

**As Passed by the House**

**132nd General Assembly**

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**Sub. H. B. No. 114**

**Representative Blessing**

**Cosponsors: Representative Seitz, Speaker Rosenberger, Representatives Schuring, Pelanda, McColley, Hill, Conditt, Hambley, Retherford, Brinkman, Koehler, Johnson, Green, Stein, Thompson, Roegner, Schaffer, Slaby, Scherer, Wiggam, Huffman, Becker, Riedel, Zeltwanger, Vitale, Hood, Keller, Dean, Butler, Householder, Hughes, Brenner, Dever, DeVitis, Goodman, Kick, Landis, LaTourette, Lipps, Rezabek, Romanchuk, Ryan, Smith, R., Young, Patton, Ginter, Cupp, Carfagna, Cera, Greenspan, Perales, Arndt, Faber, Sprague, Gavarone, Henne, Reineke**

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**A BILL**

To amend sections 4928.01, 4928.142, 4928.143, 1  
4928.20, 4928.61, 4928.62, 4928.64, 4928.641, 2  
4928.643, 4928.644, 4928.645, 4928.65, 4928.66, 3  
4928.662, 4928.6610, 4928.6611, and 5727.75 and 4  
to enact sections 4928.647, 4928.664, 4928.665, 5  
4928.666, 4928.667, 4928.6620, and 4928.6621 of 6  
the Revised Code and to amend Section 257.80 of 7  
Am. Sub. H.B. 64 of the 132nd General Assembly 8  
and to repeal Sections 5, 6, 7, 8, 9, 10, and 11 9  
of Sub. S.B. 310 of the 130th General Assembly 10  
to revise the provisions governing renewable 11  
energy, energy efficiency, and peak demand 12  
reduction and to alter funding allocations under 13  
the Home Energy Assistance Program. 14

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

**Section 1.** That sections 4928.01, 4928.142, 4928.143, 15  
4928.20, 4928.61, 4928.62, 4928.64, 4928.641, 4928.643, 16  
4928.644, 4928.645, 4928.65, 4928.66, 4928.662, 4928.6610, 17  
4928.6611, and 5727.75 be amended and sections 4928.647, 18  
4928.664, 4928.665, 4928.666, 4928.667, 4928.6620, and 4928.6621 19  
of the Revised Code be enacted to read as follows: 20

**Sec. 4928.01.** (A) As used in this chapter: 21

(1) "Ancillary service" means any function necessary to 22  
the provision of electric transmission or distribution service 23  
to a retail customer and includes, but is not limited to, 24  
scheduling, system control, and dispatch services; reactive 25  
supply from generation resources and voltage control service; 26  
reactive supply from transmission resources service; regulation 27  
service; frequency response service; energy imbalance service; 28  
operating reserve-spinning reserve service; operating reserve- 29  
supplemental reserve service; load following; back-up supply 30  
service; real-power loss replacement service; dynamic 31  
scheduling; system black start capability; and network stability 32  
service. 33

(2) "Billing and collection agent" means a fully 34  
independent agent, not affiliated with or otherwise controlled 35  
by an electric utility, electric services company, electric 36  
cooperative, or governmental aggregator subject to certification 37  
under section 4928.08 of the Revised Code, to the extent that 38  
the agent is under contract with such utility, company, 39  
cooperative, or aggregator solely to provide billing and 40  
collection for retail electric service on behalf of the utility 41  
company, cooperative, or aggregator. 42

(3) "Certified territory" means the certified territory 43  
established for an electric supplier under sections 4933.81 to 44

4933.90 of the Revised Code. 45

(4) "Competitive retail electric service" means a 46  
component of retail electric service that is competitive as 47  
provided under division (B) of this section. 48

(5) "Electric cooperative" means a not-for-profit electric 49  
light company that both is or has been financed in whole or in 50  
part under the "Rural Electrification Act of 1936," 49 Stat. 51  
1363, 7 U.S.C. 901, and owns or operates facilities in this 52  
state to generate, transmit, or distribute electricity, or a 53  
not-for-profit successor of such company. 54

(6) "Electric distribution utility" means an electric 55  
utility that supplies at least retail electric distribution 56  
service. 57

(7) "Electric light company" has the same meaning as in 58  
section 4905.03 of the Revised Code and includes an electric 59  
services company, but excludes any self-generator to the extent 60  
that it consumes electricity it so produces, sells that 61  
electricity for resale, or obtains electricity from a generating 62  
facility it hosts on its premises. 63

(8) "Electric load center" has the same meaning as in 64  
section 4933.81 of the Revised Code. 65

(9) "Electric services company" means an electric light 66  
company that is engaged on a for-profit or not-for-profit basis 67  
in the business of supplying or arranging for the supply of only 68  
a competitive retail electric service in this state. "Electric 69  
services company" includes a power marketer, power broker, 70  
aggregator, or independent power producer but excludes an 71  
electric cooperative, municipal electric utility, governmental 72  
aggregator, or billing and collection agent. 73

(10) "Electric supplier" has the same meaning as in 74  
section 4933.81 of the Revised Code. 75

(11) "Electric utility" means an electric light company 76  
that has a certified territory and is engaged on a for-profit 77  
basis either in the business of supplying a noncompetitive 78  
retail electric service in this state or in the businesses of 79  
supplying both a noncompetitive and a competitive retail 80  
electric service in this state. "Electric utility" excludes a 81  
municipal electric utility or a billing and collection agent. 82

(12) "Firm electric service" means electric service other 83  
than nonfirm electric service. 84

(13) "Governmental aggregator" means a legislative 85  
authority of a municipal corporation, a board of township 86  
trustees, or a board of county commissioners acting as an 87  
aggregator for the provision of a competitive retail electric 88  
service under authority conferred under section 4928.20 of the 89  
Revised Code. 90

(14) A person acts "knowingly," regardless of the person's 91  
purpose, when the person is aware that the person's conduct will 92  
probably cause a certain result or will probably be of a certain 93  
nature. A person has knowledge of circumstances when the person 94  
is aware that such circumstances probably exist. 95

(15) "Level of funding for low-income customer energy 96  
efficiency programs provided through electric utility rates" 97  
means the level of funds specifically included in an electric 98  
utility's rates on October 5, 1999, pursuant to an order of the 99  
public utilities commission issued under Chapter 4905. or 4909. 100  
of the Revised Code and in effect on October 4, 1999, for the 101  
purpose of improving the energy efficiency of housing for the 102

utility's low-income customers. The term excludes the level of 103  
any such funds committed to a specific nonprofit organization or 104  
organizations pursuant to a stipulation or contract. 105

(16) "Low-income customer assistance programs" means the 106  
percentage of income payment plan program, the home energy 107  
assistance program, the home weatherization assistance program, 108  
and the targeted energy efficiency and weatherization program. 109

(17) "Market development period" for an electric utility 110  
means the period of time beginning on the starting date of 111  
competitive retail electric service and ending on the applicable 112  
date for that utility as specified in section 4928.40 of the 113  
Revised Code, irrespective of whether the utility applies to 114  
receive transition revenues under this chapter. 115

(18) "Market power" means the ability to impose on 116  
customers a sustained price for a product or service above the 117  
price that would prevail in a competitive market. 118

(19) "Mercantile customer" means a commercial or 119  
industrial customer if the electricity consumed is for 120  
nonresidential use and the customer consumes more than seven 121  
hundred thousand kilowatt hours per year or is part of a 122  
national account involving multiple facilities in one or more 123  
states. 124

(20) "Municipal electric utility" means a municipal 125  
corporation that owns or operates facilities to generate, 126  
transmit, or distribute electricity. 127

(21) "Noncompetitive retail electric service" means a 128  
component of retail electric service that is noncompetitive as 129  
provided under division (B) of this section. 130

(22) "Nonfirm electric service" means electric service 131

provided pursuant to a schedule filed under section 4905.30 of 132  
the Revised Code or pursuant to an arrangement under section 133  
4905.31 of the Revised Code, which schedule or arrangement 134  
includes conditions that may require the customer to curtail or 135  
interrupt electric usage during nonemergency circumstances upon 136  
notification by an electric utility. 137

(23) "Percentage of income payment plan arrears" means 138  
funds eligible for collection through the percentage of income 139  
payment plan rider, but uncollected as of July 1, 2000. 140

(24) "Person" has the same meaning as in section 1.59 of 141  
the Revised Code. 142

(25) "Advanced energy project" means any technologies, 143  
products, activities, or management practices or strategies that 144  
facilitate the generation or use of electricity or energy and 145  
that reduce or support the reduction of energy consumption or 146  
support the production of clean, renewable energy for 147  
industrial, distribution, commercial, institutional, 148  
governmental, research, not-for-profit, or residential energy 149  
users, including, but not limited to, advanced energy resources 150  
and renewable energy resources. "Advanced energy project" also 151  
includes any project described in division (A), (B), or (C) of 152  
section 4928.621 of the Revised Code. 153

(26) "Regulatory assets" means the unamortized net 154  
regulatory assets that are capitalized or deferred on the 155  
regulatory books of the electric utility, pursuant to an order 156  
or practice of the public utilities commission or pursuant to 157  
generally accepted accounting principles as a result of a prior 158  
commission rate-making decision, and that would otherwise have 159  
been charged to expense as incurred or would not have been 160  
capitalized or otherwise deferred for future regulatory 161

consideration absent commission action. "Regulatory assets" 162  
includes, but is not limited to, all deferred demand-side 163  
management costs; all deferred percentage of income payment plan 164  
arrears; post-in-service capitalized charges and assets 165  
recognized in connection with statement of financial accounting 166  
standards no. 109 (receivables from customers for income taxes); 167  
future nuclear decommissioning costs and fuel disposal costs as 168  
those costs have been determined by the commission in the 169  
electric utility's most recent rate or accounting application 170  
proceeding addressing such costs; the undepreciated costs of 171  
safety and radiation control equipment on nuclear generating 172  
plants owned or leased by an electric utility; and fuel costs 173  
currently deferred pursuant to the terms of one or more 174  
settlement agreements approved by the commission. 175

(27) "Retail electric service" means any service involved 176  
in supplying or arranging for the supply of electricity to 177  
ultimate consumers in this state, from the point of generation 178  
to the point of consumption. For the purposes of this chapter, 179  
retail electric service includes one or more of the following 180  
"service components": generation service, aggregation service, 181  
power marketing service, power brokerage service, transmission 182  
service, distribution service, ancillary service, metering 183  
service, and billing and collection service. 184

(28) "Starting date of competitive retail electric 185  
service" means January 1, 2001. 186

(29) "Customer-generator" means a user of a net metering 187  
system. 188

(30) "Net metering" means measuring the difference in an 189  
applicable billing period between the electricity supplied by an 190  
electric service provider and the electricity generated by a 191

customer-generator that is fed back to the electric service provider.	192 193
(31) "Net metering system" means a facility for the production of electrical energy that does all of the following:	194 195
(a) Uses as its fuel either solar, wind, biomass, landfill gas, or hydropower, or uses a microturbine or a fuel cell;	196 197
(b) Is located on a customer-generator's premises;	198
(c) Operates in parallel with the electric utility's transmission and distribution facilities;	199 200
(d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.	201 202
(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.	203 204 205 206 207 208
(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.	209 210 211
(34) "Advanced energy resource" means any of the following:	212 213
(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;	214 215 216 217 218



(b) Any distributed generation system consisting of	219
customer cogeneration technology;	220
(c) Clean coal technology that includes a carbon-based	221
product that is chemically altered before combustion to	222
demonstrate a reduction, as expressed as ash, in emissions of	223
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or	224
sulfur trioxide in accordance with the American society of	225
testing and materials standard D1757A or a reduction of metal	226
oxide emissions in accordance with standard D5142 of that	227
society, or clean coal technology that includes the design	228
capability to control or prevent the emission of carbon dioxide,	229
which design capability the commission shall adopt by rule and	230
shall be based on economically feasible best available	231
technology or, in the absence of a determined best available	232
technology, shall be of the highest level of economically	233
feasible design capability for which there exists generally	234
accepted scientific opinion;	235
(d) Advanced nuclear energy technology consisting of	236
generation III technology as defined by the nuclear regulatory	237
commission; other, later technology; or significant improvements	238
to existing facilities;	239
(e) Any fuel cell used in the generation of electricity,	240
including, but not limited to, a proton exchange membrane fuel	241
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or	242
solid oxide fuel cell;	243
(f) Advanced solid waste or construction and demolition	244
debris conversion technology, including, but not limited to,	245
advanced stoker technology, and advanced fluidized bed	246
gasification technology, that results in measurable greenhouse	247
gas emissions reductions as calculated pursuant to the United	248

States environmental protection agency's waste reduction model	249
(WARM);	250
(g) Demand-side management and any energy efficiency	251
improvement;	252
(h) Any new, retrofitted, refueled, or repowered	253
generating facility located in Ohio, including a simple or	254
combined-cycle natural gas generating facility or a generating	255
facility that uses biomass, coal, modular nuclear, or any other	256
fuel as its input;	257
(i) Any uprated capacity of an existing electric	258
generating facility if the uprated capacity results from the	259
deployment of advanced technology.	260
"Advanced energy resource" does not include a waste energy	261
recovery system that is, or has been, included in an energy	262
efficiency program of an electric distribution utility pursuant	263
to requirements under section 4928.66 of the Revised Code.	264
(35) "Air contaminant source" has the same meaning as in	265
section 3704.01 of the Revised Code.	266
(36) "Cogeneration technology" means technology that	267
produces electricity and useful thermal output simultaneously.	268
(37) (a) "Renewable energy resource" means any of the	269
following:	270
(i) Solar photovoltaic or solar thermal energy;	271
(ii) Wind energy;	272
(iii) Power produced by a hydroelectric facility;	273
(iv) <u>Power produced by a small hydroelectric facility,</u>	274
<u>which is a facility that operates, or is rated to operate, at an</u>	275

<u>aggregate capacity of less than six megawatts;</u>	276
<u>(v)</u> Power produced by a run-of-the-river hydroelectric facility placed in service on or after January 1, 1980, that is located within this state, relies upon the Ohio river, and operates, or is rated to operate, at an aggregate capacity of forty or more megawatts;	277 278 279 280 281
<del>(v)</del> <u>(vi)</u> Geothermal energy;	282
<del>(vi)</del> <u>(vii)</u> Fuel derived from solid wastes, as defined in section 3734.01 of the Revised Code, through fractionation, biological decomposition, or other process that does not principally involve combustion;	283 284 285 286
<del>(vii)</del> <u>(viii)</u> Biomass energy;	287
<del>(viii)</del> <u>(ix)</u> Energy produced by cogeneration technology that is placed into service on or before December 31, 2015, and for which more than ninety per cent of the total annual energy input is from combustion of a waste or byproduct gas from an air contaminant source in this state, which source has been in operation since on or before January 1, 1985, provided that the cogeneration technology is a part of a facility located in a county having a population of more than three hundred sixty-five thousand but less than three hundred seventy thousand according to the most recent federal decennial census;	288 289 290 291 292 293 294 295 296 297
<del>(ix)</del> <u>(x)</u> Biologically derived methane gas;	298
<del>(x)</del> <u>(xi)</u> Heat captured from a generator of electricity, boiler, or heat exchanger fueled by biologically derived methane gas;	299 300 301
<del>(xi)</del> <u>(xii)</u> Energy derived from nontreated by-products of the pulping process or wood manufacturing process, including	302 303

bark, wood chips, sawdust, and lignin in spent pulping liquors. 304

"Renewable energy resource" includes, but is not limited 305  
to, any fuel cell used in the generation of electricity, 306  
including, but not limited to, a proton exchange membrane fuel 307  
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 308  
solid oxide fuel cell; wind turbine located in the state's 309  
territorial waters of Lake Erie; methane gas emitted from an 310  
abandoned coal mine; waste energy recovery system placed into 311  
service or retrofitted on or after the effective date of the 312  
amendment of this section by S.B. 315 of the 129th general 313  
assembly, September 10, 2012, except that a waste energy 314  
recovery system described in division (A)(38)(b) of this section 315  
may be included only if it was placed into service between 316  
January 1, 2002, and December 31, 2004; storage facility that 317  
will promote the better utilization of a renewable energy 318  
resource; or distributed generation system used by a customer to 319  
generate electricity from any such energy. 320

"Renewable energy resource" does not include a waste 321  
energy recovery system that is, or was, on or after January 1, 322  
2012, included in an energy efficiency program of an electric 323  
distribution utility pursuant to requirements under section 324  
4928.66 of the Revised Code. 325

