A BILL

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:
Section 1. That sections 4928.01, 4928.142, 4928.143, 4928.20, 4928.61, 4928.62, 4928.64, 4928.641, 4928.643, 4928.644, 4928.645, 4928.65, 4928.66, 4928.662, 4928.6610, 4928.6611, and 5727.75 be amended and sections 4928.647, 4928.664, 4928.665, 4928.666, 4928.667, 4928.6620, and 4928.6621 of the Revised Code be enacted to read as follows:

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

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

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

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

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

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

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

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

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

(9) "Electric services company" means an electric light company that is engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of only a competitive retail electric service in this state. "Electric services company" includes a power marketer, power broker, aggregator, or independent power producer but excludes an electric cooperative, municipal electric utility, governmental aggregator, or billing and collection agent.
(10) "Electric supplier" has the same meaning as in section 4933.81 of the Revised Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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States environmental protection agency's waste reduction model (WARM);

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

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

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

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

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

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

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

(i) Solar photovoltaic or solar thermal energy;

(ii) Wind energy;

(iii) Power produced by a hydroelectric facility;

(iv) Power produced by a small hydroelectric facility, which is a facility that operates, or is rated to operate, at an
aggregate capacity of less than six megawatts;

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

(vi) Geothermal energy;

(vii) Fuel derived from solid wastes, as defined in section 3734.01 of the Revised Code, through fractionation, biological decomposition, or other process that does not principally involve combustion;

(viii) Biomass energy;

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

(x) Biologically derived methane gas;

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

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

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

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

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

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

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

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

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


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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Clear product definition;

(c) Standardized bid evaluation criteria;

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

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

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

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

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

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

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

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

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

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

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

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

(2) There were four or more bidders.

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

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

(D) The first application filed under this section by an electric distribution utility that, as of July 31, 2008, directly owns, in whole or in part, operating electric generating facilities that had been used and useful in this state shall require that a portion of that utility's standard service offer load for the first five years of the market rate offer be competitively bid under division (A) of this section as follows: ten per cent of the load in year one, not more than twenty per cent in year two, thirty per cent in year three, forty per cent in year four, and fifty per cent in year five. Consistent with those percentages, the commission shall determine the actual percentages for each year of years one through five. The standard service offer price for retail electric generation service under this first application shall be a proportionate blend of the bid price and the generation service price for the remaining standard service offer load, which latter price shall be equal to the electric distribution utility's most recent standard service offer price, adjusted upward or downward as the commission determines reasonable, relative to the jurisdictional portion of any known and measurable changes from the level of any one or more of the following costs as reflected in that most recent standard service offer price:
(1) The electric distribution utility's prudently incurred cost of fuel used to produce electricity;

(2) Its prudently incurred purchased power costs;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Provisions regarding the utility's distribution service, including, without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary, provisions regarding single issue ratemaking, a revenue decoupling mechanism or any other incentive ratemaking, and provisions regarding distribution infrastructure and modernization incentives for the electric distribution utility. The latter may include a long-term energy delivery infrastructure modernization plan for that utility or any plan providing for the utility's recovery of costs, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on such infrastructure modernization. As part of its determination as to whether to allow in an electric distribution utility's electric security plan inclusion
of any provision described in division (B)(2)(h) of this section, the commission shall examine the reliability of the electric distribution utility's distribution system and ensure that customers' and the electric distribution utility's expectations are aligned and that the electric distribution utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system.

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

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

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

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

(D) Regarding the rate plan requirement of division (A) of section 4928.141 of the Revised Code, if an electric distribution utility that has a rate plan that extends beyond December 31, 2008, files an application under this section for the purpose of its compliance with division (A) of section 4928.141 of the Revised Code, that rate plan and its terms and conditions are hereby incorporated into its proposed electric security plan and shall continue in effect until the date scheduled under the rate plan for its expiration, and that portion of the electric security plan shall not be subject to
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
the electric distribution utility. If the test results are in
the negative or the commission finds that continuation of the
electric security plan will result in a return on equity that is
significantly in excess of the return on common equity that is
likely to be earned by publicly traded companies, including
utilities, that will face comparable business and financial
risk, with such adjustments for capital structure as may be
appropriate, during the balance of the plan, the commission may
terminate the electric security plan, but not until it shall
have provided interested parties with notice and an opportunity
to be heard. The commission may impose such conditions on the
plan's termination as it considers reasonable and necessary to
accommodate the transition from an approved plan to the more
advantageous alternative. In the event of an electric security
plan's termination pursuant to this division, the commission
shall permit the continued deferral and phase-in of any amounts
that occurred prior to that termination and the recovery of
those amounts as contemplated under that electric security plan.

