To amend sections 3706.02, 3706.03, 4928.644, and 4928.66 and to enact sections 3706.40, 3706.42, 3706.44, 3706.45, 3706.46, 3706.47, 3706.471, 3706.48, 3706.481, 3706.482, 3706.49, 3706.50, 4928.46, 4928.47, and 4928.471 of the Revised Code to create the Ohio Clean Air Program, to facilitate and encourage electricity production and use from clean air resources, to facilitate investment to reduce the emissions from other generating technologies that can be readily dispatched to satisfy demand in real time, and proactively engage the buying power of consumers in this state for the purpose of improving air quality in this state.

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

Section 1. That sections 3706.02, 3706.03, 4928.644, and 4928.66 be amended and sections 3706.40, 3706.42, 3706.44, 3706.45, 3706.46, 3706.47, 3706.471, 3706.48, 3706.481, 3706.482, 3706.49, 3706.50, 4928.46, 4928.47, and 4928.471 of the Revised Code be enacted to read as follows:
Sec. 3706.02. (A) There is hereby created the Ohio air
quality development authority. Such authority is a body both
corporate and politic in this state, and the carrying out of its
purposes and the exercise by it of the powers conferred by
Chapter 3706. of the Revised Code shall be held to be, and are
hereby determined to be, essential governmental functions and
public purposes of the state, but the authority shall not be
immune from liability by reason thereof.

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

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

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

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

(4) Four legislative members, who shall be members ex
officio without compensation. The speaker of the house of
representatives, the president of the senate, and the minority
leader of each house shall each appoint one of the legislative
members. The legislative members may participate fully in all
the board's deliberations and activities. Each

Each appointive member shall be a resident of the state,
and a qualified elector therein. The members of the authority
first appointed shall continue in office for terms expiring on
June 30, 1978, respectively, the term of each member to be
designated by the governor. Appointed members' terms of office
shall be for eight years, commencing on the first day of July
and ending on the thirtieth day of June. Each appointed member
shall hold office from the date of his appointment until the end
of the term for which he was appointed. Any member appointed to
fill a vacancy occurring prior to the expiration of the term for
which his predecessor was appointed shall hold office for the remainder of such term. Any appointed member
shall continue in office subsequent to the expiration date of
his term until his successor takes office, or until a period of sixty days has elapsed, whichever occurs first. A member of the authority is eligible for
reappointment. Each appointed member of the authority, before entering upon his official duties, shall take an oath as
provided by Section 7 of Article XV, Ohio Constitution. The
governor may at any time remove any member of the authority for
misfeasance, nonfeasance, or malfeasance in office. The
authority shall elect one of its appointed members as chairman
and another as vice-chairman, and shall appoint a secretary-treasurer who need not be a member of
the authority. Four members of the authority shall constitute a
quorum, and the affirmative vote of four members shall be
necessary for any action taken by vote of the authority. No
vacancy in the membership of the authority shall impair the
rights of a quorum by such vote to exercise all the rights and
perform all the duties of the authority.

Before Except as provided in division (D) of this
section, before the issuance of any air quality revenue bonds
under Chapter 3706. of the Revised Code, each appointed member
of the authority shall give a surety bond to the state in the
central sum of twenty-five thousand dollars and the secretary-
treasurer shall give such a bond in the penal sum of fifty
thousand dollars, each such surety bond to be conditioned upon
the faithful performance of the duties of the office, to be
executed by a surety company authorized to transact business in
this state, and to be approved by the governor and filed in the
office of the secretary of state. Each except as provided in
division (B)(4) of this section, each appointed member of the
authority shall receive an annual salary of five thousand
dollars, payable in monthly installments. Each member shall be
reimbursed for his actual expenses necessarily incurred in
the performance of his official duties. All expenses incurred in
carrying out Chapter 3706. of the Revised Code shall be payable
solely from funds provided under Chapter 3706. of the Revised
Code, appropriated for such purpose by the general assembly, or
provided by the controlling board. No liability or obligation
shall be incurred by the authority beyond the extent to which
moneys have been so provided or appropriated.

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

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

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

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

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

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

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

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

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;

Make loans and grants to governmental agencies for the acquisition or construction of air quality facilities by such governmental agencies;

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

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

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

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

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

(1) The facility does not receive state tax exemptions, deferrals, exclusions, allowances, payments, credits, deductions, or reimbursements calculated using a metric that provides a value for air emissions not produced by the facility through any program other than the Ohio clean air program created under section 3706.42 of the Revised Code.

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

(3) 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.

(4) 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.

(5) The facility is interconnected with PJM interconnection, L.L.C., or its successor organization.