(b) As used in division (A)(37) of this section, 326  
"hydroelectric facility" means a hydroelectric generating 327  
facility that is located at a dam on a river, or on any water 328  
discharged to a river, that is within or bordering this state or 329  
within or bordering an adjoining state and meets all of the 330  
following standards: 331

(i) The facility provides for river flows that are not 332  
detrimental for fish, wildlife, and water quality, including 333

seasonal flow fluctuations as defined by the applicable 334  
licensing agency for the facility. 335

(ii) The facility demonstrates that it complies with the 336  
water quality standards of this state, which compliance may 337  
consist of certification under Section 401 of the "Clean Water 338  
Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and 339  
demonstrates that it has not contributed to a finding by this 340  
state that the river has impaired water quality under Section 341  
303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 342  
U.S.C. 1313. 343

(iii) The facility complies with mandatory prescriptions 344  
regarding fish passage as required by the federal energy 345  
regulatory commission license issued for the project, regarding 346  
fish protection for riverine, anadromous, and catadromous fish. 347

(iv) The facility complies with the recommendations of the 348  
Ohio environmental protection agency and with the terms of its 349  
federal energy regulatory commission license regarding watershed 350  
protection, mitigation, or enhancement, to the extent of each 351  
agency's respective jurisdiction over the facility. 352

(v) The facility complies with provisions of the 353  
"Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 354  
to 1544, as amended. 355

(vi) The facility does not harm cultural resources of the 356  
area. This can be shown through compliance with the terms of its 357  
federal energy regulatory commission license or, if the facility 358  
is not regulated by that commission, through development of a 359  
plan approved by the Ohio historic preservation office, to the 360  
extent it has jurisdiction over the facility. 361

(vii) The facility complies with the terms of its federal 362

energy regulatory commission license or exemption that are 363  
related to recreational access, accommodation, and facilities 364  
or, if the facility is not regulated by that commission, the 365  
facility complies with similar requirements as are recommended 366  
by resource agencies, to the extent they have jurisdiction over 367  
the facility; and the facility provides access to water to the 368  
public without fee or charge. 369

(viii) The facility is not recommended for removal by any 370  
federal agency or agency of any state, to the extent the 371  
particular agency has jurisdiction over the facility. 372

(c) The standards in divisions (A) (37) (b) (i) to (viii) of 373  
this section do not apply to a small hydroelectric facility 374  
under division (A) (37) (a) (iv) of this section. 375

(38) "Waste energy recovery system" means either of the 376  
following: 377

(a) A facility that generates electricity through the 378  
conversion of energy from either of the following: 379

(i) Exhaust heat from engines or manufacturing, 380  
industrial, commercial, or institutional sites, except for 381  
exhaust heat from a facility whose primary purpose is the 382  
generation of electricity; 383

(ii) Reduction of pressure in gas pipelines before gas is 384  
distributed through the pipeline, provided that the conversion 385  
of energy to electricity is achieved without using additional 386  
fossil fuels. 387

(b) A facility at a state institution of higher education 388  
as defined in section 3345.011 of the Revised Code that recovers 389  
waste heat from electricity-producing engines or combustion 390  
turbines and that simultaneously uses the recovered heat to 391

produce steam, provided that the facility was placed into 392  
service between January 1, 2002, and December 31, 2004. 393

(39) "Smart grid" means capital improvements to an 394  
electric distribution utility's distribution infrastructure that 395  
improve reliability, efficiency, resiliency, or reduce energy 396  
demand or use, including, but not limited to, advanced metering 397  
and automation of system functions. 398

(40) "Combined heat and power system" means the 399  
coproduction of electricity and useful thermal energy from the 400  
same fuel source designed to achieve thermal-efficiency levels 401  
of at least sixty per cent, with at least twenty per cent of the 402  
system's total useful energy in the form of thermal energy. 403

(B) For the purposes of this chapter, a retail electric 404  
service component shall be deemed a competitive retail electric 405  
service if the service component is competitive pursuant to a 406  
declaration by a provision of the Revised Code or pursuant to an 407  
order of the public utilities commission authorized under 408  
division (A) of section 4928.04 of the Revised Code. Otherwise, 409  
the service component shall be deemed a noncompetitive retail 410  
electric service. 411

**Sec. 4928.142.** (A) For the purpose of complying with 412  
section 4928.141 of the Revised Code and subject to division (D) 413  
of this section and, as applicable, subject to the rate plan 414  
requirement of division (A) of section 4928.141 of the Revised 415  
Code, an electric distribution utility may establish a standard 416  
service offer price for retail electric generation service that 417  
is delivered to the utility under a market-rate offer. 418

(1) The market-rate offer shall be determined through a 419  
competitive bidding process that provides for all of the 420

following: 421

(a) Open, fair, and transparent competitive solicitation; 422

(b) Clear product definition; 423

(c) Standardized bid evaluation criteria; 424

(d) Oversight by an independent third party that shall 425  
design the solicitation, administer the bidding, and ensure that 426  
the criteria specified in ~~division~~ divisions (A) (1) (a) to (c) of 427  
this section are met; 428

(e) Evaluation of the submitted bids prior to the 429  
selection of the least-cost bid winner or winners. 430

No generation supplier shall be prohibited from 431  
participating in the bidding process. 432

(2) The public utilities commission shall modify rules, or 433  
adopt new rules as necessary, concerning the conduct of the 434  
competitive bidding process and the qualifications of bidders, 435  
which rules shall foster supplier participation in the bidding 436  
process and shall be consistent with the requirements of 437  
division (A) (1) of this section. 438

(B) Prior to initiating a competitive bidding process for 439  
a market-rate offer under division (A) of this section, the 440  
electric distribution utility shall file an application with the 441  
commission. An electric distribution utility may file its 442  
application with the commission prior to the effective date of 443  
the commission rules required under division (A) (2) of this 444  
section, and, as the commission determines necessary, the 445  
utility shall immediately conform its filing to the rules upon 446  
their taking effect. 447

An application under this division shall detail the 448



electric distribution utility's proposed compliance with the 449  
requirements of division (A) (1) of this section and with 450  
commission rules under division (A) (2) of this section and 451  
demonstrate that all of the following requirements are met: 452

(1) The electric distribution utility or its transmission 453  
service affiliate belongs to at least one regional transmission 454  
organization that has been approved by the federal energy 455  
regulatory commission; or there otherwise is comparable and 456  
nondiscriminatory access to the electric transmission grid. 457

(2) Any such regional transmission organization has a 458  
market-monitor function and the ability to take actions to 459  
identify and mitigate market power or the electric distribution 460  
utility's market conduct; or a similar market monitoring 461  
function exists with commensurate ability to identify and 462  
monitor market conditions and mitigate conduct associated with 463  
the exercise of market power. 464

(3) A published source of information is available 465  
publicly or through subscription that identifies pricing 466  
information for traded electricity on- and off-peak energy 467  
products that are contracts for delivery beginning at least two 468  
years from the date of the publication and is updated on a 469  
regular basis. 470

The commission shall initiate a proceeding and, within 471  
ninety days after the application's filing date, shall determine 472  
by order whether the electric distribution utility and its 473  
market-rate offer meet all of the foregoing requirements. If the 474  
finding is positive, the electric distribution utility may 475  
initiate its competitive bidding process. If the finding is 476  
negative as to one or more requirements, the commission in the 477  
order shall direct the electric distribution utility regarding 478

how any deficiency may be remedied in a timely manner to the 479  
commission's satisfaction; otherwise, the electric distribution 480  
utility shall withdraw the application. However, if such remedy 481  
is made and the subsequent finding is positive and also if the 482  
electric distribution utility made a simultaneous filing under 483  
this section and section 4928.143 of the Revised Code, the 484  
utility shall not initiate its competitive bid until at least 485  
one hundred fifty days after the filing date of those 486  
applications. 487

(C) Upon the completion of the competitive bidding process 488  
authorized by divisions (A) and (B) of this section, including 489  
for the purpose of division (D) of this section, the commission 490  
shall select the least-cost bid winner or winners of that 491  
process, and such selected bid or bids, as prescribed as retail 492  
rates by the commission, shall be the electric distribution 493  
utility's standard service offer unless the commission, by order 494  
issued before the third calendar day following the conclusion of 495  
the competitive bidding process for the market rate offer, 496  
determines that one or more of the following criteria were not 497  
met: 498

(1) Each portion of the bidding process was 499  
oversubscribed, such that the amount of supply bid upon was 500  
greater than the amount of the load bid out. 501

(2) There were four or more bidders. 502

(3) At least twenty-five per cent of the load is bid upon 503  
by one or more persons other than the electric distribution 504  
utility. 505

All costs incurred by the electric distribution utility as 506  
a result of or related to the competitive bidding process or to 507

procuring generation service to provide the standard service 508  
offer, including the costs of energy and capacity and the costs 509  
of all other products and services procured as a result of the 510  
competitive bidding process, shall be timely recovered through 511  
the standard service offer price, and, for that purpose, the 512  
commission shall approve a reconciliation mechanism, other 513  
recovery mechanism, or a combination of such mechanisms for the 514  
utility. 515

(D) The first application filed under this section by an 516  
electric distribution utility that, as of July 31, 2008, 517  
directly owns, in whole or in part, operating electric 518  
generating facilities that had been used and useful in this 519  
state shall require that a portion of that utility's standard 520  
service offer load for the first five years of the market rate 521  
offer be competitively bid under division (A) of this section as 522  
follows: ten per cent of the load in year one, not more than 523  
twenty per cent in year two, thirty per cent in year three, 524  
forty per cent in year four, and fifty per cent in year five. 525  
Consistent with those percentages, the commission shall 526  
determine the actual percentages for each year of years one 527  
through five. The standard service offer price for retail 528  
electric generation service under this first application shall 529  
be a proportionate blend of the bid price and the generation 530  
service price for the remaining standard service offer load, 531  
which latter price shall be equal to the electric distribution 532  
utility's most recent standard service offer price, adjusted 533  
upward or downward as the commission determines reasonable, 534  
relative to the jurisdictional portion of any known and 535  
measurable changes from the level of any one or more of the 536  
following costs as reflected in that most recent standard 537  
service offer price: 538

(1) The electric distribution utility's prudently incurred cost of fuel used to produce electricity;	539 540
(2) Its prudently incurred purchased power costs;	541
(3) Its prudently incurred costs of satisfying the supply and demand portfolio requirements of this state, including, but not limited to, <del>renewable energy resource and</del> energy efficiency requirements;	542 543 544 545
(4) Its costs prudently incurred to comply with environmental laws and regulations, with consideration of the derating of any facility associated with those costs.	546 547 548
In making any adjustment to the most recent standard service offer price on the basis of costs described in division (D) of this section, the commission shall include the benefits that may become available to the electric distribution utility as a result of or in connection with the costs included in the adjustment, including, but not limited to, the utility's receipt of emissions credits or its receipt of tax benefits or of other benefits, and, accordingly, the commission may impose such conditions on the adjustment to ensure that any such benefits are properly aligned with the associated cost responsibility. The commission shall also determine how such adjustments will affect the electric distribution utility's return on common equity that may be achieved by those adjustments. The commission shall not apply its consideration of the return on common equity to reduce any adjustments authorized under this division unless the adjustments will cause the electric distribution utility to earn a return on common equity that is significantly in excess of the return on common equity that is earned by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure	549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568

as may be appropriate. The burden of proof for demonstrating 569  
that significantly excessive earnings will not occur shall be on 570  
the electric distribution utility. 571

Additionally, the commission may adjust the electric 572  
distribution utility's most recent standard service offer price 573  
by such just and reasonable amount that the commission 574  
determines necessary to address any emergency that threatens the 575  
utility's financial integrity or to ensure that the resulting 576  
revenue available to the utility for providing the standard 577  
service offer is not so inadequate as to result, directly or 578  
indirectly, in a taking of property without compensation 579  
pursuant to Section 19 of Article I, Ohio Constitution. The 580  
electric distribution utility has the burden of demonstrating 581  
that any adjustment to its most recent standard service offer 582  
price is proper in accordance with this division. 583

(E) Beginning in the second year of a blended price under 584  
division (D) of this section and notwithstanding any other 585  
requirement of this section, the commission may alter 586  
prospectively the proportions specified in that division to 587  
mitigate any effect of an abrupt or significant change in the 588  
electric distribution utility's standard service offer price 589  
that would otherwise result in general or with respect to any 590  
rate group or rate schedule but for such alteration. Any such 591  
alteration shall be made not more often than annually, and the 592  
commission shall not, by altering those proportions and in any 593  
event, including because of the length of time, as authorized 594  
under division (C) of this section, taken to approve the market 595  
rate offer, cause the duration of the blending period to exceed 596  
ten years as counted from the effective date of the approved 597  
market rate offer. Additionally, any such alteration shall be 598  
limited to an alteration affecting the prospective proportions 599

used during the blending period and shall not affect any 600  
blending proportion previously approved and applied by the 601  
commission under this division. 602

(F) An electric distribution utility that has received 603  
commission approval of its first application under division (C) 604  
of this section shall not, nor ever shall be authorized or 605  
required by the commission to, file an application under section 606  
4928.143 of the Revised Code. 607

**Sec. 4928.143.** (A) For the purpose of complying with 608  
section 4928.141 of the Revised Code, an electric distribution 609  
utility may file an application for public utilities commission 610  
approval of an electric security plan as prescribed under 611  
division (B) of this section. The utility may file that 612  
application prior to the effective date of any rules the 613  
commission may adopt for the purpose of this section, and, as 614  
the commission determines necessary, the utility immediately 615  
shall conform its filing to those rules upon their taking 616  
effect. 617

(B) Notwithstanding any other provision of Title XLIX of 618  
the Revised Code to the contrary except division (D) of this 619  
section, divisions (I), (J), and (K) of section 4928.20, 620  
division ~~(E)~~(G) of section 4928.64, and section 4928.69 of the 621  
Revised Code: 622

(1) An electric security plan shall include provisions 623  
relating to the supply and pricing of electric generation 624  
service. In addition, if the proposed electric security plan has 625  
a term longer than three years, it may include provisions in the 626  
plan to permit the commission to test the plan pursuant to 627  
division (E) of this section and any transitional conditions 628  
that should be adopted by the commission if the commission 629

terminates the plan as authorized under that division. 630

(2) The plan may provide for or include, without 631  
limitation, any of the following: 632

(a) Automatic recovery of any of the following costs of 633  
the electric distribution utility, provided the cost is 634  
prudently incurred: the cost of fuel used to generate the 635  
electricity supplied under the offer; the cost of purchased 636  
power supplied under the offer, including the cost of energy and 637  
capacity, and including purchased power acquired from an 638  
affiliate; the cost of emission allowances; and the cost of 639  
federally mandated carbon or energy taxes; 640

(b) A reasonable allowance for construction work in 641  
progress for any of the electric distribution utility's cost of 642  
constructing an electric generating facility or for an 643  
environmental expenditure for any electric generating facility 644  
of the electric distribution utility, provided the cost is 645  
incurred or the expenditure occurs on or after January 1, 2009. 646  
Any such allowance shall be subject to the construction work in 647  
progress allowance limitations of division (A) of section 648  
4909.15 of the Revised Code, except that the commission may 649  
authorize such an allowance upon the incurrence of the cost or 650  
occurrence of the expenditure. No such allowance for generating 651  
facility construction shall be authorized, however, unless the 652  
commission first determines in the proceeding that there is need 653  
for the facility based on resource planning projections 654  
submitted by the electric distribution utility. Further, no such 655  
allowance shall be authorized unless the facility's construction 656  
was sourced through a competitive bid process, regarding which 657  
process the commission may adopt rules. An allowance approved 658  
under division (B) (2) (b) of this section shall be established as 659

a nonbypassable surcharge for the life of the facility. 660

(c) The establishment of a nonbypassable surcharge for the 661  
life of an electric generating facility that is owned or 662  
operated by the electric distribution utility, was sourced 663  
through a competitive bid process subject to any such rules as 664  
the commission adopts under division (B) (2) (b) of this section, 665  
and is newly used and useful on or after January 1, 2009, which 666  
surcharge shall cover all costs of the utility specified in the 667  
application, excluding costs recovered through a surcharge under 668  
division (B) (2) (b) of this section. However, no surcharge shall 669  
be authorized unless the commission first determines in the 670  
proceeding that there is need for the facility based on resource 671  
planning projections submitted by the electric distribution 672  
utility. Additionally, if a surcharge is authorized for a 673  
facility pursuant to plan approval under division (C) of this 674  
section and as a condition of the continuation of the surcharge, 675  
the electric distribution utility shall dedicate to Ohio 676  
consumers the capacity and energy and the rate associated with 677  
the cost of that facility. Before the commission authorizes any 678  
surcharge pursuant to this division, it may consider, as 679  
applicable, the effects of any decommissioning, deratings, and 680  
retirements. 681