(F) With regard to the provisions that are included in an
electric security plan under this section, the commission shall
consider, following the end of each annual period of the plan,
if any such adjustments resulted in excessive earnings as
measured by whether the earned return on common equity of the
electric distribution utility is significantly in excess of the
return on common equity that was earned during the same period
by publicly traded companies, including utilities, that face
comparable business and financial risk, with such adjustments
for capital structure as may be appropriate. Consideration also
shall be given to the capital requirements of future committed
investments in this state. The burden of proof for demonstrating
that significantly excessive earnings did not occur shall be on
the electric distribution utility. If the commission finds that
such adjustments, in the aggregate, did result in significantly
excessive earnings, it shall require the electric distribution
utility to return to consumers the amount of the excess by
prospective adjustments; provided that, upon making such
prospective adjustments, the electric distribution utility shall
have the right to terminate the plan and immediately file an
application pursuant to section 4928.142 of the Revised Code.
Upon termination of a plan under this division, rates shall be
set on the same basis as specified in division (C)(2)(b) of this
section, and the commission shall permit the continued deferral
and phase-in of any amounts that occurred prior to that
termination and the recovery of those amounts as contemplated
under that electric security plan. In making its determination
of significantly excessive earnings under this division, the
commission shall not consider, directly or indirectly, the
revenue, expenses, or earnings of any affiliate or parent
company.

Sec. 4928.20. (A) The legislative authority of a municipal
corporation may adopt an ordinance, or the board of township
trustees of a township or the board of county commissioners of a
county may adopt a resolution, under which, on or after the
starting date of competitive retail electric service, it may
aggregate in accordance with this section the retail electrical
loads located, respectively, within the municipal corporation,
township, or unincorporated area of the county and, for that
purpose, may enter into service agreements to facilitate for
those loads the sale and purchase of electricity. The
legislative authority or board also may exercise such authority
jointly with any other such legislative authority or board. For
customers that are not mercantile customers, an ordinance or resolution under this division shall specify whether the aggregation will occur only with the prior, affirmative consent of each person owning, occupying, controlling, or using an electric load center proposed to be aggregated or will occur automatically for all such persons pursuant to the opt-out requirements of division (D) of this section. The aggregation of mercantile customers shall occur only with the prior, affirmative consent of each such person owning, occupying, controlling, or using an electric load center, as defined in section 4933.81 of the Revised Code, that is located in the certified territory of a nonprofit electric supplier under sections 4933.81 to 4933.90 of the Revised Code or an electric load center served by transmission or distribution facilities of a municipal electric utility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) Customers that are part of a governmental aggregation under this section shall be responsible only for such portion of a surcharge under section 4928.144 of the Revised Code that is proportionate to the benefits, as determined by the commission, that electric load centers within the jurisdiction of the governmental aggregation as a group receive. The proportionate surcharge so established shall apply to each customer of the
governmental aggregation while the customer is part of that aggregation. If a customer ceases being such a customer, the otherwise applicable surcharge shall apply. Nothing in this section shall result in less than full recovery by an electric distribution utility of any surcharge authorized under section 4928.144 of the Revised Code. Nothing in this section shall result in less than the full and timely imposition, charging, collection, and adjustment by an electric distribution utility, its assignee, or any collection agent, of the phase-in-recovery charges authorized pursuant to a final financing order issued pursuant to sections 4928.23 to 4928.2318 of the Revised Code.

