A BILL

To amend sections 717.25, 1710.061, 3706.03, 4905.31, 4906.20, 4906.201, 4928.01, 4928.02, 4928.142, 4928.143, 4928.20, 4928.61, 4928.621, 4928.64, 4928.643, 4928.65, 4928.66, 4928.662, 4928.6612, and 5727.75; to enact sections 3706.40, 3706.42, 3706.44, 3706.46, 3706.47, 3706.48, 3706.481, 3706.482, 3706.483, 3706.484, 3706.485, 3706.486, 3706.50, 3706.51, 3706.52, and 4928.663 of the Revised Code to maintain operations of certified clean air resources, establish the Ohio generation and jobs incentive program and the energy performance and waste reduction program, and make changes regarding wind turbine siting.

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

Section 1. That sections 717.25, 1710.061, 3706.03, 4905.31, 4906.20, 4906.201, 4928.01, 4928.02, 4928.142, 4928.143, 4928.20, 4928.61, 4928.621, 4928.64, 4928.643, 4928.65, 4928.66, 4928.662, 4928.6612, and 5727.75; to enact sections 3706.40, 3706.42, 3706.44, 3706.46, 3706.47, 3706.48, 3706.481, 3706.482, 3706.483, 3706.484, 3706.485, 3706.486, 3706.50, 3706.51, 3706.52, and 4928.663 of the Revised Code to maintain operations of certified clean air resources, establish the Ohio generation and jobs incentive program and the energy performance and waste reduction program, and make changes regarding wind turbine siting.
Sec. 717.25. (A) As used in this section:

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

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

(b) The facility is:

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

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

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

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

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

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

(B) The legislative authority of a municipal corporation may establish a low-cost alternative energy revolving loan program to assist owners of real property within the municipal corporation with installing and implementing either of the following on their real property:

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

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

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

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

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

(3) Facilities for making loans from the alternative energy revolving loan fund, including an explanation of how owners of real property within the municipal corporation may qualify for loans from the fund, a description of the alternative energy and energy efficiency technologies and related equipment for which a loan can be made from the fund, authorization of a municipal agency to process applications for loans and otherwise to administer the low-cost alternative
energy revolving loan program, a procedure whereby loans can be applied for, criteria for reviewing and accepting or denying applications for loans, criteria for determining the appropriate amount of a loan, the interest rate to be charged, the repayment schedule, and other terms and conditions of a loan, and procedures for collecting loans that are not repaid according to the repayment schedule;

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

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

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

The interest rate charged on a loan from the alternative energy revolving loan fund shall be below prevailing market rates. The legislative authority may specify the interest rate in the ordinance or may, after establishing a standard in the ordinance whereby the interest rate can be specified, delegate authority to specify the interest rate to the administrator of loans from the alternative energy revolving loan fund.
The alternative energy revolving loan fund shall be seeded with sufficient money to enable loans to be made until the fund accumulates sufficient reserves through investment and repayment of loans for revolving operation.

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

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

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

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

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

Sec. 1710.061. (A) Except as provided in division (B) of this section, an electric distribution utility may count toward its compliance with the energy efficiency performance and waste reduction program and peak demand reduction requirements of section 4928.66 of the Revised Code any efficiency savings or reduction in demand produced by a special energy improvement project located in its certified territory.

(B) A mercantile customer that realizes energy efficiency savings or reduction in demand produced by a special energy improvement project that it owns may elect to commit the savings or reduction to the electric distribution utility in exchange for an exemption from an energy efficiency savings cost recovery mechanism permitted under section 4928.66 of the Revised Code, approved by the public utilities commission.