(d) Terms, conditions, or charges relating to limitations 682  
on customer shopping for retail electric generation service, 683  
bypassability, standby, back-up, or supplemental power service, 684  
default service, carrying costs, amortization periods, and 685  
accounting or deferrals, including future recovery of such 686  
deferrals, as would have the effect of stabilizing or providing 687  
certainty regarding retail electric service; 688

(e) Automatic increases or decreases in any component of 689



the standard service offer price; 690

(f) Consistent with sections 4928.23 to 4928.2318 of the 691  
Revised Code, both of the following: 692

(i) Provisions for the electric distribution utility to 693  
securitize any phase-in, inclusive of carrying charges, of the 694  
utility's standard service offer price, which phase-in is 695  
authorized in accordance with section 4928.144 of the Revised 696  
Code; 697

(ii) Provisions for the recovery of the utility's cost of 698  
securitization. 699

(g) Provisions relating to transmission, ancillary, 700  
congestion, or any related service required for the standard 701  
service offer, including provisions for the recovery of any cost 702  
of such service that the electric distribution utility incurs on 703  
or after that date pursuant to the standard service offer; 704

(h) Provisions regarding the utility's distribution 705  
service, including, without limitation and notwithstanding any 706  
provision of Title XLIX of the Revised Code to the contrary, 707  
provisions regarding single issue ratemaking, a revenue 708  
decoupling mechanism or any other incentive ratemaking, and 709  
provisions regarding distribution infrastructure and 710  
modernization incentives for the electric distribution utility. 711  
The latter may include a long-term energy delivery 712  
infrastructure modernization plan for that utility or any plan 713  
providing for the utility's recovery of costs, including lost 714  
revenue, shared savings, and avoided costs, and a just and 715  
reasonable rate of return on such infrastructure modernization. 716  
As part of its determination as to whether to allow in an 717  
electric distribution utility's electric security plan inclusion 718

of any provision described in division (B) (2) (h) of this 719  
section, the commission shall examine the reliability of the 720  
electric distribution utility's distribution system and ensure 721  
that customers' and the electric distribution utility's 722  
expectations are aligned and that the electric distribution 723  
utility is placing sufficient emphasis on and dedicating 724  
sufficient resources to the reliability of its distribution 725  
system. 726

(i) Provisions under which the electric distribution 727  
utility may implement economic development, job retention, and 728  
energy efficiency programs, which provisions may allocate 729  
program costs across all classes of customers of the utility and 730  
those of electric distribution utilities in the same holding 731  
company system. 732

(C) (1) The burden of proof in the proceeding shall be on 733  
the electric distribution utility. The commission shall issue an 734  
order under this division for an initial application under this 735  
section not later than one hundred fifty days after the 736  
application's filing date and, for any subsequent application by 737  
the utility under this section, not later than two hundred 738  
seventy-five days after the application's filing date. Subject 739  
to division (D) of this section, the commission by order shall 740  
approve or modify and approve an application filed under 741  
division (A) of this section if it finds that the electric 742  
security plan so approved, including its pricing and all other 743  
terms and conditions, including any deferrals and any future 744  
recovery of deferrals, is more favorable in the aggregate as 745  
compared to the expected results that would otherwise apply 746  
under section 4928.142 of the Revised Code. Additionally, if the 747  
commission so approves an application that contains a surcharge 748  
under division (B) (2) (b) or (c) of this section, the commission 749

shall ensure that the benefits derived for any purpose for which 750  
the surcharge is established are reserved and made available to 751  
those that bear the surcharge. Otherwise, the commission by 752  
order shall disapprove the application. 753

(2) (a) If the commission modifies and approves an 754  
application under division (C) (1) of this section, the electric 755  
distribution utility may withdraw the application, thereby 756  
terminating it, and may file a new standard service offer under 757  
this section or a standard service offer under section 4928.142 758  
of the Revised Code. 759

(b) If the utility terminates an application pursuant to 760  
division (C) (2) (a) of this section or if the commission 761  
disapproves an application under division (C) (1) of this 762  
section, the commission shall issue such order as is necessary 763  
to continue the provisions, terms, and conditions of the 764  
utility's most recent standard service offer, along with any 765  
expected increases or decreases in fuel costs from those 766  
contained in that offer, until a subsequent offer is authorized 767  
pursuant to this section or section 4928.142 of the Revised 768  
Code, respectively. 769

(D) Regarding the rate plan requirement of division (A) of 770  
section 4928.141 of the Revised Code, if an electric 771  
distribution utility that has a rate plan that extends beyond 772  
December 31, 2008, files an application under this section for 773  
the purpose of its compliance with division (A) of section 774  
4928.141 of the Revised Code, that rate plan and its terms and 775  
conditions are hereby incorporated into its proposed electric 776  
security plan and shall continue in effect until the date 777  
scheduled under the rate plan for its expiration, and that 778  
portion of the electric security plan shall not be subject to 779

commission approval or disapproval under division (C) of this 780  
section, and the earnings test provided for in division (F) of 781  
this section shall not apply until after the expiration of the 782  
rate plan. However, that utility may include in its electric 783  
security plan under this section, and the commission may 784  
approve, modify and approve, or disapprove subject to division 785  
(C) of this section, provisions for the incremental recovery or 786  
the deferral of any costs that are not being recovered under the 787  
rate plan and that the utility incurs during that continuation 788  
period to comply with section 4928.141, ~~division (B) of section~~ 789  
~~4928.64,~~ or division (A) of section 4928.66 of the Revised Code. 790

(E) If an electric security plan approved under division 791  
(C) of this section, except one withdrawn by the utility as 792  
authorized under that division, has a term, exclusive of phase- 793  
ins or deferrals, that exceeds three years from the effective 794  
date of the plan, the commission shall test the plan in the 795  
fourth year, and if applicable, every fourth year thereafter, to 796  
determine whether the plan, including its then-existing pricing 797  
and all other terms and conditions, including any deferrals and 798  
any future recovery of deferrals, continues to be more favorable 799  
in the aggregate and during the remaining term of the plan as 800  
compared to the expected results that would otherwise apply 801  
under section 4928.142 of the Revised Code. The commission shall 802  
also determine the prospective effect of the electric security 803  
plan to determine if that effect is substantially likely to 804  
provide the electric distribution utility with a return on 805  
common equity that is significantly in excess of the return on 806  
common equity that is likely to be earned by publicly traded 807  
companies, including utilities, that face comparable business 808  
and financial risk, with such adjustments for capital structure 809  
as may be appropriate. The burden of proof for demonstrating 810

that significantly excessive earnings will not occur shall be on 811  
the electric distribution utility. If the test results are in 812  
the negative or the commission finds that continuation of the 813  
electric security plan will result in a return on equity that is 814  
significantly in excess of the return on common equity that is 815  
likely to be earned by publicly traded companies, including 816  
utilities, that will face comparable business and financial 817  
risk, with such adjustments for capital structure as may be 818  
appropriate, during the balance of the plan, the commission may 819  
terminate the electric security plan, but not until it shall 820  
have provided interested parties with notice and an opportunity 821  
to be heard. The commission may impose such conditions on the 822  
plan's termination as it considers reasonable and necessary to 823  
accommodate the transition from an approved plan to the more 824  
advantageous alternative. In the event of an electric security 825  
plan's termination pursuant to this division, the commission 826  
shall permit the continued deferral and phase-in of any amounts 827  
that occurred prior to that termination and the recovery of 828  
those amounts as contemplated under that electric security plan. 829

(F) With regard to the provisions that are included in an 830  
electric security plan under this section, the commission shall 831  
consider, following the end of each annual period of the plan, 832  
if any such adjustments resulted in excessive earnings as 833  
measured by whether the earned return on common equity of the 834  
electric distribution utility is significantly in excess of the 835  
return on common equity that was earned during the same period 836  
by publicly traded companies, including utilities, that face 837  
comparable business and financial risk, with such adjustments 838  
for capital structure as may be appropriate. Consideration also 839  
shall be given to the capital requirements of future committed 840  
investments in this state. The burden of proof for demonstrating 841

that significantly excessive earnings did not occur shall be on 842  
the electric distribution utility. If the commission finds that 843  
such adjustments, in the aggregate, did result in significantly 844  
excessive earnings, it shall require the electric distribution 845  
utility to return to consumers the amount of the excess by 846  
prospective adjustments; provided that, upon making such 847  
prospective adjustments, the electric distribution utility shall 848  
have the right to terminate the plan and immediately file an 849  
application pursuant to section 4928.142 of the Revised Code. 850  
Upon termination of a plan under this division, rates shall be 851  
set on the same basis as specified in division (C) (2) (b) of this 852  
section, and the commission shall permit the continued deferral 853  
and phase-in of any amounts that occurred prior to that 854  
termination and the recovery of those amounts as contemplated 855  
under that electric security plan. In making its determination 856  
of significantly excessive earnings under this division, the 857  
commission shall not consider, directly or indirectly, the 858  
revenue, expenses, or earnings of any affiliate or parent 859  
company. 860

**Sec. 4928.20.** (A) The legislative authority of a municipal 861  
corporation may adopt an ordinance, or the board of township 862  
trustees of a township or the board of county commissioners of a 863  
county may adopt a resolution, under which, on or after the 864  
starting date of competitive retail electric service, it may 865  
aggregate in accordance with this section the retail electrical 866  
loads located, respectively, within the municipal corporation, 867  
township, or unincorporated area of the county and, for that 868  
purpose, may enter into service agreements to facilitate for 869  
those loads the sale and purchase of electricity. The 870  
legislative authority or board also may exercise such authority 871  
jointly with any other such legislative authority or board. For 872

customers that are not mercantile customers, an ordinance or 873  
resolution under this division shall specify whether the 874  
aggregation will occur only with the prior, affirmative consent 875  
of each person owning, occupying, controlling, or using an 876  
electric load center proposed to be aggregated or will occur 877  
automatically for all such persons pursuant to the opt-out 878  
requirements of division (D) of this section. The aggregation of 879  
mercantile customers shall occur only with the prior, 880  
affirmative consent of each such person owning, occupying, 881  
controlling, or using an electric load center proposed to be 882  
aggregated. Nothing in this division, however, authorizes the 883  
aggregation of the retail electric loads of an electric load 884  
center, as defined in section 4933.81 of the Revised Code, that 885  
is located in the certified territory of a nonprofit electric 886  
supplier under sections 4933.81 to 4933.90 of the Revised Code 887  
or an electric load center served by transmission or 888  
distribution facilities of a municipal electric utility. 889

(B) If an ordinance or resolution adopted under division 890  
(A) of this section specifies that aggregation of customers that 891  
are not mercantile customers will occur automatically as 892  
described in that division, the ordinance or resolution shall 893  
direct the board of elections to submit the question of the 894  
authority to aggregate to the electors of the respective 895  
municipal corporation, township, or unincorporated area of a 896  
county at a special election on the day of the next primary or 897  
general election in the municipal corporation, township, or 898  
county. The legislative authority or board shall certify a copy 899  
of the ordinance or resolution to the board of elections not 900  
less than ninety days before the day of the special election. No 901  
ordinance or resolution adopted under division (A) of this 902  
section that provides for an election under this division shall 903

take effect unless approved by a majority of the electors voting 904  
upon the ordinance or resolution at the election held pursuant 905  
to this division. 906

(C) Upon the applicable requisite authority under 907  
divisions (A) and (B) of this section, the legislative authority 908  
or board shall develop a plan of operation and governance for 909  
the aggregation program so authorized. Before adopting a plan 910  
under this division, the legislative authority or board shall 911  
hold at least two public hearings on the plan. Before the first 912  
hearing, the legislative authority or board shall publish notice 913  
of the hearings once a week for two consecutive weeks in a 914  
newspaper of general circulation in the jurisdiction or as 915  
provided in section 7.16 of the Revised Code. The notice shall 916  
summarize the plan and state the date, time, and location of 917  
each hearing. 918

(D) No legislative authority or board, pursuant to an 919  
ordinance or resolution under divisions (A) and (B) of this 920  
section that provides for automatic aggregation of customers 921  
that are not mercantile customers as described in division (A) 922  
of this section, shall aggregate the electrical load of any 923  
electric load center located within its jurisdiction unless it 924  
in advance clearly discloses to the person owning, occupying, 925  
controlling, or using the load center that the person will be 926  
enrolled automatically in the aggregation program and will 927  
remain so enrolled unless the person affirmatively elects by a 928  
stated procedure not to be so enrolled. The disclosure shall 929  
state prominently the rates, charges, and other terms and 930  
conditions of enrollment. The stated procedure shall allow any 931  
person enrolled in the aggregation program the opportunity to 932  
opt out of the program every three years, without paying a 933  
switching fee. Any such person that opts out before the 934



commencement of the aggregation program pursuant to the stated 935  
procedure shall default to the standard service offer provided 936  
under section 4928.14 or division (D) of section 4928.35 of the 937  
Revised Code until the person chooses an alternative supplier. 938

(E) (1) With respect to a governmental aggregation for a 939  
municipal corporation that is authorized pursuant to divisions 940  
(A) to (D) of this section, resolutions may be proposed by 941  
initiative or referendum petitions in accordance with sections 942  
731.28 to 731.41 of the Revised Code. 943

(2) With respect to a governmental aggregation for a 944  
township or the unincorporated area of a county, which 945  
aggregation is authorized pursuant to divisions (A) to (D) of 946  
this section, resolutions may be proposed by initiative or 947  
referendum petitions in accordance with sections 731.28 to 948  
731.40 of the Revised Code, except that: 949

(a) The petitions shall be filed, respectively, with the 950  
township fiscal officer or the board of county commissioners, 951  
who shall perform those duties imposed under those sections upon 952  
the city auditor or village clerk. 953

(b) The petitions shall contain the signatures of not less 954  
than ten per cent of the total number of electors in, 955  
respectively, the township or the unincorporated area of the 956  
county who voted for the office of governor at the preceding 957  
general election for that office in that area. 958

(F) A governmental aggregator under division (A) of this 959  
section is not a public utility engaging in the wholesale 960  
purchase and resale of electricity, and provision of the 961  
aggregated service is not a wholesale utility transaction. A 962  
governmental aggregator shall be subject to supervision and 963

regulation by the public utilities commission only to the extent 964  
of any competitive retail electric service it provides and 965  
commission authority under this chapter. 966

(G) This section does not apply in the case of a municipal 967  
corporation that supplies such aggregated service to electric 968  
load centers to which its municipal electric utility also 969  
supplies a noncompetitive retail electric service through 970  
transmission or distribution facilities the utility singly or 971  
jointly owns or operates. 972

(H) A governmental aggregator shall not include in its 973  
aggregation the accounts of any of the following: 974

(1) A customer that has opted out of the aggregation; 975

(2) A customer in contract with a certified electric 976  
services company; 977

(3) A customer that has a special contract with an 978  
electric distribution utility; 979

(4) A customer that is not located within the governmental 980  
aggregator's governmental boundaries; 981

(5) Subject to division (C) of section 4928.21 of the 982  
Revised Code, a customer who appears on the "do not aggregate" 983  
list maintained under that section. 984

(I) Customers that are part of a governmental aggregation 985  
under this section shall be responsible only for such portion of 986  
a surcharge under section 4928.144 of the Revised Code that is 987  
proportionate to the benefits, as determined by the commission, 988  
that electric load centers within the jurisdiction of the 989  
governmental aggregation as a group receive. The proportionate 990  
surcharge so established shall apply to each customer of the 991

governmental aggregation while the customer is part of that 992  
aggregation. If a customer ceases being such a customer, the 993  
otherwise applicable surcharge shall apply. Nothing in this 994  
section shall result in less than full recovery by an electric 995  
distribution utility of any surcharge authorized under section 996  
4928.144 of the Revised Code. Nothing in this section shall 997  
result in less than the full and timely imposition, charging, 998  
collection, and adjustment by an electric distribution utility, 999  
its assignee, or any collection agent, of the phase-in-recovery 1000  
charges authorized pursuant to a final financing order issued 1001  
pursuant to sections 4928.23 to 4928.2318 of the Revised Code. 1002