(J) On behalf of the customers that are part of a governmental aggregation under this section and by filing written notice with the public utilities commission, the legislative authority that formed or is forming that governmental aggregation may elect not to receive standby service within the meaning of division (B)(2)(d) of section 4928.143 of the Revised Code from an electric distribution utility in whose certified territory the governmental aggregation is located and that operates under an approved electric security plan under that section. Upon the filing of that notice, the electric distribution utility shall not charge any such customer to whom competitive retail electric generation service is provided by another supplier under the governmental aggregation for the standby service. Any such consumer that returns to the utility for competitive retail electric service shall pay the market price of power incurred by the utility to serve that consumer plus any additional amount attributable to the utility's cost of compliance with the providing, after the effective date of the amendments to this section by H.B. 114 of the 132nd general assembly, electricity from qualifying
renewable energy resource provisions of resources as defined in section 4928.64 of the Revised Code to serve the consumer, unless that customer opts out under section 4928.647 of the Revised Code. Such market price shall include, but not be limited to, capacity and energy charges; all charges associated with the provision of that power supply through the regional transmission organization, including, but not limited to, transmission, ancillary services, congestion, and settlement and administrative charges; and all other costs incurred by the utility that are associated with the procurement, provision, and administration of that power supply, as such costs may be approved by the commission. The period of time during which the market price and qualifying renewable energy resource amount shall be so assessed on the consumer shall be from the time the consumer so returns to the electric distribution utility until the expiration of the electric security plan. However, if that period of time is expected to be more than two years, the commission may reduce the time period to a period of not less than two years.

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

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

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

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

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

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

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

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

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

(7) Interest earnings on the advanced energy fund.

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

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

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

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

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

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

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

(3) The director shall not authorize financial assistance 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.

(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:

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

(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;

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

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

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

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

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

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

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

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

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

(a) Has a placed-in-service date on or after January 1, 1998, or with respect to a renewable energy resource, as defined in section 4928.01 of the Revised Code that has:

(b) Is any run-of-the-river hydroelectric facility that has an in-service date on or after January 1, 1980; a renewable energy resource, as defined in section 4928.01 of the Revised Code that has:
energy resource

(c) Is a small hydroelectric facility;

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

(e) Is a mercantile customer-sited renewable energy resource, whether new or existing, that the mercantile customer commits for integration into the electric distribution utility's demand-response, energy efficiency, 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:

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

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

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

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

(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.

(B) Except as provided in division (D) of this section:

(1) By 2027 and thereafter, an electric distribution
utility shall may provide from qualifying renewable energy resources, including, at its discretion, qualifying renewable energy resources obtained pursuant to an electricity supply contract, a portion of the electricity supply required for its standard service offer under section 4928.141 of the Revised Code, and an electric services company shall may provide a portion of its electricity supply for retail consumers in this state from qualifying renewable energy resources, including, at its discretion, qualifying renewable energy resources obtained pursuant to an electricity supply contract. That portion shall may equal twelve and one-half per cent of the total number of kilowatt hours of electricity sold by the subject utility or company to any and all retail electric consumers whose electric load centers are served by that utility and are located within the utility's certified territory or, in the case of an electric services company, are served by the company and are located within this state baseline as defined in section 4928.643 of the Revised Code. However, nothing in this section precludes a utility or company from providing a greater percentage.

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

<table>
<thead>
<tr>
<th>By end of year</th>
<th>Renewable energy resources</th>
<th>Solar energy resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>0.25%</td>
<td>0.004%</td>
</tr>
<tr>
<td>2010</td>
<td>0.50%</td>
<td>0.010%</td>
</tr>
<tr>
<td>2011</td>
<td>1%</td>
<td>0.030%</td>
</tr>
<tr>
<td>Year</td>
<td>Percentage</td>
<td>Cost Percentage</td>
</tr>
<tr>
<td>------</td>
<td>------------</td>
<td>----------------</td>
</tr>
<tr>
<td>2012</td>
<td>1.5%</td>
<td>0.060%</td>
</tr>
<tr>
<td>2013</td>
<td>2%</td>
<td>0.090%</td>
</tr>
<tr>
<td>2014</td>
<td>2.5%</td>
<td>0.12%</td>
</tr>
<tr>
<td>2015</td>
<td>2.5%</td>
<td>0.12%</td>
</tr>
<tr>
<td>2016</td>
<td>2.5%</td>
<td>0.12%</td>
</tr>
<tr>
<td>2017</td>
<td>3.5%</td>
<td>0.15%</td>
</tr>
<tr>
<td>2018</td>
<td>4.5%</td>
<td>0.18%</td>
</tr>
<tr>
<td>2019</td>
<td>5.5%</td>
<td>0.22%</td>
</tr>
<tr>
<td>2020</td>
<td>6.5%</td>
<td>0.26%</td>
</tr>
<tr>
<td>2021</td>
<td>7.5%</td>
<td>0.3%</td>
</tr>
<tr>
<td>2022</td>
<td>8.5%</td>
<td>0.34%</td>
</tr>
<tr>
<td>2023</td>
<td>9.5%</td>
<td>0.38%</td>
</tr>
<tr>
<td>2024</td>
<td>10.5%</td>
<td>0.42%</td>
</tr>
<tr>
<td>2025</td>
<td>11.5%</td>
<td>0.46%</td>
</tr>
<tr>
<td>2026 and each calendar year thereafter</td>
<td>12.5%</td>
<td>0.5%</td>
</tr>
</tbody>
</table>