(C) The board of directors of a special improvement district shall submit a quarterly report to the electric distribution utility that includes, but is not limited to, both of the following:

(1) The total number and a description of each new and ongoing special energy improvement project located within the special improvement district that produces energy efficiency savings or reduction in demand;

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

Sec. 3706.03. It is hereby declared to be the public
policy of the state through the operations of the Ohio air
quality development authority under this chapter to contribute
toward one or more of the following: to provide for the
conservation of air as a natural resource of the state, and to
prevent or abate the pollution thereof, to provide for the
comfort, health, safety, and general welfare of all employees,
as well as all other inhabitants of the state, to assist in the
financing of air quality facilities for industry, commerce,
distribution, and research, including public utility companies,
to create or preserve jobs and employment opportunities or
improve the economic welfare of the people, or assist and
cooperate with governmental agencies in achieving such purposes,
and to maintain operations of certified clean air resources, as
defined in section 3706.40 of the Revised Code, that, through
continued operation, are expected to provide the greatest
quantity of carbon-dioxide-free electric energy generation. In
furtherance of such public policy the Ohio air quality
development authority may initiate, acquire, construct,
maintain, repair, and operate air quality projects or cause the
same to be operated pursuant to a lease, sublease, or agreement
with any person or governmental agency; may make loans and
grants to governmental agencies for the acquisition or
construction of air quality facilities by such governmental
agencies; may make loans to persons for the acquisition or
construction of air quality facilities by such persons; may
enter into commodity contracts with, or make loans for the
purpose of entering into commodity contracts to, any person,
governmental agency, or entity located within or without the
state in connection with the acquisition or construction of air
quality facilities; and may issue air quality revenue bonds of
this state payable solely from revenues, to pay the cost of such
projects, including any related commodity contracts. Any air
quality project shall be determined by the authority to be not
inconsistent with any applicable air quality standards duly
established and then required to be met pursuant to the "Clean
Any resolution of the authority providing for acquiring or
constructing such projects or for making a loan or grant for
such projects shall include a finding by the authority that such
determination has been made. Determinations by resolution of the
authority that a project is an air quality facility under this
chapter and is consistent with the purposes of section 13 of
Article VIII, Ohio Constitution, and this chapter, shall be
conclusive as to the validity and enforceability of the air
quality revenue bonds issued to finance such project and of the
resolutions, trust agreements or indentures, leases, subleases,
sale agreements, loan agreements, and other agreements made in
connection therewith, all in accordance with their terms.

Sec. 3706.40. As used in sections 3706.40 to 3706.52 of
the Revised Code:

(A) "Clean air resource" means an electric generating
facility in this state fueled by nuclear power and that
satisfies all of the following criteria:

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

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

(3) Either of the following:

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

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

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

(5) The facility is a major utility facility in this state as defined in section 4906.01 of the Revised Code.

(B) "Program year" means the twelve-month period beginning the first day of June of a given year of the Ohio clean air program and ending the thirty-first day of May of the following year.

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

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

(E) "Clean air credit" means a credit that represents the clean air attributes of one megawatt hour of electric energy produced from a certified clean air resource.
Sec. 3706.42. (A)(1) There is hereby created the Ohio clean air program.

(2) The Ohio clean air program shall terminate on December 31, 2029.

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

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

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

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

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

(4) A forecast estimate of the emissions that would occur in this state during the remaining useful life of the resource if the resource discontinued operations prior to the end of the resource's useful life;
(5) Verified documentation demonstrating all of the following:

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

(b) That without certification as a clean air resource, the positive contributions to the air quality of this state that the resource has made and is capable of making in the future may be diminished or eliminated;

(c) That the clean air resource or reduced emissions resource meets the definition of a clean air resource or reduced emissions resource, as applicable, in section 3706.40 of the Revised Code;

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

(6) The resource's nameplate capacity;

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

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

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

**Sec. 3706.44.** (A)(1) On or before the thirty-first day of March, the Ohio air quality development authority shall review all applications timely submitted under section 3706.42 of the Revised Code and issue an order certifying a clean air resource that meets the definition of a clean air resource in section 3706.40 of the Revised Code.

(2) Except as provided in division (D) of this section, a clean air resource shall remain certified as a clean air resource as long as the resource continues to meet the definition of a clean air resource in section 3706.40 of the Revised Code.

(B) In the event the authority does not issue an order under division (A) of this section by the thirty-first day of March, each electric generating facility included in a timely and properly filed application shall be deemed a clean air resource.

