its efforts to address energy 1974  
pricing issues. 1975

Therefore, it is the intent of the General Assembly ~~to~~ 1976  
~~enact legislation in the future~~, after taking into account the 1977  
recommendations of the Energy Mandates Study Committee, to enact 1978  
legislation in the future that ~~will reduce the mandates in~~ 1979  
~~sections 4928.64 and 4928.66 of the Revised Code and provide~~ 1980  
provides greater transparency to electric customers on the costs 1981  
of future energy mandates, if there are to be any. 1982

**Sec. 4.** (A) There is hereby created the Energy Mandates 1983  
Study Committee to study ~~Ohio's~~ renewable energy, energy 1984  
efficiency, and peak demand reduction mandates. The Committee 1985  
shall consist of the following members: 1986

(1) Six members of the House of Representatives appointed 1987  
by the Speaker of the House of Representatives, with not more 1988  
than four members from the same political party; 1989

(2) Six members of the Senate appointed by the President 1990  
of the Senate, with not more than four members from the same 1991  
political party; 1992

(3) The chairperson of the Public Utilities Commission, as 1993  
an ex officio, nonvoting member. 1994

(B) The Speaker of the House of Representatives and the 1995  
President of the Senate shall each appoint one member of the 1996  
Committee to serve as a cochairperson of the Committee. Any 1997  
vacancies that occur on the Committee shall be filled in the 1998  
same manner as the original appointment. 1999

(C) Not later than September 30, 2015, the Committee shall 2000

submit a report of its findings to the House of Representatives 2001  
and the Senate in accordance with division (B) of section 101.68 2002  
of the Revised Code. The Committee shall cease to exist on 2003  
October 1, 2015. The report shall include, at a minimum, all of 2004  
the following: 2005

(1) A cost-benefit analysis of ~~the~~ renewable energy, 2006  
energy efficiency, and peak demand reduction mandates, including 2007  
the projected costs on electric customers if the mandates were 2008  
to remain at the percentage levels required under former 2009  
sections 4928.64 and 4928.66 of the Revised Code, as amended by 2010  
~~this act~~ S.B. 310 of the 130th General Assembly; 2011

(2) A recommendation of the best, evidence-based standard 2012  
for reviewing ~~the~~ mandates in the future, including an 2013  
examination of readily available technology to attain such a 2014  
standard; 2015

(3) The potential benefits of an opt-in system for ~~the~~ 2016  
mandates, in contrast to an opt-out system ~~for the mandates~~, and 2017  
a recommendation as to whether an opt-in system should apply to 2018  
all electric customers, whether an opt-out system should apply 2019  
to only certain customers, or whether a hybrid of these two 2020  
systems is recommended; 2021

(4) ~~A recommendation on whether costs incurred by an~~ 2022  
~~electric distribution utility or an electric services company~~ 2023  
~~pursuant to any contract, which may be entered into by the~~ 2024  
~~utility or company on or after the effective date of S.B. 310 of~~ 2025  
~~the 130th General Assembly for the purpose of procuring~~ 2026  
~~renewable energy resources or renewable energy credits and~~ 2027  
~~complying with the requirements of section 4928.64 of the~~ 2028  
~~Revised Code, may be passed through to any consumer, if such~~ 2029  
~~costs could have been avoided with the inclusion of a change of~~ 2030

~~law provision in the contract;~~ 2031

~~(5)~~—(5) A review of the risk of increased grid congestion due 2032  
to the anticipated retirement of coal-fired generation capacity 2033  
and other factors; the ability of distributed generation, 2034  
including combined heat and power and waste energy recovery, to 2035  
reduce electric grid congestion; and the potential benefit to 2036  
all energy consumers resulting from reduced grid congestion; 2037

~~(6)~~—(5) An analysis of whether there are alternatives for 2038  
the development of advanced energy resources as that term is 2039  
defined in section 4928.01 of the Revised Code; 2040

~~(7)~~—(6) An assessment of the environmental impact of ~~the~~ 2041  
renewable energy, energy efficiency, and peak demand reduction 2042  
mandates on reductions of greenhouse gas and fossil fuel 2043  
emissions; 2044

~~(8)~~—(7) A review of payments made by electric distribution 2045  
utilities to third-party administrators to promote energy 2046  
efficiency and peak demand reduction programs ~~under the terms of~~ 2047  
~~the utilities' portfolio plans~~. The review shall include, but 2048  
shall not be limited to, a complete analysis of all fixed and 2049  
variable payments made to those administrators since the 2050  
effective date of S.B. 221 of the 127th General Assembly, July 2051  
31, 2008, jobs created, retained, and impacted, whether those 2052  
payments outweigh the benefits to ratepayers, and whether those 2053  
payments should no longer be recovered from ratepayers. The 2054  
review also shall include a recommendation regarding whether the 2055  
administrators should submit periodic reports to the Commission 2056  
documenting the payments received from utilities. 2057

**Section 4.** That existing Sections 3 and 4 of Sub. S.B. 310 2058  
of the 130th General Assembly are hereby repealed. 2059

**Section 5.** That Sections 5, 6, 7, 8, 9, 10, and 11 of Sub. 2060  
S.B. 310 of the 130th General Assembly are hereby repealed. 2061