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

(a) Through facilities located in this state; or

(b) With resources that can be shown to be deliverable into this state.

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

(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:

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

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

(iii) Two hundred dollars for 2019 and 2020;

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

(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.

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

(3) An electric distribution utility or an electric services company need not comply with a benchmark under division (B)(2) of this section to the extent that it may provide a portion of its electricity from qualifying renewable energy resources if its reasonably expected cost of providing that portion from those resources exceeds its reasonably expected cost of otherwise producing or acquiring the requisite same amount of electricity by three per cent or more. The cost of providing the portion from qualifying renewable energy resources shall be calculated as though any exemption from taxes and assessments had not been granted under section 5727.75 of the Revised Code. As long as the cost of providing the portion from qualifying renewable energy resources does not exceed the cost cap set forth in this division, then the portion may exceed any of the benchmarks set forth in division (B)(2) of this section.

(4)(a)(E)(1) An electric distribution utility or electric services company may request the commission to make a force majeure determination pursuant to this division regarding all or part of the utility's or company's compliance with provision of electricity from qualifying renewable energy resources at the level of any minimum benchmark of the benchmarks under division (B)(2) of this section during the period of review occurring pursuant to division (C)(2) of this section. The commission may
require the electric distribution utility or electric services company to make solicitations for renewable energy resource credits as part of its default service before the utility's or company's request of force majeure under this division can be made.

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

(c)(3) If, pursuant to division (C)(4)(b)(E)(2) of this section, the commission determines that qualifying renewable energy or solar energy resources are not reasonably available to permit the electric distribution utility or electric services company to comply, during the period of review, with the subject minimum—provide electricity from qualifying renewable energy.
resources at the level of the benchmark prescribed under division (B)(2) of this section at issue, the commission shall modify that compliance obligation of the utility or company benchmark as it determines appropriate to accommodate the finding. Commission modification shall not automatically reduce the obligation for the electric distribution utility's or electric services company's compliance in subsequent years. If it modifies the electric distribution utility or electric services company obligation under division (C)(4)(c) of this section, the commission may require the utility or company, if sufficient renewable energy resource credits exist in the marketplace, to acquire additional renewable energy resource credits in subsequent years equivalent to the utility's or company's modified obligation under division (C)(4)(c) of this section.

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

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

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

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

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

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

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

Sec. 4928.641. (A) If an electric distribution utility has
executed a contract before April 1, 2014, the effective date of
the amendments to this section by H.B. 114 of the 132nd general
assembly to procure renewable energy resources for compliance with section 4928.64 of the Revised Code as that section existed prior to that date and there are ongoing costs associated with that contract that are being recovered from customers through a bypassable charge as of the effective that date of S.B. 310 of the 130th general assembly, that cost recovery shall continue on a bypassable basis until the prudently incurred costs associated with that contract are fully recovered.