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

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

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

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

(D) If a certified clean air resource or certified reduced emissions resource is participating in the Ohio clean air program and is sold to a new owner, the new owner shall apply
As Introduced

under section 3706.42 of the Revised Code to the authority for

certification as a clean air resource or reduced emissions

resource to be eligible to participate in the Ohio clean air

program.

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

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

**Sec. 3706.47.** (A) Beginning January 1, 2020, and until December 31, 2029, each retail electric customer of an electric distribution utility in this state shall pay a per-account monthly charge, which may vary by customer class and shall be billed and collected by each electric distribution utility and remitted to the state treasurer for deposit into the Ohio clean air program fund, created under section 3706.46 of the Revised Code.

(B) The monthly charges under division (A) of this section shall be established by the public utilities commission in accordance with the information provided by the Ohio air quality development authority from the financial disclosures submitted under section 3706.486 of the Revised Code. The commission shall periodically review the charges based on information provided by the authority from the most recent financial disclosures.
submitted, to determine the continued need for the charges and whether the charges are reasonable.

(C) The monthly charges established in division (B) of this section shall not exceed the following:

(1) For customers classified by the utility as residential, one dollar and twenty five cents.

(2) For customers classified by the utility as commercial, fifteen dollars.

(3) For customers classified by the utility as industrial, two hundred dollars.

(D) The charges required to be collected under divisions (A) and (B) of this section shall cease upon reaching a total amount of one hundred sixty million dollars in the Ohio clean air program fund created under section 3706.46 of the Revised Code as enacted in ...B... of the 133rd General Assembly.

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

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

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

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

(B) The price for each clean air credit shall be established by the authority in accordance with the information from the financial disclosures submitted under section 3706.486 of the Revised Code. The authority shall adjust the price as it determines necessary based on the most recent financial disclosures submitted.

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

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

Sec. 3706.485. The money remitted to an owner of a certified clean air resource under section 3706.482 of the Revised Code shall be used only for the operation and maintenance of the resource and to cover any shortfalls regarding that operation or maintenance, including shortfalls.
for employee wages, salaries, and benefits. The remitted money
shall not be applied to subsidize any profit, return on
investment, or earned rate of return.

Sec. 3706.486. (A) Each owner of a certified clean air
resource shall submit, beginning on July 1, 2021, and on the
date that is every six months thereafter, a financial disclosure
to the Ohio air quality development authority, providing
financial information regarding the operation and maintenance of
the resource, including employee wages, salaries, and benefits,
demonstrating compliance with the requirements of section
3706.485 of the Revised Code, and providing any other financial
information required under rules adopted by the authority.

(B) The authority shall provide information from the
financial disclosures to the public utilities commission for the
commission's purposes under section 3706.47 of the Revised Code.

(C) The authority, not later than ninety days after the
effective date of this section, shall adopt rules under Chapter
119. of the Revised Code governing the financial disclosures
required under this section.

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

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

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

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

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

Sec. 3706.51. Any owner of a clean air resource receiving clean air credits shall annually, beginning February 1, 2021, provide to the governor, the general assembly, and the Ohio air quality development authority a report of the following information for the prior calendar year:

(A) The amount of jobs created in this state by the resource, and the wage and salary ranges of the jobs;

(B) The amount of carbon dioxide emissions prevented due to the use of the resource;

(C) Annual tax disbursements to or from the state and any political subdivision of the state;

(D) The number of megawatts of electricity produced and sold by the resource and the price per megawatt hour received by the resource.

Sec. 3706.52. (A) Notwithstanding section 4905.32 of the Revised Code, if a certified clean air resource or certified reduced emissions resource closes or is sold prior to the termination of the Ohio clean air program, the charges paid under section 3706.47 of the Revised Code shall be refunded to the customers that paid the charges.
(B) Not later than ninety days after the effective date of this section, the public utilities commission, in consultation with the consumers' counsel, shall adopt rules to determine the disbursement of refunds under division (A) of this section.