(J) On behalf of the customers that are part of a 1003  
governmental aggregation under this section and by filing 1004  
written notice with the public utilities commission, the 1005  
legislative authority that formed or is forming that 1006  
governmental aggregation may elect not to receive standby 1007  
service within the meaning of division (B) (2) (d) of section 1008  
4928.143 of the Revised Code from an electric distribution 1009  
utility in whose certified territory the governmental 1010  
aggregation is located and that operates under an approved 1011  
electric security plan under that section. Upon the filing of 1012  
that notice, the electric distribution utility shall not charge 1013  
any such customer to whom competitive retail electric generation 1014  
service is provided by another supplier under the governmental 1015  
aggregation for the standby service. Any such consumer that 1016  
returns to the utility for competitive retail electric service 1017  
shall pay the market price of power incurred by the utility to 1018  
serve that consumer plus any additional amount attributable to 1019  
the utility's cost of ~~compliance with the providing, after the~~ 1020  
effective date of the amendments to this section by H.B. 114 of 1021  
the 132nd general assembly, electricity from qualifying 1022

renewable energy ~~resource provisions of~~ resources as defined in 1023  
section 4928.64 of the Revised Code ~~to serve the consumer,~~ 1024  
unless that customer opts out under section 4928.647 of the 1025  
Revised Code. Such market price shall include, but not be 1026  
limited to, capacity and energy charges; all charges associated 1027  
with the provision of that power supply through the regional 1028  
transmission organization, including, but not limited to, 1029  
transmission, ancillary services, congestion, and settlement and 1030  
administrative charges; and all other costs incurred by the 1031  
utility that are associated with the procurement, provision, and 1032  
administration of that power supply, as such costs may be 1033  
approved by the commission. The period of time during which the 1034  
market price and qualifying renewable energy resource amount 1035  
shall be so assessed on the consumer shall be from the time the 1036  
consumer so returns to the electric distribution utility until 1037  
the expiration of the electric security plan. However, if that 1038  
period of time is expected to be more than two years, the 1039  
commission may reduce the time period to a period of not less 1040  
than two years. 1041

(K) The commission shall adopt rules to encourage and 1042  
promote large-scale governmental aggregation in this state. For 1043  
that purpose, the commission shall conduct an immediate review 1044  
of any rules it has adopted for the purpose of this section that 1045  
are in effect on the effective date of the amendment of this 1046  
section by S.B. 221 of the 127th general assembly, July 31, 1047  
2008. Further, within the context of an electric security plan 1048  
under section 4928.143 of the Revised Code, the commission shall 1049  
consider the effect on large-scale governmental aggregation of 1050  
any nonbypassable generation charges, however collected, that 1051  
would be established under that plan, except any nonbypassable 1052  
generation charges that relate to any cost incurred by the 1053

electric distribution utility, the deferral of which has been 1054  
authorized by the commission prior to the effective date of the 1055  
amendment of this section by S.B. 221 of the 127th general 1056  
assembly, July 31, 2008. 1057

**Sec. 4928.61.** (A) There is hereby established in the state 1058  
treasury the advanced energy fund, into which shall be deposited 1059  
all advanced energy revenues remitted to the director of 1060  
development under division (B) of this section, for the 1061  
exclusive purposes of funding the advanced energy program 1062  
created under section 4928.62 of the Revised Code and paying the 1063  
program's administrative costs. Interest on the fund shall be 1064  
credited to the fund. 1065

(B) Advanced energy revenues shall include all of the 1066  
following: 1067

(1) Revenues remitted to the director after collection by 1068  
each electric distribution utility in this state of a temporary 1069  
rider on retail electric distribution service rates as such 1070  
rates are determined by the public utilities commission pursuant 1071  
to this chapter. The rider shall be a uniform amount statewide, 1072  
determined by the director of development, after consultation 1073  
with the public benefits advisory board created by section 1074  
4928.58 of the Revised Code. The amount shall be determined by 1075  
dividing an aggregate revenue target for a given year as 1076  
determined by the director, after consultation with the advisory 1077  
board, by the number of customers of electric distribution 1078  
utilities in this state in the prior year. Such aggregate 1079  
revenue target shall not exceed more than fifteen million 1080  
dollars in any year through 2005 and shall not exceed more than 1081  
five million dollars in any year after 2005. The rider shall be 1082  
imposed beginning on the effective date of the amendment of this 1083

section by Sub. H.B. 251 of the 126th general assembly, January 1084  
4, 2007, and shall terminate at the end of ten years following 1085  
the starting date of competitive retail electric service or 1086  
until the advanced energy fund, including interest, reaches one 1087  
hundred million dollars, whichever is first. 1088

(2) Revenues from payments, repayments, and collections 1089  
under the advanced energy program and from program income; 1090

(3) Revenues remitted to the director after collection by 1091  
a municipal electric utility or electric cooperative in this 1092  
state upon the utility's or cooperative's decision to 1093  
participate in the advanced energy fund; 1094

~~(4) Revenues from renewable energy compliance payments as~~ 1095  
~~provided under division (C) (2) of section 4928.64 of the Revised~~ 1096  
~~Code;~~ 1097

~~(5) Revenue from forfeitures under division (C) (B) of~~ 1098  
section 4928.66 of the Revised Code; 1099

~~(6) (5) Funds transferred pursuant to division (B) of~~ 1100  
Section 512.10 of S.B. 315 of the 129th general assembly; 1101

~~(7) (6) Interest earnings on the advanced energy fund.~~ 1102

(C) (1) Each electric distribution utility in this state 1103  
shall remit to the director on a quarterly basis the revenues 1104  
described in divisions (B) (1) and (2) of this section. Such 1105  
remittances shall occur within thirty days after the end of each 1106  
calendar quarter. 1107

(2) Each participating electric cooperative and 1108  
participating municipal electric utility shall remit to the 1109  
director on a quarterly basis the revenues described in division 1110  
(B) (3) of this section. Such remittances shall occur within 1111

thirty days after the end of each calendar quarter. For the 1112  
purpose of division (B) (3) of this section, the participation of 1113  
an electric cooperative or municipal electric utility in the 1114  
energy efficiency revolving loan program as it existed 1115  
immediately prior to the effective date of the amendment of this 1116  
section by Sub. H.B. 251 of the 126th general assembly, January 1117  
4, 2007, does not constitute a decision to participate in the 1118  
advanced energy fund under this section as so amended. 1119

(3) All remittances under divisions (C) (1) and (2) of this 1120  
section shall continue only until the end of ten years following 1121  
the starting date of competitive retail electric service or 1122  
until the advanced energy fund, including interest, reaches one 1123  
hundred million dollars, whichever is first. 1124

(D) Any moneys collected in rates for non-low-income 1125  
customer energy efficiency programs, as of October 5, 1999, and 1126  
not contributed to the energy efficiency revolving loan fund 1127  
authorized under this section prior to the effective date of its 1128  
amendment by Sub. H.B. 251 of the 126th general assembly, 1129  
January 4, 2007, shall be used to continue to fund cost- 1130  
effective, residential energy efficiency programs, be 1131  
contributed into the universal service fund as a supplement to 1132  
that required under section 4928.53 of the Revised Code, or be 1133  
returned to ratepayers in the form of a rate reduction at the 1134  
option of the affected electric distribution utility. 1135

**Sec. 4928.62.** (A) There is hereby created the advanced 1136  
energy program, which shall be administered by the director of 1137  
development. Under the program, the director may authorize the 1138  
use of moneys in the advanced energy fund for financial, 1139  
technical, and related assistance for advanced energy projects 1140  
in this state or for economic development assistance, in 1141

furtherance of the purposes set forth in section 4928.63 of the Revised Code. 1142  
1143

(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. 1144  
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(2) The funds described in division (B) ~~(6)~~ (5) of section 4928.61 of the Revised Code shall not be subject to the territorial requirements of division (A) (1) of this section. 1152  
1153  
1154

(3) The director shall not authorize financial assistance for an advanced energy project under the program unless the director first determines that the project will create new jobs or preserve existing jobs in this state or use innovative technologies or materials. 1155  
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(B) In carrying out sections 4928.61 to 4928.63 of the Revised Code, the director may do all of the following to further the public interest in advanced energy projects and economic development: 1160  
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1162  
1163

(1) Award grants, contracts, loans, loan participation agreements, linked deposits, and energy production incentives; 1164  
1165

(2) Acquire in the name of the director any property of any kind or character in accordance with this section, by purchase, purchase at foreclosure, or exchange, on such terms and in such manner as the director considers proper; 1166  
1167  
1168  
1169

(3) Make and enter into all contracts and agreements 1170



necessary or incidental to the performance of the director's 1171  
duties and the exercise of the director's powers under sections 1172  
4928.61 to 4928.63 of the Revised Code; 1173

(4) Employ or enter into contracts with financial 1174  
consultants, marketing consultants, consulting engineers, 1175  
architects, managers, construction experts, attorneys, technical 1176  
monitors, energy evaluators, or other employees or agents as the 1177  
director considers necessary, and fix their compensation; 1178

(5) Adopt rules prescribing the application procedures for 1179  
financial assistance under the advanced energy program; the 1180  
fees, charges, interest rates, payment schedules, local match 1181  
requirements, and other terms and conditions of any grants, 1182  
contracts, loans, loan participation agreements, linked 1183  
deposits, and energy production incentives; criteria pertaining 1184  
to the eligibility of participating lending institutions; and 1185  
any other matters necessary for the implementation of the 1186  
program; 1187

(6) Do all things necessary and appropriate for the 1188  
operation of the program. 1189

(C) The department of development may hold ownership to 1190  
any unclaimed energy efficiency and renewable energy emission 1191  
allowances provided for in Chapter 3745-14 of the Administrative 1192  
Code or otherwise, that result from advanced energy projects 1193  
that receive funding from the advanced energy fund, and it may 1194  
use the allowances to further the public interest in advanced 1195  
energy projects or for economic development. 1196

(D) Financial statements, financial data, and trade 1197  
secrets submitted to or received by the director from an 1198  
applicant or recipient of financial assistance under sections 1199

4928.61 to 4928.63 of the Revised Code, or any information taken 1200  
from those statements, data, or trade secrets for any purpose, 1201  
are not public records for the purpose of section 149.43 of the 1202  
Revised Code. 1203

(E) Nothing in the amendments of sections 4928.61, 1204  
4928.62, and 4928.63 of the Revised Code by Sub. H.B. 251 of the 1205  
126th general assembly shall affect any pending or effected 1206  
assistance, pending or effected purchases or exchanges of 1207  
property made, or pending or effected contracts or agreements 1208  
entered into pursuant to division (A) or (B) of this section as 1209  
the section existed prior to the effective date of those 1210  
amendments, January 4, 2007, or shall affect the exemption 1211  
provided under division (C) of this section as the section 1212  
existed prior to that effective date. 1213

(F) Any assistance a school district receives for an 1214  
advanced energy project, including a geothermal heating, 1215  
ventilating, and air conditioning system, shall be in addition 1216  
to any assistance provided under Chapter 3318. of the Revised 1217  
Code and shall not be included as part of the district or state 1218  
portion of the basic project cost under that chapter. 1219

**Sec. 4928.64.** (A) (1) As used in this section and sections 1220  
4928.645, 4928.647, 4928.65, and 4928.6620 of the Revised Code, 1221  
"qualifying renewable energy resource" means a renewable energy 1222  
resource, as defined in section 4928.01 of the Revised Code that 1223  
~~has~~ : 1224

(a) Has a placed-in-service date on or after January 1, 1225  
1998, ~~or with respect to~~ ; 1226

(b) Is any run-of-the-river hydroelectric facility, that 1227  
has an in-service date on or after January 1, 1980; ~~a renewable~~ 1228

<del>energy resource</del>	1229
<u>(c) Is a small hydroelectric facility;</u>	1230
<u>(d) Is created on or after January 1, 1998, by the</u> modification or retrofit of any facility placed in service prior to January 1, 1998; or	1231 1232 1233
<u>(e) Is a mercantile customer-sited renewable energy</u> resource, whether new or existing, that the mercantile customer commits for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs as provided under division (A) (2) (c) of section 4928.66 of the Revised Code, including, but not limited to, any of the following:	1234 1235 1236 1237 1238 1239 1240
<del>(a)</del> <u>(i)</u> A resource that has the effect of improving the relationship between real and reactive power;	1241 1242
<del>(b)</del> <u>(ii)</u> A resource that makes efficient use of waste heat or other thermal capabilities owned or controlled by a mercantile customer;	1243 1244 1245
<del>(c)</del> <u>(iii)</u> Storage technology that allows a mercantile customer more flexibility to modify its demand or load and usage characteristics;	1246 1247 1248
<del>(d)</del> <u>(iv)</u> Electric generation equipment owned or controlled by a mercantile customer that uses a renewable energy resource.	1249 1250
(2) For the purpose of this section and as it considers appropriate, the public utilities commission may classify any new technology as such a qualifying renewable energy resource.	1251 1252 1253
<u>(B) Except as provided in division (D) of this section:</u>	1254
(1) By 2027 <del> and thereafter</del> , an electric distribution	1255

utility ~~shall~~ may provide from qualifying renewable energy 1256  
resources, including, at its discretion, qualifying renewable 1257  
energy resources obtained pursuant to an electricity supply 1258  
contract, a portion of the electricity supply required for its 1259  
standard service offer under section 4928.141 of the Revised 1260  
Code, and an electric services company ~~shall~~ may provide a 1261  
portion of its electricity supply for retail consumers in this 1262  
state from qualifying renewable energy resources, including, at 1263  
its discretion, qualifying renewable energy resources obtained 1264  
pursuant to an electricity supply contract. That portion ~~shall~~ 1265  
may equal twelve and one-half per cent of the ~~total number of~~ 1266  
~~kilowatt hours of electricity sold by the subject utility or~~ 1267  
~~company to any and all retail electric consumers whose electric~~ 1268  
~~load centers are served by that utility and are located within~~ 1269  
~~the utility's certified territory or, in the case of an electric~~ 1270  
~~services company, are served by the company and are located~~ 1271  
~~within this state~~ baseline as defined in section 4928.643 of the 1272  
Revised Code. ~~However, nothing in this section precludes a~~ 1273  
~~utility or company from providing a greater percentage.~~ 1274

(2) The portion ~~required~~ permitted under division (B) (1) 1275  
of this section ~~shall~~ may be generated ~~from renewable energy~~ 1276  
~~resources, including one half per cent from solar energy~~ 1277  
~~resources,~~ in accordance with the following benchmarks, which 1278  
are expressed as percentages of the baseline as defined in 1279  
section 4928.643 of the Revised Code: 1280

By end of year	Renewable energy resources	Solar energy resources	
2009	0.25%	0.004%	1283
2010	0.50%	0.010%	1284
2011	1%	0.030%	1285

2012	1.5%	0.060%	1286
2013	2%	0.090%	1287
2014	2.5%	0.12%	1288
2015	2.5%	0.12%	1289
2016	2.5%	0.12%	1290
2017	3.5%	0.15%	1291
2018	4.5%	0.18%	1292
2019	5.5%	0.22%	1293
2020	6.5%	0.26%	1294
2021	7.5%	0.3%	1295
2022	8.5%	0.34%	1296
2023	9.5%	0.38%	1297
2024	10.5%	0.42%	1298
2025	11.5%	0.46%	1299
<del>2026 and each calendar</del>	12.5%	0.5%.	1300
<del>year thereafter</del>			1301

~~(3) (C) The qualifying renewable energy resources~~ 1302  
~~implemented by the utility or company shall may be met either:~~ 1303

~~(a) (1) Through facilities located in this state; or~~ 1304

~~(b) (2) With resources that can be shown to be deliverable~~ 1305  
~~into this state.~~ 1306

~~(C) (1) The commission annually shall review an electric-~~ 1307  
~~distribution utility's or electric services company's compliance-~~ 1308  
~~with the most recent applicable benchmark under division (B) (2)-~~ 1309  
~~of this section and, in the course of that review, shall-~~ 1310  
~~identify any undercompliance or noncompliance of the utility or-~~ 1311  
~~company that it determines is weather-related, related to-~~ 1312  
~~equipment or resource shortages for qualifying renewable energy-~~ 1313  
~~resources as applicable, or is otherwise outside the utility's-~~ 1314  
~~or company's control.~~ 1315

~~(2) Subject to the cost cap provisions of division (C) (3) of this section, if the commission determines, after notice and opportunity for hearing, and based upon its findings in that review regarding avoidable undercompliance or noncompliance, but subject to division (C) (4) of this section, that the utility or company has failed to comply with any such benchmark, the commission shall impose a renewable energy compliance payment on the utility or company.~~ 1316  
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1323

~~(a) The compliance payment pertaining to the solar energy resource benchmarks under division (B) (2) of this section shall be an amount per megawatt hour of undercompliance or noncompliance in the period under review, as follows:~~ 1324  
1325  
1326  
1327