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

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

(1) In the case of an electric distribution utility, any
and all retail electric consumers whose electric load centers are served by that utility and are located within the utility's certified territory, excluding customers of the utility who have opted out under section 4928.647 of the Revised Code;

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

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

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

Sec. 4928.644. The public utilities commission may reduce either baseline defined in section 4928.643 of the Revised Code to adjust for new economic growth in the electric distribution utility's certified territory or in the electric services company's service area in this state.
Sec. 4928.645. (A) An electric distribution utility or electric services company may use, for the purpose of complying with the requirements under divisions (B)(1) and (2) of section 4928.64 of the Revised Code providing electricity from qualifying renewable energy resources, renewable energy credits any time in the five calendar years following the date of their purchase or acquisition from any entity, including, but not limited to, the following:

(1) A mercantile customer;

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

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

(B)(1) The public utilities commission shall adopt rules specifying that one unit of credit shall equal one megawatt hour of electricity derived from qualifying renewable energy resources, except that, for a generating facility of seventy-five megawatts or greater that is situated within this state and has committed by December 31, 2009, to modify or retrofit its generating unit or units to enable the facility to generate principally from biomass energy by June 30, 2013, each megawatt hour of electricity generated principally from that biomass energy shall equal, in units of credit, the product obtained by multiplying the actual percentage of biomass feedstock heat input used to generate such megawatt hour by the quotient
obtained by dividing the then existing unit dollar amount used
to determine a renewable energy compliance payment as provided
under division (C)(2)(b) of section 4928.64 of the Revised Code
forty-five by the then existing market value of one renewable
energy credit, but such megawatt hour shall not equal less than
one unit of credit. Renewable Qualifying renewable energy
resources do not have to be converted to electricity in order to
be eligible to receive renewable energy credits. The rules shall
specify that, for purposes of converting the quantity of energy
derived from biologically derived methane gas to an electricity
equivalent, one megawatt hour equals 3,412,142 British thermal
units.

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

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

(B) Division (A) of this section does not apply to cost.
recovery under section 4928.641 of the Revised Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) If applicable, the company's compliance with the renewable energy resource requirements under section 4928.64 of the Revised Code for the applicable billing period as that section existed prior to the effective date of the amendments to this section by H.B. 114 of the 132nd general assembly, subject to division (C) of this section.
(C)(1) For purposes of division (A)(B)(1)(a)(b)(i) of this section, the any cost of compliance with the renewable energy resource requirements, including costs recovered under section 4928.641 of the Revised Code, shall be calculated by multiplying the individual customer's monthly usage by the combined weighted average of renewable-energy-credit costs, including solar-renewable-energy-credit costs, paid by all electric distribution utilities, as listed in the commission's most recently available alternative energy portfolio standard report.

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

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

Sec. 4928.66. (A)(1)(a) Beginning in 2009, an electric distribution utility shall implement energy efficiency programs that achieve energy savings equivalent to at least three-tenths of one per cent of the total, annual average, and normalized kilowatt-hour sales of the electric distribution utility during the preceding three calendar years to customers in this state.
An energy efficiency program may include a combined heat and power system placed into service or retrofitted on or after the effective date of the amendment of this section by S.B. 315 of the 129th general assembly, September 10, 2012, or a waste energy recovery system placed into service or retrofitted on or after September 10, 2012, except that a waste energy recovery system described in division (A)(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 per cent by the end of 2027. For purposes of a waste energy recovery or combined heat and power system, an electric distribution utility shall not apply more than the total annual percentage of
the electric distribution utility's industrial-customer load, relative to the electric distribution utility's total load, to the annual energy savings requirement.

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

(c) Subject to section 4928.6620 of the Revised Code, noncompliance with the provisions of division (A)(1)(a) of this section shall be subject to forfeitures under division (B) of this section only for the requirements for years 2016, 2019, 2022, 2025, and 2027. Subject to section 4928.6620 of the Revised Code, noncompliance with the provisions of division (A)(1)(b) of this section shall be subject to forfeitures under division (B) of this section only for the requirements for years 2016, 2019, and 2020. The sole penalty for an electric distribution utility's failure to comply with any provision of divisions (A)(1)(a) and (b) of this section shall be the
(2) For the purposes of divisions (A)(1)(a) and (b) of this section:

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

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

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

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

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

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

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

(I) Demand-response programs;

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

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

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

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

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

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

(iii) Division (A)(2)(c) of this section shall be applied  
to include facilitating efforts by a mercantile customer or
group of those customers to offer customer-sited demand-
response, energy efficiency, including waste energy recovery and
combined heat and power, or peak demand reduction capabilities
to the electric distribution utility as part of a reasonable
arrangement submitted to the commission pursuant to section
4905.31 of the Revised Code.