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

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

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

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

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

(E) Any other financial device that may be practicable or advantageous to the parties interested. In the case of a schedule or arrangement concerning a public utility electric
light company, such other financial device may include a device to recover costs incurred in conjunction with any economic development and job retention program of the utility within its certified territory, including recovery of revenue foregone as a result of any such program; any development and implementation of peak demand reduction and energy efficiency performance and waste reduction programs under section 4928.66 of the Revised Code; any acquisition and deployment of advanced metering, including the costs of any meters prematurely retired as a result of the advanced metering implementation; and compliance with any government mandate.

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

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

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

Sec. 4906.20. (A) No person shall commence to construct an
economically significant wind farm in this state without first having obtained a certificate from the power siting board. An economically significant wind farm with respect to which such a certificate is required shall be constructed, operated, and maintained in conformity with that certificate and any terms, conditions, and modifications it contains. A certificate shall be issued only pursuant to this section. The certificate may be transferred, subject to the approval of the board, to a person that agrees to comply with those terms, conditions, and modifications.

(B) The board shall adopt rules governing the certificating of economically significant wind farms under this section. Initial rules shall be adopted within one hundred twenty days after June 24, 2008.

(1) The rules shall provide for an application process for certificating economically significant wind farms that is identical to the extent practicable to the process applicable to certificating major utility facilities under sections 4906.06, 4906.07, 4906.08, 4906.09, 4906.10, 4906.11, and 4906.12 of the Revised Code and shall prescribe a reasonable schedule of application filing fees structured in the manner of the schedule of filing fees required for major utility facilities.

(2) Additionally, the rules shall prescribe reasonable regulations regarding any wind turbines and associated facilities of an economically significant wind farm, including, but not limited to, their location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement and including erosion control, aesthetics, recreational land use, wildlife protection, interconnection with power lines and with regional transmission organizations,
independent transmission system operators, or similar organizations, ice throw, sound and noise levels, blade shear, shadow flicker, decommissioning, and necessary cooperation for site visits and enforcement investigations.

(a) The rules also shall prescribe a minimum setback for a wind turbine of an economically significant wind farm. That minimum shall be equal to a horizontal distance, from the turbine’s base to the property line of the wind farm property, equal to one and one-tenth times the total height of the turbine structure as measured from its base to the tip of its highest blade and be at least one thousand one hundred twenty-five feet in horizontal distance from the tip of the turbine's nearest blade at ninety degrees to the exterior of the nearest habitable residential structure, if any, located on adjacent property at the time of the certification application.

(b)(i) For any existing certificates and amendments thereto, and existing certification applications that have been found by the chairperson to be in compliance with division (A) of section 4906.06 of the Revised Code before the effective date of the amendment of this section by H.B. 59 of the 130th general assembly, September 29, 2013, the distance shall be seven hundred fifty feet instead of one thousand one hundred twenty-five feet.

(ii) Any amendment made to an existing certificate after the effective date of the amendment of this section by H.B. 483 of the 130th general assembly, September 15, 2014, and before the effective date of the amendment of this section by H.B. 6 of the 133rd general assembly shall be subject to the setback provision of this section as amended by that act H.B. 483 of the 130th general assembly. The amendments to this section by that
as introduced act h.b. 483 of the 130th general assembly shall not be construed to limit or abridge any rights or remedies in equity or under the common law.

(iii) any amendment made to an existing certificate after the effective date of the amendment of this section by h.b. 6 of the 133rd general assembly shall be subject to the setback provision of this section as amended by that act. the amendments to this section by that act shall not be construed to limit or abridge any rights or remedies in equity or under the common law.

(c) The setback shall apply in all cases except those in which all owners of property adjacent to the wind farm property waive application of the setback to that property pursuant to a procedure the board shall establish by rule and except in which, in a particular case, the board determines that a setback greater than the minimum is necessary.

sec. 4906.201. (a) An electric generating plant that consists of wind turbines and associated facilities with a single interconnection to the electrical grid that is designed for, or capable of, operation at an aggregate capacity of fifty megawatts or more is subject to the minimum setback requirements established in rules adopted by the power siting board under division (b)(2) of section 4906.20 of the revised code.