~~(i) Three hundred dollars for 2014, 2015, and 2016;~~ 1328

~~(ii) Two hundred fifty dollars for 2017 and 2018;~~ 1329

~~(iii) Two hundred dollars for 2019 and 2020;~~ 1330

~~(iv) Similarly reduced every two years thereafter through 2026 by fifty dollars, to a minimum of fifty dollars.~~ 1331  
1332

~~(b) The compliance payment pertaining to the renewable energy resource benchmarks under division (B) (2) of this section shall equal the number of additional renewable energy credits that the electric distribution utility or electric services company would have needed to comply with the applicable benchmark in the period under review times an amount that shall begin at forty five dollars and shall be adjusted annually by the commission to reflect any change in the consumer price index as defined in section 101.27 of the Revised Code, but shall not be less than forty five dollars.~~ 1333  
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~~(c) The compliance payment shall not be passed through by the electric distribution utility or electric services company~~ 1343  
1344

~~to consumers. The compliance payment shall be remitted to the~~ 1345  
~~commission, for deposit to the credit of the advanced energy~~ 1346  
~~fund created under section 4928.61 of the Revised Code. Payment~~ 1347  
~~of the compliance payment shall be subject to such collection~~ 1348  
~~and enforcement procedures as apply to the collection of a~~ 1349  
~~forfeiture under sections 4905.55 to 4905.60 and 4905.64 of the~~ 1350  
~~Revised Code.~~ 1351

~~(3) An (D) Neither an electric distribution utility or nor~~ 1352  
~~an electric services company need not comply with a benchmark~~ 1353  
~~under division (B) (2) of this section to the extent that may~~ 1354  
~~provide a portion of its electricity from qualifying renewable~~ 1355  
~~energy resources if its reasonably expected cost of that~~ 1356  
~~compliance providing that portion from those resources exceeds~~ 1357  
~~its reasonably expected cost of otherwise producing or acquiring~~ 1358  
~~the requisite same amount of electricity by three per cent or~~ 1359  
~~more. The cost of compliance providing the portion from~~ 1360  
~~qualifying renewable energy resources shall be calculated as~~ 1361  
~~though any exemption from taxes and assessments had not been~~ 1362  
~~granted under section 5727.75 of the Revised Code. As long as~~ 1363  
~~the cost of providing the portion from qualifying renewable~~ 1364  
~~energy resources does not exceed the cost cap set forth in this~~ 1365  
~~division, then the portion may exceed any of the benchmarks set~~ 1366  
~~forth in division (B) (2) of this section.~~ 1367

~~(4) (a) (E) (1) An electric distribution utility or electric~~ 1368  
~~services company may request the commission to make a force~~ 1369  
~~majeure determination pursuant to this division regarding all or~~ 1370  
~~part of the utility's or company's compliance with provision of~~ 1371  
~~electricity from qualifying renewable energy resources at the~~ 1372  
~~level of any minimum benchmark of the benchmarks under division~~ 1373  
~~(B) (2) of this section during the period of review occurring~~ 1374  
~~pursuant to division (C) (2) of this section. The commission may~~ 1375

~~require~~ encourage the electric distribution utility or electric 1376  
services company to make solicitations for renewable energy 1377  
resource credits as part of its default service before the 1378  
utility's or company's request of force majeure under this 1379  
division can be made. 1380

~~(b)~~ (2) Within ninety days after the filing of a request 1381  
by an electric distribution utility or electric services company 1382  
under division ~~(C) (4) (a)~~ (E) (1) of this section, the commission 1383  
shall determine if qualifying renewable energy resources are 1384  
reasonably available in the marketplace in sufficient quantities 1385  
for the utility or company to ~~comply with the subject minimum~~ 1386  
provide electricity from qualifying renewable energy resources 1387  
at the level of the benchmark during the review period at issue. 1388  
In making this determination, the commission shall consider 1389  
whether the electric distribution utility or electric services 1390  
company has made a good faith effort to acquire sufficient 1391  
qualifying renewable energy or, as applicable, solar energy 1392  
resources ~~to so comply~~, including, but not limited to, by 1393  
banking or seeking renewable energy resource credits or by 1394  
seeking the resources through long-term contracts. Additionally, 1395  
the commission shall consider the availability of qualifying 1396  
renewable energy or solar energy resources in this state and 1397  
other jurisdictions in the PJM interconnection regional 1398  
transmission organization, L.L.C., or its successor and the 1399  
midcontinent independent system operator or its successor. 1400

~~(c)~~ (3) If, pursuant to division ~~(C) (4) (b)~~ (E) (2) of this 1401  
section, the commission determines that qualifying renewable 1402  
energy or solar energy resources are not reasonably available to 1403  
permit the electric distribution utility or electric services 1404  
company to ~~comply, during the period of review, with the subject~~ 1405  
minimum provide electricity from qualifying renewable energy 1406



~~resources at the level of the benchmark prescribed under~~ 1407  
~~division (B) (2) of this section at issue,~~ the commission shall 1408  
modify that ~~compliance obligation of the utility or company~~ 1409  
~~benchmark~~ as it determines appropriate to accommodate the 1410  
finding. ~~Commission modification shall not automatically reduce~~ 1411  
~~the obligation for the electric distribution utility's or~~ 1412  
~~electric services company's compliance in subsequent years. If~~ 1413  
~~it modifies the electric distribution utility or electric~~ 1414  
~~services company obligation under division (C) (4) (c) of this~~ 1415  
~~section, the commission may require the utility or company, if~~ 1416  
~~sufficient renewable energy resource credits exist in the~~ 1417  
~~marketplace, to acquire additional renewable energy resource~~ 1418  
~~credits in subsequent years equivalent to the utility's or~~ 1419  
~~company's modified obligation under division (C) (4) (c) of this~~ 1420  
~~section.~~ 1421

~~(5) (F)~~ The commission shall establish a process to 1422  
provide for at least an annual review of the renewable energy 1423  
resource market in this state and in the service territories of 1424  
the regional transmission organizations that manage transmission 1425  
systems located in this state. ~~The commission shall use the~~ 1426  
~~results of this study to identify any needed changes to the~~ 1427  
~~amount of the renewable energy compliance payment specified~~ 1428  
~~under divisions (C) (2) (a) and (b) of this section. Specifically,~~ 1429  
~~the commission may increase the amount to ensure that payment of~~ 1430  
~~compliance payments is not used to achieve compliance with this~~ 1431  
~~section in lieu of actually acquiring or realizing energy~~ 1432  
~~derived from qualifying renewable energy resources. However, if~~ 1433  
~~the commission finds that the amount of the compliance payment~~ 1434  
~~should be otherwise changed, the commission shall present this~~ 1435  
~~finding to the general assembly for legislative enactment.~~ 1436

~~(D)~~ The commission annually shall submit to the general 1437

~~assembly in accordance with section 101.68 of the Revised Code a~~ 1438  
~~report describing all of the following:~~ 1439

~~(1) The compliance of electric distribution utilities and~~ 1440  
~~electric services companies with division (B) of this section;~~ 1441

~~(2) The average annual cost of renewable energy credits~~ 1442  
~~purchased by utilities and companies for the year covered in the~~ 1443  
~~report;~~ 1444

~~(3) Any strategy for utility and company compliance or for~~ 1445  
~~encouraging the use of qualifying renewable energy resources in~~ 1446  
~~supplying this state's electricity needs in a manner that~~ 1447  
~~considers available technology, costs, job creation, and~~ 1448  
~~economic impacts.~~ 1449

~~The commission shall begin providing the information~~ 1450  
~~described in division (D) (2) of this section in each report~~ 1451  
~~submitted after September 10, 2012. The commission shall allow~~ 1452  
~~and consider public comments on the report prior to its~~ 1453  
~~submission to the general assembly. Nothing in the report shall~~ 1454  
~~be binding on any person, including any utility or company for~~ 1455  
~~the purpose of its compliance with any benchmark under division~~ 1456  
~~(B) of this section, or the enforcement of that provision under~~ 1457  
~~division (C) of this section.~~ 1458

~~(E)~~ (G) All costs incurred by an electric distribution 1459  
utility in ~~complying with the requirements of this section~~ 1460  
providing electricity from qualifying renewable energy resources 1461  
shall be bypassable by any consumer that has exercised choice of 1462  
supplier under section 4928.03 of the Revised Code. 1463

**Sec. 4928.641.** (A) If an electric distribution utility has 1464  
executed a contract before ~~April 1, 2014,~~ the effective date of 1465  
the amendments to this section by H.B. 114 of the 132nd general 1466

assembly to procure renewable energy resources for compliance 1467  
with section 4928.64 of the Revised Code as that section existed 1468  
prior to that date and there are ongoing costs associated with 1469  
that contract that are being recovered from customers through a 1470  
bypassable charge as of ~~the effective that date of S.B. 310 of~~ 1471  
~~the 130th general assembly~~, that cost recovery shall continue on 1472  
a bypassable basis until the prudently incurred costs associated 1473  
with that contract are fully recovered. 1474

(B) Division (A) of this section applies only to costs 1475  
associated with the original term of a contract described in 1476  
that division and entered into before ~~April 1, 2014~~ the 1477  
effective date of the amendments to this section by H.B. 114 of 1478  
the 132nd general assembly. This section does not permit 1479  
recovery of costs associated with an extension of such a 1480  
contract. This section does not permit recovery of costs 1481  
associated with an amendment of such a contract if that 1482  
amendment was made on or after ~~April 1, 2014~~ the effective date 1483  
of the amendments to this section by H.B. 114 of the 132nd 1484  
general assembly. 1485

**Sec. 4928.643.** (A) ~~Except As used in sections 4928.64 and~~ 1486  
~~4928.6620 of the Revised Code, and except as provided in~~ 1487  
division (B) of this section and section 4928.644 of the Revised 1488  
Code, ~~the baseline for an electric distribution utility's or an~~ 1489  
~~electric services company's compliance with the qualified~~ 1490  
~~renewable energy resource requirements of section 4928.64 of the~~ 1491  
~~Revised Code shall be~~ "baseline" means the average of total 1492  
kilowatt hours sold by ~~the~~ an electric distribution utility or 1493  
electric services company in the preceding three calendar years 1494  
to the following: 1495

(1) In the case of an electric distribution utility, any 1496

and all retail electric consumers whose electric load centers 1497  
are served by that utility and are located within the utility's 1498  
certified territory, excluding customers of the utility who have 1499  
opted out under section 4928.647 of the Revised Code; 1500

(2) In the case of an electric services company, any and 1501  
all retail electric consumers who are served by the company and 1502  
are located within this state, excluding customers of the 1503  
company who have opted out under section 4928.647 of the Revised 1504  
Code. 1505

(B) ~~Beginning with compliance year 2014, a A utility or~~ 1506  
~~company may choose for its baseline for compliance with the~~ 1507  
~~qualified renewable energy resource requirements of section~~ 1508  
~~4928.64 of the Revised Code to be the total kilowatt hours sold~~ 1509  
to the applicable consumers, as described in division (A) (1) or 1510  
(2) of this section, in the applicable compliance calendar year 1511  
described in the utility's report submitted under division (A) 1512  
of section 4928.6620 of the Revised Code. 1513

(C) A utility or company that uses the baseline permitted 1514  
under division (B) of this section may use the baseline 1515  
described in division (A) of this section in any subsequent 1516  
~~compliance calendar year~~. A utility or company that makes this 1517  
switch shall use the baseline described in division (A) of this 1518  
section for at least three consecutive ~~compliance calendar years~~ 1519  
before again using the baseline permitted under division (B) of 1520  
this section. 1521

**Sec. 4928.644.** The public utilities commission may reduce 1522  
either baseline ~~described~~ defined in section 4928.643 of the 1523  
Revised Code to adjust for new economic growth in the electric 1524  
distribution utility's certified territory or in the electric 1525  
services company's service area in this state. 1526

**Sec. 4928.645.** (A) An electric distribution utility or 1527  
electric services company may use, for the purpose of ~~complying~~ 1528  
~~with the requirements under divisions (B) (1) and (2) of section~~ 1529  
~~4928.64 of the Revised Code~~ providing electricity from 1530  
qualifying renewable energy resources, renewable energy credits 1531  
any time in the five calendar years following the date of their 1532  
purchase or acquisition from any entity, including, but not 1533  
limited to, the following: 1534

(1) A mercantile customer; 1535

(2) An owner or operator of a hydroelectric generating 1536  
facility that is located at a dam on a river, or on any water 1537  
discharged to a river, that is within or bordering this state or 1538  
within or bordering an adjoining state, or that produces power 1539  
that can be shown to be deliverable into this state; 1540

(3) A seller of compressed natural gas that has been 1541  
produced from biologically derived methane gas, provided that 1542  
the seller may only provide renewable energy credits for metered 1543  
amounts of gas. 1544

(B) (1) The public utilities commission shall adopt rules 1545  
specifying that one unit of credit shall equal one megawatt hour 1546  
of electricity derived from qualifying renewable energy 1547  
resources, except that, for a generating facility of seventy- 1548  
five megawatts or greater that is situated within this state and 1549  
has committed by December 31, 2009, to modify or retrofit its 1550  
generating unit or units to enable the facility to generate 1551  
principally from biomass energy by June 30, 2013, each megawatt 1552  
hour of electricity generated principally from that biomass 1553  
energy shall equal, in units of credit, the product obtained by 1554  
multiplying the actual percentage of biomass feedstock heat 1555  
input used to generate such megawatt hour by the quotient 1556

obtained by dividing ~~the then existing unit dollar amount used~~ 1557  
~~to determine a renewable energy compliance payment as provided~~ 1558  
~~under division (C) (2) (b) of section 4928.64 of the Revised Code~~ 1559  
forty-five by the then existing market value of one renewable 1560  
energy credit, but such megawatt hour shall not equal less than 1561  
one unit of credit. ~~Renewable~~ Qualifying renewable energy 1562  
resources do not have to be converted to electricity in order to 1563  
be eligible to receive renewable energy credits. The rules shall 1564  
specify that, for purposes of converting the quantity of energy 1565  
derived from biologically derived methane gas to an electricity 1566  
equivalent, one megawatt hour equals 3,412,142 British thermal 1567  
units. 1568

(2) The rules also shall provide for this state a system 1569  
of registering renewable energy credits by specifying which of 1570  
any generally available registries shall be used for that 1571  
purpose and not by creating a registry. That selected system of 1572  
registering renewable energy credits shall allow a hydroelectric 1573  
generating facility to be eligible for obtaining renewable 1574  
energy credits and shall allow customer-sited projects or 1575  
actions the broadest opportunities to be eligible for obtaining 1576  
renewable energy credits. 1577

Sec. 4928.647. (A) Beginning January 1, 2019, and in 1578  
accordance with rules adopted by the public utilities commission 1579  
under division (C) of this section, any customer of an electric 1580  
distribution utility and any customer of an electric services 1581  
company may opt out of paying any rider, charge, or other cost 1582  
recovery mechanism designed to recover the costs of the 1583  
utility's or company's, as applicable, provision of electricity 1584  
from qualifying renewable energy resources. 1585

(B) Division (A) of this section does not apply to cost 1586

recovery under section 4928.641 of the Revised Code. 1587

(C) Not later than January 1, 2019, the commission shall 1588  
adopt rules governing division (A) of this section. 1589

**Sec. 4928.65.** (A) Not later than January 1, ~~2015~~ 2018, the 1590  
public utilities commission shall adopt rules governing the 1591  
disclosure of the costs to customers of all of the following: 1592

(1) If applicable, the renewable energy resource 1593  
requirements of section 4928.64 of the Revised Code as that 1594  
section existed prior to the effective date of the amendments to 1595  
this section by H.B. 114 of the 132nd general assembly, 1596  
including costs recovered under section 4928.641 of the Revised 1597  
Code; 1598

(2) The energy efficiency savings~~7~~ and peak demand 1599  
reduction requirements ~~provisions~~ of sections ~~4928.64 and~~ 1600  
section 4928.66 of the Revised Code; 1601

(3) Electricity provided after the effective date of the 1602  
amendments to this section by H.B. 114 of the 132nd general 1603  
assembly from qualifying renewable energy resources.~~The~~ 1604

(B) The rules shall include both of the following 1605  
requirements: 1606

(1) That every electric distribution utility list, on all 1607  
customer bills sent by the utility, including utility 1608  
consolidated bills that include both electric distribution 1609  
utility and electric services company charges, the individual 1610  
customer cost of both of the following for the applicable 1611  
billing period: 1612

(a) Electricity provided by the utility after the 1613  
effective date of the amendments to this section by H.B. 114 of 1614

the 132nd general assembly from qualifying renewable energy 1615  
resources; 1616

(b) The utility's compliance with all of the following 1617  
for the applicable billing period: 1618