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

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

(C) If the commission determines, after notice and
opportunity for hearing and based upon its report the
information reported under division (B)(A) of this section
4928.6620 of the Revised Code and any other information that is
public, that an electric distribution utility has failed to
comply with an energy efficiency or peak demand reduction
requirement of under division (A)(1)(a) of this section for
years 2016, 2019, 2022, 2025, or 2027 or a peak demand reduction
requirement under division (A)(1)(b) of this section for years
2016, 2019, or 2020, the commission shall assess a forfeiture on
the utility as provided under sections 4905.55 to 4905.60 and
4905.64 of the Revised Code, either in the amount, per day per
undercompliance or noncompliance, relative to the period of the
report submitted under division (A) of section 4928.6620 of the
Revised Code, equal to that prescribed for noncompliances under section 4905.54 of the Revised Code, or in an amount equal to the then existing market value of one renewable energy credit per megawatt hour of undercompliance or noncompliance. Revenue from any forfeiture assessed under this division shall be deposited to the credit of the advanced energy fund created under section 4928.61 of the Revised Code.

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

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

Sec. 4928.662. For the purpose of measuring and determining compliance with the energy efficiency and peak demand reduction requirements under section 4928.66 of the Revised Code, the public utilities commission shall count and recognize compliance as follows:
(A) Energy efficiency savings and peak demand reduction achieved through actions taken by customers or through electric distribution utility programs that comply with federal standards for either or both energy efficiency and peak demand reduction requirements, including resources associated with such savings or reduction that are recognized as capacity resources by the regional transmission organization operating in Ohio in compliance with section 4928.12 of the Revised Code, shall count toward compliance with the energy efficiency and peak demand reduction requirements.

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

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

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

(E) The commission shall count energy efficiency savings and peak demand reductions associated with transmission and distribution infrastructure improvements that reduce line losses.
and with energy intensity reductions resulting from heat rate improvements at electric generating plants. No energy efficiency or peak demand reduction achieved under division (E) of this section shall qualify for shared savings.

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

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

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

(I) The commission shall recognize and count, as energy efficiency savings and peak demand reduction, the savings and reduction associated with heat rate improvements, other efficiency improvements, or other energy intensity improvements,
if such savings and reduction are both of the following:

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

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

(a) Owned by the electric distribution utility; or

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

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

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

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

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

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

(K) As used in this section:

(1) "Energy intensity" has the same meaning as in section
4928.6610 of the Revised Code.

(2) "Water supply function" means the functions associated with the following:

(a) Raw water collection, purification, treatment, and storage;

(b) Establishing or maintaining pressure to balance water supply and demand;

(c) Water delivery and transfer.

(3) "Water treatment function" means any of the preliminary, secondary, tertiary, and advanced activities, whether physical, biological, or chemical, associated with the removal of contaminants from, or conditioning of, wastewater prior to its return to the environment or recycled use.

Sec. 4928.664. (A) An electric services company may apply on behalf of its customers for energy efficiency programs offered by an electric distribution utility.

(B) An electric services company that has applied for a program on behalf of a customer under division (A) of this section may collect rebates under that program on behalf of the customer upon producing evidence that the customer completed the program. This evidence may be in the form of a product identification code, a product serial number, an acknowledgment letter from the customer, or similar evidence that proves installation or delivery of a product. Once the evidence is produced, the electric distribution utility shall send the rebate to the electric services company or the customer, at the direction of the customer.

(C) An electric distribution utility shall be entitled to
lost distribution revenue and full program costs.

(D) Not later than one hundred eighty days after the effective date of this section, the public utilities commission shall initiate an investigation to ensure that energy efficiency programs are consistent with the requirements and permissive provisions of this section.

(E) Not later than January 1, 2018, the commission shall amend its rules to bring them into conformity with this section.

Sec. 4928.665. All energy savings from an energy efficiency program shall be eligible for inclusion in any incentive calculation by the public utilities commission.

Sec. 4928.666. For a customer to be eligible for a rebate from an electric distribution utility, that customer shall be located within the utility's service territory.

Sec. 4928.667. All parts of an energy efficiency program transaction shall be shown to be cost effective, which shall be determined by the public utilities commission.