(b)(1) For any existing certificates and amendments thereto, and existing certification applications that have been found by the chairperson to be in compliance with division (a) of section 4906.06 of the revised code before the effective date of the amendment of this section by h.b. 59 of the 130th general assembly, september 29, 2013, the distance shall be seven hundred fifty feet instead of one thousand one hundred twenty-six hundred fifty feet.
five feet.

(2) Any amendment made to an existing certificate after the effective date of the amendment of this section by H.B. 483 of the 130th general assembly, September 15, 2014, and before the effective date of the amendment of this section by H.B. 6 of the 133rd general assembly shall be subject to the setback provision of this section as amended by that act. The amendments to this section by that act shall not be construed to limit or abridge any rights or remedies in equity or under the common law.

(3) Any amendment made to an existing certificate after the effective date of the amendment of this section by H.B. 6 of the 133rd general assembly shall be subject to the setback provision of this section as amended by that act. The amendments to this section by that act shall not be construed to limit or abridge any rights or remedies in equity or under common law.

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
As Introduced

commission; other, later technology; or significant improvements to existing facilities;

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

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

(g) Demand-side management and any energy efficiency performance and waste reduction 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-performance and waste reduction program of an electric distribution utility pursuant to requirements standards 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 performance and waste reduction program of an electric distribution utility pursuant to requirements standards 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. 4928.02. It is the policy of this state to do the following throughout this state:

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

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

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

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

(E) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports.
written in plain language;

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

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

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

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

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

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

(L) Protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource;
(M) Encourage the education of small business owners in this state regarding the use of, and encourage the use of, energy efficiency, performance, and waste reduction programs and alternative energy resources in their businesses;

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

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

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 divisions (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 commission 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 requirements and
energy efficiency requirements, performance and waste reduction
standards;

(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 performance and waste reduction 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 section, and the earnings test provided for in division (F) of this section shall not apply until after the expiration of the rate plan. However, that utility may include in its electric security plan under this section, and the commission may approve, modify and approve, or disapprove subject to division (C) of this section, provisions for the incremental recovery or the deferral of any costs that are not being recovered under the rate plan and that the utility incurs during that continuation period to comply with section 4928.141, division (B) of section
4928.64, or division (A) of section 4928.66 of the Revised Code.

(E) If an electric security plan approved under division (C) of this section, except one withdrawn by the utility as authorized under that division, has a term, exclusive of phase-ins or deferrals, that exceeds three years from the effective date of the plan, the commission shall test the plan in the fourth year, and if applicable, every fourth year thereafter, to determine whether the plan, including its then-existing pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, continues to be more favorable in the aggregate and during the remaining term of the plan as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. The commission shall also determine the prospective effect of the electric security plan to determine if that effect is substantially likely to provide the electric distribution utility with a return on common 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 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. 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 proposed to be
aggregated. Nothing in this division, however, authorizes the aggregation of the retail electric loads of 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 amount attributable to the utility's cost of compliance with the renewable energy resource provisions of Ohio generation and jobs incentive program under section 4928.64 of the Revised Code to serve the consumer. 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 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

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

(5) Revenue from forfeitures under division (C) 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. 4928.621. (A) Any Edison technology center in this state is eligible to apply for and receive assistance pursuant to section 4928.62 of the Revised Code for the purposes of creating an advanced energy manufacturing center in this state that will provide for the exchange of information and expertise regarding advanced energy, assisting with the design of advanced energy projects, developing workforce training programs for such projects, and encouraging investment in advanced energy manufacturing technologies for advanced energy products and investment in sustainable manufacturing operations that create high-paying jobs in this state.