(a) The (i) If applicable, the renewable energy resource 1619  
requirements under section 4928.64 of the Revised Code 1620  
as that section existed prior to the effective date of the amendments to 1621  
this section by H.B. 114 of the 132nd general assembly, 1622  
including costs recovered under section 4928.641 of the Revised 1623  
Code and subject to division (B) (C) of this section; 1624

(b) (ii) The energy efficiency savings requirements 1625  
provisions under section 4928.66 of the Revised Code; 1626

(c) (iii) The peak demand reduction requirements 1627  
provisions under section 4928.66 of the Revised Code. 1628

(2) That every electric services company list, on all 1629  
customer bills sent by the company, the individual customer 1630  
cost, ~~subject to division (B) of this section,~~ of both of the 1631  
following for the applicable billing period: 1632

(a) Electricity provided by the company after the 1633  
effective date of the amendments to this section by H.B. 114 of 1634  
the 132nd general assembly from qualifying renewable energy 1635  
resources; 1636

(b) If applicable, the company's compliance with the 1637  
renewable energy resource requirements under section 4928.64 of 1638  
the Revised Code ~~for the applicable billing period~~ as that 1639  
section existed prior to the effective date of the amendments to 1640  
this section by H.B. 114 of the 132nd general assembly, subject 1641  
to division (C) of this section. 1642



~~(B)~~ (C) (1) For purposes of division ~~(A)~~ (B) (1) ~~(a)~~ (b) ~~(i)~~ of 1643  
this section, ~~the~~ any cost of compliance with the renewable 1644  
energy resource requirements, including costs recovered under 1645  
section 4928.641 of the Revised Code, shall be calculated by 1646  
multiplying the individual customer's monthly usage by the 1647  
combined weighted average of renewable-energy-credit costs, 1648  
including solar-renewable-energy-credit costs, paid by all 1649  
electric distribution utilities, as listed in the commission's 1650  
most recently available alternative energy portfolio standard 1651  
report. 1652

(2) For purposes of division ~~(A)~~ (B) (2) ~~(b)~~ of this section, 1653  
~~the~~ any cost of compliance with the renewable energy resource 1654  
requirements shall be calculated by multiplying the individual 1655  
customer's monthly usage by the combined weighted average of 1656  
renewable-energy-credit costs, including solar-renewable-energy- 1657  
credit costs, paid by all electric services companies, as listed 1658  
in the commission's most recently available alternative energy 1659  
portfolio standard report. 1660

~~(C)~~ (D) The costs required to be listed under division ~~(A)~~ 1661  
(B) (1) of this section shall be listed on each customer's 1662  
monthly bill as ~~three~~ four distinct line items. The ~~cost~~ costs 1663  
required to be listed under division ~~(A)~~ (B) (2) of this section 1664  
shall be listed on each customer's monthly bill as ~~a~~ two 1665  
distinct line ~~item~~ items. 1666

**Sec. 4928.66.** (A) (1) (a) Beginning in 2009, an electric 1667  
distribution utility shall implement energy efficiency programs 1668  
that achieve energy savings equivalent to at least three-tenths 1669  
of one per cent of the total, annual average, and normalized 1670  
kilowatt-hour sales of the electric distribution utility during 1671  
the preceding three calendar years to customers in this state. 1672

An energy efficiency program may include a combined heat and power system placed into service or retrofitted on or after the effective date of the amendment of this section by S.B. 315 of the 129th general assembly, September 10, 2012, or a waste energy recovery system placed into service or retrofitted on or after September 10, 2012, except that a waste energy recovery system described in division (A) (38) (b) of section 4928.01 of the Revised Code may be included only if it was placed into service between January 1, 2002, and December 31, 2004. For a waste energy recovery or combined heat and power system, the savings shall be as estimated by the public utilities commission. The savings requirement, using such a three-year average, shall increase to an additional five-tenths of one per cent in 2010, seven-tenths of one per cent in 2011, eight-tenths of one per cent in 2012, nine-tenths of one per cent in 2013, and one per cent in 2014. In 2015 and 2016, an electric distribution utility shall achieve energy savings equal to the result of subtracting the cumulative energy savings achieved since 2009 from the product of multiplying the baseline for energy savings, described in division (A) (2) (a) of this section, by four and two-tenths of one per cent. If the result is zero or less for the year for which the calculation is being made, the utility shall not be required to achieve additional energy savings for that year, but may achieve additional energy savings for that year. Thereafter, the annual savings requirements shall be, for years 2017, 2018, 2019, ~~and 2020~~, 2021, 2022, 2023, 2024, and 2025, one per cent of the baseline, and two per cent ~~each year thereafter for years 2026 and 2027~~, achieving cumulative energy savings in excess of ~~twenty-two~~ seventeen per cent by the end of 2027. For purposes of a waste energy recovery or combined heat and power system, an electric distribution utility shall not apply more than the total annual percentage of

the electric distribution utility's industrial-customer load, 1705  
relative to the electric distribution utility's total load, to 1706  
the annual energy savings requirement. 1707

(b) Beginning in 2009, an electric distribution utility 1708  
shall implement peak demand reduction programs designed to 1709  
achieve a one per cent reduction in peak demand in 2009 and an 1710  
additional seventy-five hundredths of one per cent reduction 1711  
each year through 2014. In 2015 and 2016, an electric 1712  
distribution utility shall achieve a reduction in peak demand 1713  
equal to the result of subtracting the cumulative peak demand 1714  
reductions achieved since 2009 from the product of multiplying 1715  
the baseline for peak demand reduction, described in division 1716  
(A) (2) (a) of this section, by four and seventy-five hundredths 1717  
of one per cent. If the result is zero or less for the year for 1718  
which the calculation is being made, the utility shall not be 1719  
required to achieve an additional reduction in peak demand for 1720  
that year, but may achieve an additional reduction in peak 1721  
demand for that year. In 2017 and each year thereafter through 1722  
2020, the utility shall achieve an additional seventy-five 1723  
hundredths of one per cent reduction in peak demand. 1724

(c) Subject to section 4928.6620 of the Revised Code, 1725  
noncompliance with the provisions of division (A) (1) (a) of this 1726  
section shall be subject to forfeitures under division (B) of 1727  
this section only for the requirements for years 2016, 2019, 1728  
2022, 2025, and 2027. Subject to section 4928.6620 of the 1729  
Revised Code, noncompliance with the provisions of division (A) 1730  
(1) (b) of this section shall be subject to forfeitures under 1731  
division (B) of this section only for the requirements for years 1732  
2016, 2019, and 2020. The sole penalty for an electric 1733  
distribution utility's failure to comply with any provision of 1734  
divisions (A) (1) (a) and (b) of this section shall be the 1735

assessment of forfeitures in accordance with division (B) of 1736  
this section. 1737

(2) For the purposes of divisions (A) (1) (a) and (b) of 1738  
this section: 1739

(a) The baseline for energy savings under division (A) (1) 1740  
(a) of this section shall be the average of the total kilowatt 1741  
hours the electric distribution utility sold in the preceding 1742  
three calendar years. The baseline for a peak demand reduction 1743  
under division (A) (1) (b) of this section shall be the average 1744  
peak demand on the utility in the preceding three calendar 1745  
years, except that the commission may reduce either baseline to 1746  
adjust for new economic growth in the utility's certified 1747  
territory. Neither baseline shall include the load and usage of 1748  
any of the following customers: 1749

(i) Beginning January 1, 2017, a customer for which a 1750  
reasonable arrangement has been approved under section 4905.31 1751  
of the Revised Code; 1752

(ii) A customer that has opted out of the utility's 1753  
portfolio plan under section 4928.6611 of the Revised Code; 1754

(iii) A customer that has opted out of the utility's 1755  
portfolio plan under Section 8 of S.B. 310 of the 130th general 1756  
assembly as that section existed prior to the effective date of 1757  
the amendments to this section by H.B. 114 of the 132nd general 1758  
assembly. 1759

(b) The commission may amend the benchmarks set forth in 1760  
division (A) (1) (a) or (b) of this section if, after application 1761  
by the electric distribution utility, the commission determines 1762  
that the amendment is necessary because the utility cannot 1763  
reasonably achieve the benchmarks due to regulatory, economic, 1764

or technological reasons beyond its reasonable control. 1765

(c) Compliance with divisions (A)(1)(a) and (b) of this 1766  
section shall be measured by including the effects of all 1767  
demand-response programs for mercantile customers of the subject 1768  
electric distribution utility, all waste energy recovery systems 1769  
and all combined heat and power systems, and all such mercantile 1770  
customer-sited energy efficiency, including waste energy 1771  
recovery and combined heat and power, and peak demand reduction 1772  
programs, adjusted upward by the appropriate loss factors. Any 1773  
mechanism designed to recover the cost of energy efficiency, 1774  
including waste energy recovery and combined heat and power, and 1775  
peak demand reduction programs under divisions (A)(1)(a) and (b) 1776  
of this section may exempt mercantile customers that commit 1777  
their demand-response or other customer-sited capabilities, 1778  
whether existing or new, for integration into the electric 1779  
distribution utility's demand-response, energy efficiency, 1780  
including waste energy recovery and combined heat and power, or 1781  
peak demand reduction programs, if the commission determines 1782  
that that exemption reasonably encourages such customers to 1783  
commit those capabilities to those programs. If a mercantile 1784  
customer makes such existing or new demand-response, energy 1785  
efficiency, including waste energy recovery and combined heat 1786  
and power, or peak demand reduction capability available to an 1787  
electric distribution utility pursuant to division (A)(2)(c) of 1788  
this section, the electric utility's baseline under division (A) 1789  
(2)(a) of this section shall be adjusted to exclude the effects 1790  
of all such demand-response, energy efficiency, including waste 1791  
energy recovery and combined heat and power, or peak demand 1792  
reduction programs that may have existed during the period used 1793  
to establish the baseline. The baseline also shall be normalized 1794  
for changes in numbers of customers, sales, weather, peak 1795

demand, and other appropriate factors so that the compliance 1796  
measurement is not unduly influenced by factors outside the 1797  
control of the electric distribution utility. 1798

(d) (i) Programs implemented by a utility may include the 1799  
following: 1800

(I) Demand-response programs; 1801

(II) Smart grid investment programs, provided that such 1802  
programs are demonstrated to be cost-beneficial; 1803

(III) Customer-sited programs, including waste energy 1804  
recovery and combined heat and power systems; 1805

(IV) Transmission and distribution infrastructure 1806  
improvements that reduce line losses; 1807

(V) Energy intensity reductions resulting from heat rate 1808  
improvements at electric generating plants. As used in this 1809  
division, "energy intensity" has the same meaning as in section 1810  
4928.6610 of the Revised Code. 1811

(VI) Energy efficiency savings and peak demand reduction 1812  
that are achieved, in whole or in part, as a result of funding 1813  
provided from the universal service fund established by section 1814  
4928.51 of the Revised Code to benefit low-income customers 1815  
through programs that include, but are not limited to, energy 1816  
audits, the installation of energy efficiency insulation, 1817  
appliances, and windows, and other weatherization measures. 1818

(ii) No energy efficiency or peak demand reduction 1819  
achieved under divisions (A) (2) (d) (i) (IV) ~~and~~, (V), and (VI) of 1820  
this section shall qualify for shared savings. 1821

(iii) Division (A) (2) (c) of this section shall be applied 1822  
to include facilitating efforts by a mercantile customer or 1823

group of those customers to offer customer-sited demand- 1824  
response, energy efficiency, including waste energy recovery and 1825  
combined heat and power, or peak demand reduction capabilities 1826  
to the electric distribution utility as part of a reasonable 1827  
arrangement submitted to the commission pursuant to section 1828  
4905.31 of the Revised Code. 1829

(e) No programs or improvements described in division (A) 1830  
(2) (d) of this section shall conflict with any statewide 1831  
building code adopted by the board of building standards. 1832

~~(B) In accordance with rules it shall adopt, the public- 1833  
utilities commission shall produce and docket at the commission- 1834  
an annual report containing the results of its verification of- 1835  
the annual levels of energy efficiency and of peak demand- 1836  
reductions achieved by each electric distribution utility- 1837  
pursuant to division (A) of this section. A copy of the report- 1838  
shall be provided to the consumers' counsel. 1839~~

~~(C) If the commission determines, after notice and 1840  
opportunity for hearing and based upon its report the 1841  
information reported under division ~~(B)~~ (A) of ~~this~~ section 1842  
4928.6620 of the Revised Code and any other information that is 1843  
public, that an electric distribution utility has failed to 1844  
comply with an energy efficiency ~~or peak demand reduction~~ 1845  
requirement ~~of~~ under division (A) (1) (a) of this section for 1846  
years 2016, 2019, 2022, 2025, or 2027 or a peak demand reduction 1847  
requirement under division (A) (1) (b) of this section for years 1848  
2016, 2019, or 2020, the commission shall assess a forfeiture on 1849  
the utility as provided under sections 4905.55 to 4905.60 and 1850  
4905.64 of the Revised Code, either in the amount, per day per 1851  
undercompliance or noncompliance, relative to the period of the 1852  
report submitted under division (A) of section 4928.6620 of the 1853~~

Revised Code, equal to that prescribed for noncompliances under 1854  
section 4905.54 of the Revised Code, or in an amount equal to 1855  
the then existing market value of one renewable energy credit 1856  
per megawatt hour of undercompliance or noncompliance. Revenue 1857  
from any forfeiture assessed under this division shall be 1858  
deposited to the credit of the advanced energy fund created 1859  
under section 4928.61 of the Revised Code. 1860

~~(D)~~ (C) The commission may establish rules regarding the 1861  
content of an application by an electric distribution utility 1862  
for commission approval of a revenue decoupling mechanism under 1863  
this division. Such an application shall not be considered an 1864  
application to increase rates and may be included as part of a 1865  
proposal to establish, continue, or expand energy efficiency or 1866  
conservation programs. The commission by order may approve an 1867  
application under this division if it determines both that the 1868  
revenue decoupling mechanism provides for the recovery of 1869  
revenue that otherwise may be forgone by the utility as a result 1870  
of or in connection with the implementation by the electric 1871  
distribution utility of any energy efficiency or energy 1872  
conservation programs and reasonably aligns the interests of the 1873  
utility and of its customers in favor of those programs. 1874

~~(E)~~ (D) The commission additionally shall adopt rules that 1875  
require an electric distribution utility to provide a customer 1876  
upon request with two years' consumption data in an accessible 1877  
form. 1878

**Sec. 4928.662.** For the purpose of measuring and 1879  
determining compliance with the energy efficiency and peak 1880  
demand reduction requirements under section 4928.66 of the 1881  
Revised Code, the public utilities commission shall count and 1882  
recognize compliance as follows: 1883



(A) Energy efficiency savings and peak demand reduction 1884  
achieved through actions taken by customers or through electric 1885  
distribution utility programs that comply with federal standards 1886  
for either or both energy efficiency and peak demand reduction 1887  
requirements, including resources associated with such savings 1888  
or reduction that are recognized as capacity resources by the 1889  
regional transmission organization operating in Ohio in 1890  
compliance with section 4928.12 of the Revised Code, shall count 1891  
toward compliance with the energy efficiency and peak demand 1892  
reduction requirements. 1893

(B) Energy efficiency savings and peak demand reduction 1894  
achieved on and after the effective date of S.B. 310 of the 1895  
130th general assembly, September 12, 2014, shall be measured on 1896  
the higher of an as found or deemed basis, except that, solely 1897  
at the option of the electric distribution utility, such savings 1898  
and reduction achieved since 2006 may also be measured using 1899  
this method. For new construction, the energy efficiency savings 1900  
and peak demand reduction shall be counted based on 2008 federal 1901  
standards, provided that when new construction replaces an 1902  
existing facility, the difference in energy consumed, energy 1903  
intensity, and peak demand between the new and replaced facility 1904  
shall be counted toward meeting the energy efficiency and peak 1905  
demand reduction requirements. 1906

(C) The commission shall count both the energy efficiency 1907  
savings and peak demand reduction on an annualized basis. 1908

(D) The commission shall count both the energy efficiency 1909  
savings and peak demand reduction on a gross savings basis. 1910

(E) The commission shall count energy efficiency savings 1911  
and peak demand reductions associated with transmission and 1912  
distribution infrastructure improvements that reduce line losses 1913

and with energy intensity reductions resulting from heat rate 1914  
improvements at electric generating plants. No energy efficiency 1915  
or peak demand reduction achieved under division (E) of this 1916  
section shall qualify for shared savings. 1917

(F) Energy efficiency savings and peak demand reduction 1918  
amounts approved by the commission shall continue to be counted 1919  
toward achieving the energy efficiency and peak demand reduction 1920  
requirements as long as the requirements remain in effect. 1921