Sec. 4928.6610. As used in sections 4928.6611 to 4928.6616 of the Revised Code:

(A) "Customer" means any either of the following:

(1) A mercantile customer of an electric distribution utility;

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

(a) The customer receives service above the primary voltage level as determined by the utility's tariff classification.
(2) The customer is a commercial or industrial customer to which both of the following apply:

(a) 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.

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

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

(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.

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
customer's premises.

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

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

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

(1) The compliance of electric distribution utilities with section 4928.66 of the Revised Code, based on the information reported under division (A) of this section and any other
information that is public;

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

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

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

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

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

(B) An electric distribution utility shall be deemed in compliance with the energy efficiency and peak demand reduction savings requirements and shall be eligible for incentives approved by the public utilities commission in any year in which the utility's actual cumulative energy efficiency and peak
demand reduction savings meet or exceed the cumulative mandates under division (A)(1) of section 4928.66 of the Revised Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) For such a qualified energy project with a nameplate
capacity of five megawatts or greater, a board of county
commissioners of a county in which property of the qualified
energy project is located has adopted a resolution under
division (E)(1)(b) or (c) of this section to approve the
application submitted under division (E) of this section to
exempt the property located in that county from taxation. A
board's adoption of a resolution rejecting the application or
its failure to adopt a resolution approving the application does
not affect the tax-exempt status of the qualified energy
project’s property that is located in another county.
(3) The certification for the qualified energy project issued under division (E)(2) of this section has not been revoked. An energy project for which certification has been revoked is ineligible for exemption under this section. Revocation does not affect the tax-exempt status of the project’s tangible personal property for the tax year in which revocation occurs or any prior tax year.

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

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

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

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

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

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

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

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

(2) The director shall certify an energy project if all of
the following circumstances exist:
(a) The application was timely submitted.

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

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

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

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

(1) Comply with all applicable regulations;

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

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

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

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

(6) Maintain a ratio of Ohio-domiciled full-time equivalent employees employed in the construction or installation of the energy project to total full-time equivalent employees employed in the construction or installation of the energy project of not less than eighty per cent in the case of a solar energy project, and not less than fifty per cent in the case of any other energy project. In the case of an energy project for which certification from the power siting board is required under section 4906.20 of the Revised Code, the number of full-time equivalent employees employed in the construction or installation of the energy project equals the number actually employed or the number projected to be employed in the certificate application, if such projection is required under
regulations adopted pursuant to section 4906.03 of the Revised Code, whichever is greater. For all other energy projects, the number of full-time equivalent employees employed in the construction or installation of the energy project equals the number actually employed or the number projected to be employed by the director of development services, whichever is greater.

To estimate the number of employees to be employed in the construction or installation of an energy project, the director shall use a generally accepted job-estimating model in use for renewable energy projects, including but not limited to the job and economic development impact model. The director may adjust an estimate produced by a model to account for variables not accounted for by the model.

(7) For energy projects with a nameplate capacity in excess of 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, 2010, or accepts an offer for power or renewable energy credits within forty-five days after the offer is submitted, power or renewable energy credits from the energy project may be sold to other persons. Division (F)(8) of this section does not apply if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Subject to the cost cap provisions of division (C)(3) of section 4928.64 of the Revised Code as that division existed prior to the effective date of this section, if the Commission determines, after notice and opportunity for hearing, and based upon its findings in the review under division (A) of this section regarding avoidable undercompliance or noncompliance, but subject to the force-majeure provisions of division (C)(4)(a) of section 4928.64 of the Revised Code as that division existed prior to the effective date of this section, that the
utility or company has failed to comply with the benchmarks for
2016, the commission shall impose a renewable energy compliance
payment on the utility or company.

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

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

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

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

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

Sec. 257.80. HEAP WEATHERIZATION

   Up to twenty-five Twenty-five per cent of the federal
funds deposited to the credit of the Home Energy Assistance
Block Grant Fund (Fund 3K90) shall be expended from
appropriation item 195614, HEAP Weatherization, to provide home
weatherization services in the state as determined by the
Director of Development Services. Any transfers or increases in
appropriation for the foregoing appropriation items 195614, HEAP-
Weatherization, or 195611, Home Energy Assistance Block Grant, shall be subject to approval by the Controlling Board.

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

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

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