(B) Any university or group of universities in this state that conducts research on any advanced energy resource or any not-for-profit corporation formed to address issues affecting the price and availability of electricity and having members that are small businesses may apply for and receive assistance pursuant to section 4928.62 of the Revised Code for the purpose of encouraging research in this state that is directed at innovation in or the refinement of those resources or for the purpose of educational outreach regarding those resources and,
to that end, shall use that assistance to establish such a program of research or education outreach. Any such educational outreach shall be directed at an increase in, innovation regarding, or refinement of access by or of application or understanding of businesses and consumers in this state regarding, advanced energy resources.

(C) Any independent group located in this state the express objective of which is to educate small businesses in this state regarding renewable energy resources and energy efficiency performance and waste reduction programs, or any small business located in this state electing to utilize an advanced energy project or participate in an energy efficiency performance and waste reduction program, is eligible to apply for and receive assistance pursuant to section 4928.62 of the Revised Code.

(D) Nothing in this section shall be construed as limiting the eligibility of any qualifying entity to apply for or receive assistance pursuant to section 4928.62 of the Revised Code.

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

(a) Has a placed-in-service date on or after January 1, 1998;

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

(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 performance and waste reduction, 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:

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

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

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

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

(2) "Consumer price index" means the consumer price index prepared by the United States bureau of labor statistics (U.S. city average for urban wage earners and clerical workers: all items, 1982-1984=100), or, if that index is no longer published, a generally available comparable index.

(3) 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)(1) By 2027 and thereafter, an electric distribution utility shall 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 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 equal twelve and one-half fifty 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. However, nothing in this section precludes a utility or company from providing a greater percentage.

(2) The portion required under division (B)(1) of this section shall be generated from renewable energy resources, including one-half six per cent from solar energy resources, in accordance with the following benchmarks:

<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>2012</td>
<td>1.5%</td>
<td>0.060%</td>
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<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>Year</td>
<td>Percentage 1</td>
<td>Percentage 2</td>
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<tr>
<td>------</td>
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<td>--------------</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>0.26-0.3%</td>
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<tr>
<td>2021</td>
<td>7.5%</td>
<td>0.3-0.4%</td>
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<tr>
<td>2022</td>
<td>8.5%</td>
<td>0.34-0.5%</td>
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<tr>
<td>2023</td>
<td>9.5%</td>
<td>0.38-0.6%</td>
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<tr>
<td>2024</td>
<td>10.5%</td>
<td>0.42-0.75%</td>
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<tr>
<td>2025</td>
<td>11.5%</td>
<td>0.46-0.9%</td>
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<tr>
<td>2026</td>
<td>12.5%</td>
<td>0.5%-1%</td>
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<td></td>
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<td>34.1%</td>
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<td>35%</td>
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<td>36.6%</td>
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<td>38.3%</td>
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<td>41.6%</td>
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<td></td>
<td>43.3%</td>
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<tr>
<td></td>
<td>45%</td>
<td>5.25%</td>
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<tr>
<td></td>
<td>46.6%</td>
<td>5.5%</td>
</tr>
</tbody>
</table>

*Note: The table continues with similar entries for subsequent years.*
2049  48.3%  5.75%  1966
2050 and each calendar  50%  6%  1967
year thereafter  1968

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

(a) Through facilities located in this state; or

(b) With the remainder shall be met with resources that can be shown to be deliverable into this state.

(4) At least half of the solar energy resources implemented by the utility or company shall be met through distributed solar projects of not more than twenty-five megawatts of base load capacity.

(C)(1) 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 its reasonably expected cost of that compliance exceeds its reasonably expected cost of otherwise producing or acquiring the requisite electricity by three per cent or more. The cost of compliance shall be calculated as though any exemption from taxes and assessments had not been granted under section 5727.75 of the Revised Code.

(4)(a) 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 any minimum benchmark 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) Within ninety days after the filing of a request by an electric distribution utility or electric services company under division (C)(4)(a) 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 benchmark during the review period. 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) If, pursuant to division (C)(4)(b) 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 benchmark prescribed under division (B)(2) of this section, the commission shall modify that compliance obligation of the utility or company 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.