~~(G) Any energy efficiency savings or peak demand reduction~~ 1922  
~~amount achieved in excess of the requirements may, at the~~ 1923  
~~discretion of the electric distribution utility, be banked and~~ 1924  
~~applied toward achieving the energy efficiency or peak demand~~ 1925  
~~reduction requirements in future years.~~ The commission shall 1926  
recognize and count energy efficiency savings and peak demand 1927  
reductions that occur as a consequence of consumer reductions in 1928  
water usage or reductions and improvements in wastewater 1929  
treatment. No energy efficiency savings or peak demand 1930  
reductions achieved under division (G) of this section shall 1931  
qualify for shared savings. 1932

(H) The commission shall recognize and count, on a 1933  
British-thermal-unit-equivalent basis, nonelectric energy 1934  
efficiency savings or nonelectric peak demand reductions that 1935  
occur as a consequence of a portfolio plan, as defined in 1936  
section 4928.6610 of the Revised Code. No nonelectric energy 1937  
efficiency savings and no nonelectric peak demand reductions 1938  
shall qualify for shared savings. 1939

(I) The commission shall recognize and count, as energy 1940  
efficiency savings and peak demand reduction, the savings and 1941  
reduction associated with heat rate improvements, other 1942  
efficiency improvements, or other energy intensity improvements, 1943

if such savings and reduction are both of the following: 1944

(1) Proposed by an electric distribution utility in its 1945  
sole discretion; 1946

(2) Achieved since 2006 from an electric generating plant 1947  
that is either: 1948

(a) Owned by the electric distribution utility; or 1949

(b) Owned and operated by an affiliate of the electric 1950  
distribution utility provided that the generating plant was 1951  
previously owned, in whole or in part, by an electric 1952  
distribution utility located in this state. 1953

No energy efficiency savings or peak demand reduction 1954  
achieved under division (I) of this section shall qualify for 1955  
shared savings. 1956

(J) The commission shall count energy efficiency savings 1957  
associated with any plan, policy, behavior, or practice that 1958  
reduces either of the following: 1959

(1) The total energy intensity of a facility, pipeline, 1960  
building, plant, or equipment, regardless of the type of energy 1961  
intensity reduction; 1962

(2) The energy intensity of any water supply function or 1963  
water treatment function. 1964

Energy efficiency savings achieved under division (J) of 1965  
this section shall not qualify for shared savings if the savings 1966  
were not the direct result of an electric distribution utility's 1967  
energy efficiency programs. 1968

(K) As used in this section: 1969

(1) "Energy intensity" has the same meaning as in section 1970

<u>4928.6610 of the Revised Code.</u>	1971
<u>(2) "Water supply function" means the functions associated</u>	1972
<u>with the following:</u>	1973
<u>(a) Raw water collection, purification, treatment, and</u>	1974
<u>storage;</u>	1975
<u>(b) Establishing or maintaining pressure to balance water</u>	1976
<u>supply and demand;</u>	1977
<u>(c) Water delivery and transfer.</u>	1978
<u>(3) "Water treatment function" means any of the</u>	1979
<u>preliminary, secondary, tertiary, and advanced activities,</u>	1980
<u>whether physical, biological, or chemical, associated with the</u>	1981
<u>removal of contaminants from, or conditioning of, wastewater</u>	1982
<u>prior to its return to the environment or recycled use.</u>	1983
<u>Sec. 4928.664. (A) An electric services company may apply</u>	1984
<u>on behalf of its customers for energy efficiency programs</u>	1985
<u>offered by an electric distribution utility.</u>	1986
<u>(B) An electric services company that has applied for a</u>	1987
<u>program on behalf of a customer under division (A) of this</u>	1988
<u>section may collect rebates under that program on behalf of the</u>	1989
<u>customer upon producing evidence that the customer completed the</u>	1990
<u>program. This evidence may be in the form of a product</u>	1991
<u>identification code, a product serial number, an acknowledgment</u>	1992
<u>letter from the customer, or similar evidence that proves</u>	1993
<u>installation or delivery of a product. Once the evidence is</u>	1994
<u>produced, the electric distribution utility shall send the</u>	1995
<u>rebate to the electric services company or the customer, at the</u>	1996
<u>direction of the customer.</u>	1997
<u>(C) An electric distribution utility shall be entitled to</u>	1998

<u>lost distribution revenue and full program costs.</u>	1999
<u>(D) Not later than one hundred eighty days after the</u>	2000
<u>effective date of this section, the public utilities commission</u>	2001
<u>shall initiate an investigation to ensure that energy efficiency</u>	2002
<u>programs are consistent with the requirements and permissive</u>	2003
<u>provisions of this section.</u>	2004
<u>(E) Not later than January 1, 2018, the commission shall</u>	2005
<u>amend its rules to bring them into conformity with this section.</u>	2006
<u>Sec. 4928.665. All energy savings from an energy</u>	2007
<u>efficiency program shall be eligible for inclusion in any</u>	2008
<u>incentive calculation by the public utilities commission.</u>	2009
<u>Sec. 4928.666. For a customer to be eligible for a rebate</u>	2010
<u>from an electric distribution utility, that customer shall be</u>	2011
<u>located within the utility's service territory.</u>	2012
<u>Sec. 4928.667. All parts of an energy efficiency program</u>	2013
<u>transaction shall be shown to be cost effective, which shall be</u>	2014
<u>determined by the public utilities commission.</u>	2015
<u>Sec. 4928.6610. As used in sections 4928.6611 to 4928.6616</u>	2016
<u>of the Revised Code:</u>	2017
<u>(A) "Customer" means <del>any</del> either of the following:</u>	2018
<u>(1) A mercantile customer of an electric distribution</u>	2019
<u>utility;</u>	2020
<u>(2) Any customer of an electric distribution utility to</u>	2021
<u>which either of the following applies:</u>	2022
<u><del>(1)</del> (a) The customer receives service above the primary</u>	2023
<u>voltage level as determined by the utility's tariff</u>	2024
<u>classification.</u>	2025

~~(2)~~ ~~(b)~~ The customer is a commercial or industrial customer to which both of the following apply: 2026  
2027

~~(a)~~ ~~(i)~~ The customer receives electricity through a meter of an end user or through more than one meter at a single location in a quantity that exceeds forty-five million kilowatt hours of electricity for the preceding calendar year. 2028  
2029  
2030  
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~~(b)~~ ~~(ii)~~ The customer has made a written request for registration as a self-assessing purchaser pursuant to section 5727.81 of the Revised Code. 2032  
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(B) "Energy intensity" means the amount of energy, ~~from~~ electricity, used or consumed per unit of production to produce a certain level of output or activity, measured by the quantity of energy needed to perform a particular activity, expressed as energy per unit of output, energy per unit of gross total floor space, or an activity measure of service. 2035  
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(C) "Portfolio plan" means the comprehensive energy efficiency and peak-demand reduction program portfolio plan required under rules adopted by the public utilities commission and codified in Chapter 4901:1-39 of the Administrative Code or hereafter recodified or amended. 2041  
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**Sec. 4928.6611.** Beginning January 1, 2017, a customer of an electric distribution utility may opt out of the opportunity and ability to obtain direct benefits from the utility's portfolio plan, regardless of whether the portfolio plan has been amended or continued under Section 4 of H.B. 114 of the 132nd general assembly. Such an opt out shall extend to all of the customer's accounts, irrespective of the size or service voltage level that are associated with the activities performed by the customer and that are located on or adjacent to the 2046  
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customer's premises. 2055

Sec. 4928.6620. (A) Beginning in 2018, every electric 2056  
distribution utility and electric services company shall submit 2057  
an annual report for the prior calendar year to the public 2058  
utilities commission not later than the first day of July of 2059  
each year. The report shall detail the amount of electricity 2060  
that the utility or company provided from qualifying renewable 2061  
energy resources during that calendar year and, in the case of a 2062  
utility, the utility's status of compliance with the provisions 2063  
of section 4928.66 of the Revised Code. The commission shall 2064  
modify its rules in accordance with this reporting requirement, 2065  
including the filing date. 2066

If an electric distribution utility reports the amount of 2067  
electricity that it provided from qualifying renewable energy 2068  
resources as a portion of the electricity supply required for 2069  
its standard service offer under section 4928.141 of the Revised 2070  
Code, or if an electric services company reports the amount of 2071  
electricity that it provided from qualifying renewable energy 2072  
resources as a portion of its electricity supply for retail 2073  
consumers in this state, those portions shall be reported as 2074  
percentages of the baseline as defined in section 4928.643 of 2075  
the Revised Code. 2076

(B) Beginning in 2018, the commission shall submit a 2077  
report to the general assembly and the Ohio consumers' counsel 2078  
not later than the first day of August of each year and in 2079  
accordance with section 101.68 of the Revised Code. The report 2080  
shall detail all of the following: 2081

(1) The compliance of electric distribution utilities with 2082  
section 4928.66 of the Revised Code, based on the information 2083  
reported under division (A) of this section and any other 2084

information that is public; 2085

(2) The amount of electricity provided by electric 2086  
distribution utilities and electric services companies from 2087  
qualifying renewable energy resources during the year covered in 2088  
the report, based on the information reported under division (A) 2089  
of this section and any other information that is public; 2090

(3) The average annual cost of renewable energy credits 2091  
purchased by utilities and companies for the year covered in the 2092  
report; 2093

(4) Any strategy for encouraging the use of qualifying 2094  
renewable energy resources in supplying this state's electricity 2095  
needs in a manner that considers available technology, costs, 2096  
job creation, and economic impacts. 2097

(C) Not later than the first day of September of each 2098  
year, the commission chairperson shall provide testimony on the 2099  
report required in that year under division (B) of this section 2100  
to the standing committees of both houses of the general 2101  
assembly that deal with public utility matters. 2102

**Sec. 4928.6621.** (A) Any energy efficiency savings or peak 2103  
demand reduction amount achieved in excess of the requirements 2104  
under section 4928.66 of the Revised Code may, at the discretion 2105  
of the electric distribution utility, be banked and applied 2106  
toward achieving the energy efficiency or peak demand reduction 2107  
requirements in future years. 2108

(B) An electric distribution utility shall be deemed in 2109  
compliance with the energy efficiency and peak demand reduction 2110  
savings requirements and shall be eligible for incentives 2111  
approved by the public utilities commission in any year in which 2112  
the utility's actual cumulative energy efficiency and peak 2113



demand reduction savings meet or exceed the cumulative mandates 2114  
under division (A) (1) of section 4928.66 of the Revised Code. 2115

**Sec. 5727.75.** (A) For purposes of this section: 2116

(1) "Qualified energy project" means an energy project 2117  
certified by the director of development services pursuant to 2118  
this section. 2119

(2) "Energy project" means a project to provide electric 2120  
power through the construction, installation, and use of an 2121  
energy facility. 2122

(3) "Alternative energy zone" means a county declared as 2123  
such by the board of county commissioners under division (E) (1) 2124  
(b) or (c) of this section. 2125

(4) "Full-time equivalent employee" means the total number 2126  
of employee-hours for which compensation was paid to individuals 2127  
employed at a qualified energy project for services performed at 2128  
the project during the calendar year divided by two thousand 2129  
eighty hours. 2130

(5) "Solar energy project" means an energy project 2131  
composed of an energy facility using solar panels to generate 2132  
electricity. 2133

(B) (1) Tangible personal property of a qualified energy 2134  
project using renewable energy resources is exempt from taxation 2135  
for tax years 2011 through 2021 if all of the following 2136  
conditions are satisfied: 2137

(a) On or before December 31, 2020, the owner or a lessee 2138  
pursuant to a sale and leaseback transaction of the project 2139  
submits an application to the power siting board for a 2140  
certificate under section 4906.20 of the Revised Code, or if 2141

that section does not apply, submits an application for any 2142  
approval, consent, permit, or certificate or satisfies any 2143  
condition required by a public agency or political subdivision 2144  
of this state for the construction or initial operation of an 2145  
energy project. 2146

(b) Construction or installation of the energy facility 2147  
begins on or after January 1, 2009, and before January 1, 2021. 2148  
For the purposes of this division, construction begins on the 2149  
earlier of the date of application for a certificate or other 2150  
approval or permit described in division (B) (1) (a) of this 2151  
section, or the date the contract for the construction or 2152  
installation of the energy facility is entered into. 2153

(c) For a qualified energy project with a nameplate 2154  
capacity of five megawatts or greater, a board of county 2155  
commissioners of a county in which property of the project is 2156  
located has adopted a resolution under division (E) (1) (b) or (c) 2157  
of this section to approve the application submitted under 2158  
division (E) of this section to exempt the property located in 2159  
that county from taxation. A board's adoption of a resolution 2160  
rejecting an application or its failure to adopt a resolution 2161  
approving the application does not affect the tax-exempt status 2162  
of the qualified energy project's property that is located in 2163  
another county. 2164

(2) If tangible personal property of a qualified energy 2165  
project using renewable energy resources was exempt from 2166  
taxation under this section beginning in any of tax years 2011 2167  
through 2021, and the certification under division (E) (2) of 2168  
this section has not been revoked, the tangible personal 2169  
property of the qualified energy project is exempt from taxation 2170  
for tax year 2022 and all ensuing tax years if the property was 2171

placed into service before January 1, 2022, as certified in the 2172  
construction progress report required under division (F) (2) of 2173  
this section. Tangible personal property that has not been 2174  
placed into service before that date is taxable property subject 2175  
to taxation. An energy project for which certification has been 2176  
revoked is ineligible for further exemption under this section. 2177  
Revocation does not affect the tax-exempt status of the 2178  
project's tangible personal property for the tax year in which 2179  
revocation occurs or any prior tax year. 2180

(C) Tangible personal property of a qualified energy 2181  
project using clean coal technology, advanced nuclear 2182  
technology, or cogeneration technology is exempt from taxation 2183  
for the first tax year that the property would be listed for 2184  
taxation and all subsequent years if all of the following 2185  
circumstances are met: 2186

(1) The property was placed into service before January 1, 2187  
2021. Tangible personal property that has not been placed into 2188  
service before that date is taxable property subject to 2189  
taxation. 2190

(2) For such a qualified energy project with a nameplate 2191  
capacity of five megawatts or greater, a board of county 2192  
commissioners of a county in which property of the qualified 2193  
energy project is located has adopted a resolution under 2194  
division (E) (1) (b) or (c) of this section to approve the 2195  
application submitted under division (E) of this section to 2196  
exempt the property located in that county from taxation. A 2197  
board's adoption of a resolution rejecting the application or 2198  
its failure to adopt a resolution approving the application does 2199  
not affect the tax-exempt status of the qualified energy 2200  
project's property that is located in another county. 2201

(3) The certification for the qualified energy project 2202  
issued under division (E) (2) of this section has not been 2203  
revoked. An energy project for which certification has been 2204  
revoked is ineligible for exemption under this section. 2205  
Revocation does not affect the tax-exempt status of the 2206  
project's tangible personal property for the tax year in which 2207  
revocation occurs or any prior tax year. 2208

(D) Except as otherwise provided in this section, real 2209  
property of a qualified energy project is exempt from taxation 2210  
for any tax year for which the tangible personal property of the 2211  
qualified energy project is exempted under this section. 2212

(E) (1) (a) A person may apply to the director of 2213  
development services for certification of an energy project as a 2214  
qualified energy project on or before the following dates: 2215

(i) December 31, 2020, for an energy project using 2216  
renewable energy resources; 2217

(ii) December 31, 2017, for an energy project using clean 2218  
coal technology, advanced nuclear technology, or cogeneration 2219  
technology. 2220

(b) The director shall forward a copy of each application 2221  
for certification of an energy project with a nameplate capacity 2222  
of five megawatts or greater to the board of county 2223  
commissioners of each county in which the project is located and 2224  
to each taxing unit with territory located in each of the 2225  
affected counties. Any board that receives from the director a 2226  
copy of an application submitted under this division shall adopt 2227  
a resolution approving or rejecting the application unless it 2228  
has adopted a resolution under division (E) (1) (c) of this 2229  
section. A resolution adopted under division (E) (1) (b) or (c) of 2230

this section may require an annual service payment to be made in 2231  
addition to the service payment required under division (G) of 2232  
this section. The sum of the service payment required in the 2233  
resolution and the service payment required under division (G) 2234  
of this section shall not exceed nine thousand dollars per 2235  
megawatt of nameplate capacity located in the county. The 2236  
resolution shall specify the time and manner in which the 2237  
payments required by the resolution shall be paid to the county 2238  
treasurer. The county treasurer shall deposit the payment to the 2239  
credit of the county's general fund to be used for any purpose 2240  
for which money credited to that fund may be used. 2241