(6) The facility is either of the following:

(a) A major utility facility as defined in section 4906.01 of the Revised Code:
(b) An economically significant wind farm as defined in section 4906.13 of the Revised Code.

(B) "Reduced emissions resource" means an electric generating facility that emits a reduced amount of carbon dioxide in the production of electricity from the utilization or consumption of any form of primary energy that satisfies all of the following criteria:

(1) The facility does not receive state tax exemptions, deferrals, exclusions, allowances, payments, credits, deductions, or reimbursements calculated using a metric that provides a value for air emissions not produced by the facility through any program other than the Ohio clean air program created under section 3706.42 of the Revised Code.

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

(3) 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.

(4) 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.

(5) The facility is interconnected with PJM interconnection, L.L.C., or its successor organization.
(6) The facility is a major utility facility as defined in section 4906.01 of the Revised Code.

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

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

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

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

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

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

(C) Applications shall include all of the following information:
(1) The in-service date and estimated remaining useful life of the resource;

(2) For existing resources, the quantity of megawatt hours generated by the resource annually and the annual capacity factor for each of the previous five 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 or reduced emissions resource and participation in the Ohio clean air program will permit the resource to reduce future emissions per unit of electrical energy generated in this state;

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

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

   (d) That the person seeking certification owns or controls the resource.
(6) The resource's nameplate capacity;

(7) The level of funding requested from the Ohio clean air program;

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

(D) The authority shall post on the authority's web site all applications and nonconfidential supporting materials submitted under this section. 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) On or before the thirty-first day of March, the Ohio air quality development authority shall review all applications timely submitted under section 3706.42 of the Revised Code and issue an order certifying a clean air resource or reduced emissions resource for one or more program years as determined by the authority in its sole discretion. A certified clean air resource or certified reduced emissions resource shall be eligible to participate in the Ohio clean air program, provided that the resource continues to meet the definition of a clean air resource or reduced emissions resource, as applicable, in section 3706.40 of the Revised Code and any additional requirements set by the authority.

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

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

(2) Before decertifying a clean air resource or reduced emissions resource, the authority shall hold a public hearing and allow for public comment.

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

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

(2) The authority shall adopt rules in accordance with Chapter 119. of the Revised Code to determine the amount of time during which a clean air resource or reduced emissions resource must come into compliance with the new requirements.

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

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

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

(B) The monthly charges established under division (A) of this section shall be:

(1) For customers classified by the utility as residential, two dollars and fifty cents;

(2) For customers classified by the utility as commercial,
twenty dollars, except as provided in division (B)(4) of this section;

(3) For customers classified by the utility as industrial, two hundred fifty dollars, except as provided in division (B)(4) of this section;

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

(C) Except as provided in division (D) of this section, a customer required to pay the monthly charge under divisions (A) and (B) of this section shall be exempt from paying costs associated with the requirements under sections 4928.64 and 4928.66 of the Revised Code, unless the customer opts, in accordance with section 3706.471 of the Revised Code, to pay those costs in addition to the charge imposed under this section.

(D) A customer required to pay the monthly charge under divisions (A) and (B) of this section shall continue to pay the following costs associated with the requirements under sections 4928.64 and 4928.66 of the Revised Code:

(1) Costs prudently incurred for contractual obligations that existed prior to the effective date of this section by an electric distribution utility in reliance on the requirements under sections 4928.64 and 4928.66 of the Revised Code;

(2) Costs prudently incurred by an electric distribution utility associated with programs approved by the public utilities commission under section 4928.64 or 4928.66 of the Revised Code that are modified or eliminated as a result of
...B... of the 133rd general assembly, including any costs to
discontinue those programs.

Sec. 3706.471. Any customer opting to pay costs associated
with the requirements under sections 4928.64 and 4928.66 of the
Revised Code shall do so by providing a written notice of intent
to opt in to pay either or both the renewable energy monthly
charge or the energy efficiency and peak demand reduction
monthly charge to the electric distribution utility from which
it receives service. The customer shall submit a complete copy
of the opt-in notice to the secretary of the public utilities
commission. The notice shall include all of the following:

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

(B) An indication of whether the customer is opting to pay
both charges or which charge the customer is opting to pay;

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

(D) The account number for each customer account to which
the opt in shall apply;

(E) The physical location of the customer's load center.

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

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

Sec. 3706.482. (A) 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.

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

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

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

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

Sec. 3706.50. (A) Not later than ninety days after the effective date of this section, the Ohio air quality development
authority shall adopt rules under Chapter 119. of the Revised Code that are necessary to begin implementation of the Ohio clean air program. The rules adopted under this division shall include provisions for 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.