(5) 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) All costs incurred by an electric distribution utility in complying with the requirements standards of this section shall be bypassable by any consumer that has exercised choice of supplier under section 4928.03 of the Revised Code.

(F) The provisions of this section shall collectively be referred to as the Ohio generation and jobs incentive program.

Sec. 4928.643. (A) 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 Ohio generation and jobs incentive program under section 4928.64 of the Revised Code shall be the average of total kilowatt hours sold by the utility or 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;

(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.

(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 Ohio...
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generation and jobs incentive program under 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 year.

(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 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 years before again using the baseline permitted under division (B) of this section.

Sec. 4928.645. (A) An electric distribution utility or electric services company may use, for the purpose of complying with the Ohio generation and jobs incentive program under divisions (B)(1) and (2) of section 4928.64 of the Revised Code, 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 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 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 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.
(3) The rules also shall require the commission to do all of the following with regard to certifying renewable energy credits:

(a) Identify solar renewable energy credits sourced from projects that are twenty-five megawatts or smaller;

(b) Identify all other solar renewable energy credits;

(c) Identify the renewable energy credits that are projects located in this state.

Sec. 4928.65. (A) Not later than January 1, 2015, the public utilities commission shall adopt rules governing the disclosure of the costs to customers of the renewable energy resource, compliance with the Ohio generation and jobs incentive program under section 4928.64 of the Revised Code and the energy efficiency savings performance and waste reduction program, and peak demand reduction requirements of sections 4928.64 and section 4928.66 of the Revised Code. 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 the utility’s compliance with all of the following for the applicable billing period:

(a) The renewable energy resource requirements Compliance with the Ohio generation and jobs incentive program under section 4928.64 of the Revised Code, subject to division (B) of this section;

(b) The energy efficiency savings requirements performance and waste reduction program under section 4928.66 of the Revised Code.
(c) The peak demand reduction requirements 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 the company's compliance with the renewable energy resource requirements Ohio generation and jobs incentive program under section 4928.64 of the Revised Code for the applicable billing period.

(B)(1) For purposes of division (A)(1)(a) of this section, the cost of compliance with the renewable energy resource requirements Ohio generation and jobs incentive program 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)(2) of this section, the cost of compliance with the renewable energy resource requirements Ohio generation and jobs incentive program 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) The costs required to be listed under division (A)(1) of this section shall be listed on each customer's monthly bill.
as three distinct line items. The cost required to be listed under division (A)(2) of this section shall be listed on each customer's monthly bill as a distinct line item.

Sec. 4928.66. (A)(1)(a) Beginning in 2009, an electric distribution utility shall implement energy efficiency performance and waste reduction 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 performance and waste reduction 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, one per cent of the baseline, and two per cent each year thereafter, achieving cumulative energy savings in excess of twenty-two per cent by the end of 2027. For purposes of a waste energy recovery or combined heat and power system, an electric distribution utility shall not apply more than the total annual percentage of the electric distribution utility's industrial-customer load, relative to the electric distribution utility's total load, to the annual energy savings requirement.

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

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

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

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

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

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

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

(c) Compliance with divisions (A)(1)(a) and (b) of this section shall be measured by including the effects of all demand-response programs for mercantile customers of the subject electric distribution utility, all waste energy recovery systems
and all combined heat and power systems, and all such mercantile customer-sited energy efficiency performance and waste reduction, 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 performance and waste reduction, 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 performance and waste reduction, 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 performance or waste reduction, 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 performance and waste reduction, including waste energy recovery and combined heat and power, or peak demand reduction programs that may have existed during the period used to establish the baseline. The baseline also shall be normalized for changes in numbers of customers, sales, weather, peak demand, and other appropriate factors so that the compliance measurement is not unduly influenced by factors outside the control of the electric distribution utility.
(d)(i) Programs implemented by a utility may include the following:

(I) Demand-response programs;

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

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

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

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

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

(iii) Division (A)(2)(c) of this section shall be applied to include facilitating efforts by a mercantile customer or group of those customers to offer customer-sited demand-response, energy efficiency performance and waste reduction, 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 savings and of peak demand reductions achieved by each electric distribution utility pursuant to division (A) of this section. A copy of the report shall be provided to the consumers' counsel.