The board shall send copies of the resolution by certified 2242  
mail to the owner of the facility and the director within thirty 2243  
days after receipt of the application, or a longer period of 2244  
time if authorized by the director. 2245

(c) A board of county commissioners may adopt a resolution 2246  
declaring the county to be an alternative energy zone and 2247  
declaring all applications submitted to the director of 2248  
development services under this division after the adoption of 2249  
the resolution, and prior to its repeal, to be approved by the 2250  
board. 2251

All tangible personal property and real property of an 2252  
energy project with a nameplate capacity of five megawatts or 2253  
greater is taxable if it is located in a county in which the 2254  
board of county commissioners adopted a resolution rejecting the 2255  
application submitted under this division or failed to adopt a 2256  
resolution approving the application under division (E) (1) (b) or 2257  
(c) of this section. 2258

(2) The director shall certify an energy project if all of 2259  
the following circumstances exist: 2260

(a) The application was timely submitted. 2261

(b) For an energy project with a nameplate capacity of 2262  
five megawatts or greater, a board of county commissioners of at 2263  
least one county in which the project is located has adopted a 2264  
resolution approving the application under division (E) (1) (b) or 2265  
(c) of this section. 2266

(c) No portion of the project's facility was used to 2267  
supply electricity before December 31, 2009. 2268

(3) The director shall deny a certification application if 2269  
the director determines the person has failed to comply with any 2270  
requirement under this section. The director may revoke a 2271  
certification if the director determines the person, or 2272  
subsequent owner or lessee pursuant to a sale and leaseback 2273  
transaction of the qualified energy project, has failed to 2274  
comply with any requirement under this section. Upon 2275  
certification or revocation, the director shall notify the 2276  
person, owner, or lessee, the tax commissioner, and the county 2277  
auditor of a county in which the project is located of the 2278  
certification or revocation. Notice shall be provided in a 2279  
manner convenient to the director. 2280

(F) The owner or a lessee pursuant to a sale and leaseback 2281  
transaction of a qualified energy project shall do each of the 2282  
following: 2283

(1) Comply with all applicable regulations; 2284

(2) File with the director of development services a 2285  
certified construction progress report before the first day of 2286  
March of each year during the energy facility's construction or 2287  
installation indicating the percentage of the project completed, 2288  
and the project's nameplate capacity, as of the preceding 2289

thirty-first day of December. Unless otherwise instructed by the 2290  
director of development services, the owner or lessee of an 2291  
energy project shall file a report with the director on or 2292  
before the first day of March each year after completion of the 2293  
energy facility's construction or installation indicating the 2294  
project's nameplate capacity as of the preceding thirty-first 2295  
day of December. Not later than sixty days after June 17, 2010, 2296  
the owner or lessee of an energy project, the construction of 2297  
which was completed before June 17, 2010, shall file a 2298  
certificate indicating the project's nameplate capacity. 2299

(3) File with the director of development services, in a 2300  
manner prescribed by the director, a report of the total number 2301  
of full-time equivalent employees, and the total number of full- 2302  
time equivalent employees domiciled in Ohio, who are employed in 2303  
the construction or installation of the energy facility; 2304

(4) For energy projects with a nameplate capacity of five 2305  
megawatts or greater, repair all roads, bridges, and culverts 2306  
affected by construction as reasonably required to restore them 2307  
to their preconstruction condition, as determined by the county 2308  
engineer in consultation with the local jurisdiction responsible 2309  
for the roads, bridges, and culverts. In the event that the 2310  
county engineer deems any road, bridge, or culvert to be 2311  
inadequate to support the construction or decommissioning of the 2312  
energy facility, the road, bridge, or culvert shall be rebuilt 2313  
or reinforced to the specifications established by the county 2314  
engineer prior to the construction or decommissioning of the 2315  
facility. The owner or lessee of the facility shall post a bond 2316  
in an amount established by the county engineer and to be held 2317  
by the board of county commissioners to ensure funding for 2318  
repairs of roads, bridges, and culverts affected during the 2319  
construction. The bond shall be released by the board not later 2320

than one year after the date the repairs are completed. The 2321  
energy facility owner or lessee pursuant to a sale and leaseback 2322  
transaction shall post a bond, as may be required by the Ohio 2323  
power siting board in the certificate authorizing commencement 2324  
of construction issued pursuant to section 4906.10 of the 2325  
Revised Code, to ensure funding for repairs to roads, bridges, 2326  
and culverts resulting from decommissioning of the facility. The 2327  
energy facility owner or lessee and the county engineer may 2328  
enter into an agreement regarding specific transportation plans, 2329  
reinforcements, modifications, use and repair of roads, 2330  
financial security to be provided, and any other relevant issue. 2331

(5) Provide or facilitate training for fire and emergency 2332  
responders for response to emergency situations related to the 2333  
energy project and, for energy projects with a nameplate 2334  
capacity of five megawatts or greater, at the person's expense, 2335  
equip the fire and emergency responders with proper equipment as 2336  
reasonably required to enable them to respond to such emergency 2337  
situations; 2338

(6) Maintain a ratio of Ohio-domiciled full-time 2339  
equivalent employees employed in the construction or 2340  
installation of the energy project to total full-time equivalent 2341  
employees employed in the construction or installation of the 2342  
energy project of not less than eighty per cent in the case of a 2343  
solar energy project, and not less than fifty per cent in the 2344  
case of any other energy project. In the case of an energy 2345  
project for which certification from the power siting board is 2346  
required under section 4906.20 of the Revised Code, the number 2347  
of full-time equivalent employees employed in the construction 2348  
or installation of the energy project equals the number actually 2349  
employed or the number projected to be employed in the 2350  
certificate application, if such projection is required under 2351



regulations adopted pursuant to section 4906.03 of the Revised Code, whichever is greater. For all other energy projects, the number of full-time equivalent employees employed in the construction or installation of the energy project equals the number actually employed or the number projected to be employed by the director of development services, whichever is greater. To estimate the number of employees to be employed in the construction or installation of an energy project, the director shall use a generally accepted job-estimating model in use for renewable energy projects, including but not limited to the job and economic development impact model. The director may adjust an estimate produced by a model to account for variables not accounted for by the model.

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

(8) Offer to sell power or renewable energy credits from the energy project to electric distribution utilities or electric service companies ~~subject to renewable energy resource requirements under section 4928.64 of the Revised Code~~ that have issued requests for proposal for such power or renewable energy credits. If no electric distribution utility or electric service

company issues a request for proposal on or before December 31, 2383  
2010, or accepts an offer for power or renewable energy credits 2384  
within forty-five days after the offer is submitted, power or 2385  
renewable energy credits from the energy project may be sold to 2386  
other persons. Division (F)(8) of this section does not apply 2387  
if: 2388

(a) The owner or lessee is a rural electric company or a 2389  
municipal power agency as defined in section 3734.058 of the 2390  
Revised Code. 2391

(b) The owner or lessee is a person that, before 2392  
completion of the energy project, contracted for the sale of 2393  
power or renewable energy credits with a rural electric company 2394  
or a municipal power agency. 2395

(c) The owner or lessee contracts for the sale of power or 2396  
renewable energy credits from the energy project before June 17, 2397  
2010. 2398

(9) Make annual service payments as required by division 2399  
(G) of this section and as may be required in a resolution 2400  
adopted by a board of county commissioners under division (E) of 2401  
this section. 2402

(G) The owner or a lessee pursuant to a sale and leaseback 2403  
transaction of a qualified energy project shall make annual 2404  
service payments in lieu of taxes to the county treasurer on or 2405  
before the final dates for payments of taxes on public utility 2406  
personal property on the real and public utility personal 2407  
property tax list for each tax year for which property of the 2408  
energy project is exempt from taxation under this section. The 2409  
county treasurer shall allocate the payment on the basis of the 2410  
project's physical location. Upon receipt of a payment, or if 2411

timely payment has not been received, the county treasurer shall 2412  
certify such receipt or non-receipt to the director of 2413  
development services and tax commissioner in a form determined 2414  
by the director and commissioner, respectively. Each payment 2415  
shall be in the following amount: 2416

(1) In the case of a solar energy project, seven thousand 2417  
dollars per megawatt of nameplate capacity located in the county 2418  
as of December 31, 2010, for tax year 2011, as of December 31, 2419  
2011, for tax year 2012, as of December 31, 2012, for tax year 2420  
2013, as of December 31, 2013, for tax year 2014, as of December 2421  
31, 2014, for tax year 2015, as of December 31, 2015, for tax 2422  
year 2016, and as of December 31, 2016, for tax year 2017 and 2423  
each tax year thereafter; 2424

(2) In the case of any other energy project using 2425  
renewable energy resources, the following: 2426

(a) If the project maintains during the construction or 2427  
installation of the energy facility a ratio of Ohio-domiciled 2428  
full-time equivalent employees to total full-time equivalent 2429  
employees of not less than seventy-five per cent, six thousand 2430  
dollars per megawatt of nameplate capacity located in the county 2431  
as of the thirty-first day of December of the preceding tax 2432  
year; 2433

(b) If the project maintains during the construction or 2434  
installation of the energy facility a ratio of Ohio-domiciled 2435  
full-time equivalent employees to total full-time equivalent 2436  
employees of less than seventy-five per cent but not less than 2437  
sixty per cent, seven thousand dollars per megawatt of nameplate 2438  
capacity located in the county as of the thirty-first day of 2439  
December of the preceding tax year; 2440

(c) If the project maintains during the construction or 2441  
installation of the energy facility a ratio of Ohio-domiciled 2442  
full-time equivalent employees to total full-time equivalent 2443  
employees of less than sixty per cent but not less than fifty 2444  
per cent, eight thousand dollars per megawatt of nameplate 2445  
capacity located in the county as of the thirty-first day of 2446  
December of the preceding tax year. 2447

(3) In the case of an energy project using clean coal 2448  
technology, advanced nuclear technology, or cogeneration 2449  
technology, the following: 2450

(a) If the project maintains during the construction or 2451  
installation of the energy facility a ratio of Ohio-domiciled 2452  
full-time equivalent employees to total full-time equivalent 2453  
employees of not less than seventy-five per cent, six thousand 2454  
dollars per megawatt of nameplate capacity located in the county 2455  
as of the thirty-first day of December of the preceding tax 2456  
year; 2457

(b) If the project maintains during the construction or 2458  
installation of the energy facility a ratio of Ohio-domiciled 2459  
full-time equivalent employees to total full-time equivalent 2460  
employees of less than seventy-five per cent but not less than 2461  
sixty per cent, seven thousand dollars per megawatt of nameplate 2462  
capacity located in the county as of the thirty-first day of 2463  
December of the preceding tax year; 2464

(c) If the project maintains during the construction or 2465  
installation of the energy facility a ratio of Ohio-domiciled 2466  
full-time equivalent employees to total full-time equivalent 2467  
employees of less than sixty per cent but not less than fifty 2468  
per cent, eight thousand dollars per megawatt of nameplate 2469  
capacity located in the county as of the thirty-first day of 2470

December of the preceding tax year. 2471

(H) The director of development services in consultation 2472  
with the tax commissioner shall adopt rules pursuant to Chapter 2473  
119. of the Revised Code to implement and enforce this section. 2474

**Section 2.** That existing sections 4928.01, 4928.142, 2475  
4928.143, 4928.20, 4928.61, 4928.62, 4928.64, 4928.641, 2476  
4928.643, 4928.644, 4928.645, 4928.65, 4928.66, 4928.662, 2477  
4928.6610, 4928.6611, and 5727.75 of the Revised Code are hereby 2478  
repealed. 2479

**Section 3.** That Sections 5, 6, 7, 8, 9, 10, and 11 of Sub. 2480  
S.B. 310 of the 130th General Assembly are hereby repealed. 2481

**Section 4.** (A) As used in this section, "portfolio plan" 2482  
has the same meaning as in section 4928.6610 of the Revised 2483  
Code. 2484

(B) (1) If an electric distribution utility has a portfolio 2485  
plan that is in effect on the effective date of this section, 2486  
the utility may file an application with the Public Utilities 2487  
Commission not later than thirty days after the effective date 2488  
of this section to amend the plan. The Commission shall review 2489  
the application in accordance with its rules as if the 2490  
application were for a new portfolio plan. The Commission shall 2491  
review and approve, or modify and approve, the application not 2492  
later than sixty days after the date the application is filed. 2493  
If the Commission fails to review and approve, or modify and 2494  
approve, the application within those sixty days, the plan shall 2495  
be deemed approved as amended in the application and shall take 2496  
effect on the sixty-first day after the application was filed. 2497

(2) A portfolio plan that is amended under division (B) (1) 2498  
of this section shall accord with Chapter 4928. of the Revised 2499

Code as amended by this act. 2500

(C) If an electric distribution utility has a portfolio 2501  
plan that is in effect on the effective date of this section and 2502  
the utility does not apply to amend the plan within the thirty 2503  
days required by division (B) (1) of this section, the utility 2504  
shall continue to implement the portfolio plan with no 2505  
amendments to the plan, for the duration that the Commission 2506  
originally approved, regardless of whether the portfolio plan 2507  
accords with Chapter 4928. of the Revised Code as amended by 2508  
this act. 2509

**Section 5.** (A) In 2017, the Public Utilities Commission 2510  
shall review an electric distribution utility's or electric 2511  
services company's compliance with the benchmarks for 2016 under 2512  
division (B) (2) of section 4928.64 of the Revised Code as that 2513  
division existed prior to the effective date of this section, 2514  
and in the course of that review, shall identify any 2515  
undercompliance or noncompliance of the utility or company that 2516  
it determines is weather-related, related to equipment or 2517  
resource shortages for qualifying renewable energy resources as 2518  
applicable, or is otherwise outside the utility's or company's 2519  
control. 2520

(B) Subject to the cost cap provisions of division (C) (3) 2521  
of section 4928.64 of the Revised Code as that division existed 2522  
prior to the effective date of this section, if the Commission 2523  
determines, after notice and opportunity for hearing, and based 2524  
upon its findings in the review under division (A) of this 2525  
section regarding avoidable undercompliance or noncompliance, 2526  
but subject to the force-majeure provisions of division (C) (4) 2527  
(a) of section 4928.64 of the Revised Code as that division 2528  
existed prior to the effective date of this section, that the 2529

utility or company has failed to comply with the benchmarks for 2530  
2016, the commission shall impose a renewable energy compliance 2531  
payment on the utility or company. 2532

(1) The compliance payment pertaining to the solar energy 2533  
resource benchmark for 2016 shall be three hundred dollars per 2534  
megawatt hour of undercompliance or noncompliance in the period 2535  
under review. 2536

(2) The compliance payment pertaining to the renewable 2537  
energy resource benchmark for 2016 shall be assessed in 2538  
accordance with division (C) (2) (b) of section 4928.64 of the 2539  
Revised Code as that division existed prior to the effective 2540  
date of this section. 2541

(C) Division (C) (2) (c) of section 4928.64 of the Revised 2542  
Code as that division existed prior to the effective date of 2543  
this section applies to compliance payments imposed under this 2544  
section. 2545

**Section 6.** The amendments to division (A) of section 2546  
4928.6610 of the Revised Code by this act take effect January 1, 2547  
2019. 2548

**Section 7.** That Section 257.80 of Am. Sub. H.B. 64 of the 2549  
131st General Assembly be amended to read as follows: 2550

**Sec. 257.80. HEAP WEATHERIZATION** 2551

~~Up to twenty-five~~ Twenty-five per cent of the federal 2552  
funds deposited to the credit of the Home Energy Assistance 2553  
Block Grant Fund (Fund 3K90) ~~may~~ shall be expended from 2554  
appropriation item 195614, HEAP Weatherization, to provide home 2555  
weatherization services in the state as determined by the 2556  
Director of Development Services. ~~Any transfers or increases in~~ 2557  
~~appropriation for the foregoing appropriation items 195614, HEAP~~ 2558

~~Weatherization, or 195611, Home Energy Assistance Block Grant,~~ 2559  
~~shall be subject to approval by the Controlling Board.~~ 2560

The Director of Development Services shall, in good faith, 2561  
take all necessary steps, including, but not limited to, 2562  
applying for any waivers that are needed from the United States 2563  
Department of Health and Human Services and any other applicable 2564  
federal agencies to secure and execute this allocation. 2565

**Section 8.** That existing Section 257.80 of Am. Sub. H.B. 2566  
64 of the 131st General Assembly is hereby repealed. 2567

**Section 9.** Sections 7 and 8 of this act take effect June 2568  
30, 2017. 2569