(B) Not later than two hundred seventy-five days after the effective date of this section, the authority shall adopt rules under Chapter 119. of the Revised Code that are necessary for the further implementation and administration of the Ohio clean air program.

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

(B) The report shall include any recommendations for legislation that may be necessary to permit this state to beneficially participate in any such program.

Sec. 4928.47. (A) As used in this section, "clean air resource" means any of the following:

(1) A clean air resource as defined in section 3706.40 of the Revised Code;

(2) A customer-sited renewable energy resource;

(3) A renewable energy resource that is a self-generator.
(B)(1) Through its general supervision, ratemaking, cost assignment, allocation, rate schedule approval, and rulemaking authority, as well as its authority under section 4905.31 of the Revised Code, the public utilities commission shall facilitate and encourage the establishment of retail purchased power agreements having a term of three years or more through which consumers commit to satisfy a portion of their electricity requirements from the output of a clean air resource.

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

(3) In addition to any other benefits that may be available as a result of the commission's application of its authority under this section, on the effective date of a retail purchased power agreement, the commission may exempt such purchasing consumer from all of the following, provided the customer agrees to forgo the benefits from compliance with the programs established in sections 3706.42, 4928.64, and 4928.66 of the Revised Code:

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

(b) The renewable energy charge for compliance with section 4928.64 of the Revised Code;

(c) The energy efficiency and peak demand reduction charge for compliance with section 4928.66 of the Revised Code.

(C)(1) Not later than ninety days after the effective date of this section, the commission shall promulgate rules under
Chapter 119. of the Revised Code as necessary to begin the implementation of this section.

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

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

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

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

Sec. 4928.644. (A) The public utilities commission may reduce either baseline described in section 4928.643 of the Revised Code to adjust for new economic growth in the electric distribution utility's certified territory or in the electric services company's service area in this state.

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

Sec. 4928.66. (A)(1)(a) Beginning in 2009, an electric distribution utility shall implement energy efficiency programs
that achieve energy savings equivalent to at least three-tenths of one per cent of the total, annual average, and normalized kilowatt-hour sales of the electric distribution utility during the preceding three calendar years to customers in this state. An energy efficiency program may include a combined heat and power system placed into service or retrofitted on or after the effective date of the amendment of this section by S.B. 315 of the 129th general assembly, September 10, 2012, or a waste energy recovery system placed into service or retrofitted on or after September 10, 2012, except that a waste energy recovery system described in division (A)(38)(b) of section 4928.01 of the Revised Code may be included only if it was placed into service between January 1, 2002, and December 31, 2004. For a waste energy recovery or combined heat and power system, the savings shall be as estimated by the public utilities commission. The savings requirement, using such a three-year average, shall increase to an additional five-tenths of one per cent in 2010, seven-tenths of one per cent in 2011, eight-tenths of one per cent in 2012, nine-tenths of one per cent in 2013, and one per cent in 2014. In 2015 and 2016, an electric distribution utility shall achieve energy savings equal to the result of subtracting the cumulative energy savings achieved since 2009 from the product of multiplying the baseline for energy savings, described in division (A)(2)(a) of this section, by four and two-tenths of one per cent. If the result is zero or less for the year for which the calculation is being made, the utility shall not be required to achieve additional energy savings for that year, but may achieve additional energy savings for that year. Thereafter, the annual savings requirements shall be, for years 2017, 2018, 2019, and 2020, 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) (a) of this section shall be the average of the total kilowatt hours the electric distribution utility sold in the preceding three calendar years. The baseline for a peak demand reduction under division (A)(1)(b) of this section shall be the average
peak demand on the utility in the preceding three calendar years, except that the commission may reduce either baseline to adjust for new economic growth in the utility's certified territory. Neither baseline shall include the load and usage of any of the following customers:

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

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

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

(iv) A customer who is subject to the monthly charge established by section 3706.47 of the Revised Code until or unless the customer opts to pay the costs associated with compliance with this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2. That existing sections 3706.02, 3706.03, 
4928.644, and 4928.66 of the Revised Code are hereby repealed.

Section 3. (A) Not earlier than two years after the 
effective date of this section, the Director of Environmental 
Protection may apply to the Administrator of the United States 
Environmental Protection Agency for an exemption from the 
requirement to implement the decentralized motor vehicle 
inspection and maintenance program established under section 
3704.14 of the Revised Code. In making the application and for 
purposes of complying with the "Federal Clean Air Act," the 
Director shall request the Administrator to authorize the 
implementation of the Ohio Clean Air Program established by this 
act as an alternative to the decentralized program in those 
areas of the state where the program is currently operating.

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