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

(D) The commission may establish rules regarding the content of an application by an electric distribution utility for commission approval of a revenue decoupling mechanism under this division. Such an application shall not be considered an
application to increase rates and may be included as part of a proposal to establish, continue, or expand energy efficiency, performance and waste reduction 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, performance and waste reduction 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. (A) For the purpose of measuring and determining compliance with the energy efficiency, performance and waste reduction program 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
(B) Energy efficiency savings and peak demand reduction achieved on and after the effective date of S.B. 310 of the 130th general assembly 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) (1) The commission shall count energy efficiency savings and peak demand reductions associated with transmission and distribution infrastructure improvements that reduce line losses. No energy efficiency savings or peak demand reduction achieved under division (E) (A)(1) of this section shall qualify for shared savings.

(F) (2) Energy efficiency savings and peak demand reduction amounts approved by the commission shall continue to be counted toward achieving the energy efficiency performance and waste reduction standards and peak demand reduction requirements as long as they remain in effect.
Any energy efficiency savings or peak demand reduction amount achieved in excess of the energy performance and waste reduction standards and peak demand reduction requirements may, at the discretion of the electric distribution utility, be banked and applied toward achieving the energy efficiency performance and waste reduction standards or peak demand reduction requirements in future years.

The commission shall adopt rules to develop methods for determining compliance with the energy performance and waste reduction program and peak demand reduction requirements. The methods shall involve calculating energy savings and peak demand reduction based on the latest best practices.

Sec. 4928.663. (A) As used in this section, "cost-effective program" means a program that delivers savings to customers participating in the program in an amount that exceeds the customers' costs for the program.

(B) The public utilities commission shall ensure that energy performance and waste reduction programs and peak demand reduction programs administered by an electric distribution utility under section 4928.66 of the Revised Code are cost-effective programs. The commission shall not limit the amount that an electric distribution utility may spend on cost-effective programs.

Sec. 4928.6612. Any customer electing to opt out under section 4928.6611 of the Revised Code shall do so by providing a verified written notice of intent to opt out to the electric distribution utility from which it receives service and submitting a complete copy of the opt-out notice to the secretary of the public utilities commission.
The notice provided to the utility shall include all of the following:

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

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

(C) The account number for each customer account to which the opt out shall apply;

(D) The physical location of the customer's load center;

(E) The date upon which the customer established, or plans to establish a process and implement, cost-effective measures to improve its energy efficiency savings and peak demand reductions.

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

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

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

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

(4) "Full-time equivalent employee" means the total number of employee-hours for which compensation was paid to individuals employed at a qualified energy project for services performed at the project during the calendar year divided by two thousand eighty hours.
(5) "Solar energy project" means an energy project composed of an energy facility using solar panels to generate electricity.

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

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

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

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

(c) For a qualified energy project with a nameplate capacity of five 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
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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 to the owner of the facility and the director by certified mail or, if the board has record of an internet identifier of record associated with the owner or director, by ordinary mail and by that internet identifier of record. The board shall send such notice...
within thirty days after receipt of the application, or a longer
period of time if authorized by the director.

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

All tangible personal property and real property of an
energy project with a nameplate capacity of 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-
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(time equivalent employees domiciled in Ohio, who are employed in the construction or installation of the energy facility;

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

(5) Provide or facilitate training for fire and emergency responders for response to emergency situations related to the
energy project and, for energy projects with a nameplate capacity of five 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 standards for the Ohio generation and jobs incentive program 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
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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 717.25, 1710.061, 3706.03, 4905.31, 4906.20, 4906.201, 4928.01, 4928.02, 4928.142, 4928.143, 4928.20, 4928.61, 4928.621, 4928.64, 4928.643, 4928.645, 4928.65, 4928.66, 4928.662, 4928.6612, and 5727.75 of the Revised Code are hereby repealed.