

As Introduced

**131st General Assembly
Regular Session
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H. B. No. 554

Representative Amstutz

A BILL

To amend sections 4928.64, 4928.66, and 4928.6610 1
of the Revised Code to revise the requirements 2
for renewable energy, energy efficiency savings, 3
and peak demand reduction and to revise 4
provisions governing which customers can opt out 5
of related programs. 6

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

Section 1. That sections 4928.64, 4928.66, and 4928.6610 7
of the Revised Code be amended to read as follows: 8

Sec. 4928.64. (A) (1) As used in this section, "qualifying 9
renewable energy resource" means a renewable energy resource, as 10
defined in section 4928.01 of the Revised Code that has a 11
placed-in-service date on or after January 1, 1998, or with 12
respect to any run-of-the-river hydroelectric facility, an in- 13
service date on or after January 1, 1980; a renewable energy 14
resource created on or after January 1, 1998, by the 15
modification or retrofit of any facility placed in service prior 16
to January 1, 1998; or a mercantile customer-sited renewable 17
energy resource, whether new or existing, that the mercantile 18
customer commits for integration into the electric distribution 19

utility's demand-response, energy efficiency, or peak demand 20
reduction programs as provided under division (A) (2) (c) of 21
section 4928.66 of the Revised Code, including, but not limited 22
to, any of the following: 23

(a) A resource that has the effect of improving the 24
relationship between real and reactive power; 25

(b) A resource that makes efficient use of waste heat or 26
other thermal capabilities owned or controlled by a mercantile 27
customer; 28

(c) Storage technology that allows a mercantile customer 29
more flexibility to modify its demand or load and usage 30
characteristics; 31

(d) Electric generation equipment owned or controlled by a 32
mercantile customer that uses a renewable energy resource. 33

(2) For the purpose of this section and as it considers 34
appropriate, the public utilities commission may classify any 35
new technology as such a qualifying renewable energy resource. 36

(B) (1) ~~By 2027 and thereafter~~In each calendar year through 37
and including 2027, an electric distribution utility shall 38
provide from qualifying renewable energy resources, including, 39
at its discretion, qualifying renewable energy resources 40
obtained pursuant to an electricity supply contract, a portion 41
of the electricity supply required for its standard service 42
offer under section 4928.141 of the Revised Code, and an 43
electric services company shall provide a portion of its 44
electricity supply for retail consumers in this state from 45
qualifying renewable energy resources, including, at its 46
discretion, qualifying renewable energy resources obtained 47
pursuant to an electricity supply contract. That portion shall 48

equal ~~twelve~~two and one-half per cent of the total number of 49
kilowatt hours of electricity sold by the subject utility or 50
company to any and all retail electric consumers whose electric 51
load centers are served by that utility and are located within 52
the utility's certified territory or, in the case of an electric 53
services company, are served by the company and are located 54
within this state. However, nothing in this section precludes a 55
utility or company from providing a greater percentage. 56

(2) The portion required under division (B)(1) of this 57
section shall ~~be generated from renewable energy resources,~~ 58
~~including one-half~~include twelve hundredths of one per cent 59
from solar energy resources, ~~in accordance with the following~~ 60
~~benchmarks:~~ 61

| By end of year | Renewable energy | Solar energy | |
|---------------------------|-----------------------------|-------------------------|----|
| | resources | resources | |
| 2009 | 0.25% | 0.004% | 64 |
| 2010 | 0.50% | 0.010% | 65 |
| 2011 | 1% | 0.030% | 66 |
| 2012 | 1.5% | 0.060% | 67 |
| 2013 | 2% | 0.090% | 68 |
| 2014 | 2.5% | 0.12% | 69 |
| 2015 | 2.5% | 0.12% | 70 |
| 2016 | 2.5% | 0.12% | 71 |
| 2017 | 3.5% | 0.15% | 72 |
| 2018 | 4.5% | 0.18% | 73 |
| 2019 | 5.5% | 0.22% | 74 |
| 2020 | 6.5% | 0.26% | 75 |
| 2021 | 7.5% | 0.3% | 76 |
| 2022 | 8.5% | 0.34% | 77 |
| 2023 | 9.5% | 0.38% | 78 |

| | | | |
|-----------------------------------|------------------|------------------|----|
| 2024 | 10.5% | 0.42% | 79 |
| 2025 | 11.5% | 0.46% | 80 |
| 2026 and each calendar | 12.5% | 0.5% | 81 |
| year thereafter | | | 82 |

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

(a) Through facilities located in this state; or

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

(C) (1) The commission annually shall review an electric distribution utility's or electric services company's compliance with the ~~most recent applicable benchmark required percentages~~ under ~~division~~ divisions (B) (1) and (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~~ either percentage requirement, 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~~ requirement 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: 108

(i) Three hundred dollars for ~~2014, 2015, and 2016;~~ 109

(ii) Two hundred fifty dollars for 2017 and 2018; 110

(iii) Two hundred dollars for 2019 and 2020; 111

(iv) Similarly reduced every two years thereafter through 112
~~2026-2027~~ by fifty dollars, to a minimum of fifty dollars. 113

(b) The compliance payment pertaining to the renewable 114
energy resource ~~benchmarks under division (B) (2) of this section~~ 115
percentage requirement of two and thirty-eight hundredths of one 116
per cent shall equal the number of additional renewable energy 117
credits that the electric distribution utility or electric 118
services company would have needed to comply with ~~the applicable~~ 119
~~benchmark that percentage requirement~~ in the period under review 120
times an amount that shall begin at forty-five dollars and shall 121
be adjusted annually by the commission to reflect any change in 122
the consumer price index as defined in section 101.27 of the 123
Revised Code, but shall not be less than forty-five dollars. 124

(c) The compliance payment shall not be passed through by 125
the electric distribution utility or electric services company 126
to consumers. The compliance payment shall be remitted to the 127
commission, for deposit to the credit of the advanced energy 128
fund created under section 4928.61 of the Revised Code. Payment 129
of the compliance payment shall be subject to such collection 130
and enforcement procedures as apply to the collection of a 131
forfeiture under sections 4905.55 to 4905.60 and 4905.64 of the 132
Revised Code. 133

(3) An electric distribution utility or an electric 134
services company need not comply with ~~a benchmark~~ the 135
requirements under ~~division~~ divisions (B) (1) and (2) of this 136

section to the extent that its reasonably expected cost of that 137
compliance exceeds its reasonably expected cost of otherwise 138
producing or acquiring the requisite electricity by three per 139
cent or more. The cost of compliance shall be calculated as 140
though any exemption from taxes and assessments had not been 141
granted under section 5727.75 of the Revised Code. 142

(4) (a) An electric distribution utility or electric 143
services company may request the commission to make a force 144
majeure determination pursuant to this division regarding all or 145
part of the utility's or company's compliance with ~~any minimum-~~ 146
~~benchmark~~ either percentage requirement under division (B) (1) or 147
(2) of this section during the period of review occurring 148
pursuant to division (C) (2) of this section. The commission may 149
require the electric distribution utility or electric services 150
company to make solicitations for renewable energy resource 151
credits as part of its default service before the utility's or 152
company's request of force majeure under this division can be 153
made. 154

(b) Within ninety days after the filing of a request by an 155
electric distribution utility or electric services company under 156
division (C) (4) (a) of this section, the commission shall 157
determine if qualifying renewable energy resources are 158
reasonably available in the marketplace in sufficient quantities 159
for the utility or company to comply with the subject ~~minimum-~~ 160
~~benchmark~~ percentage requirement during the review period. In 161
making this determination, the commission shall consider whether 162
the electric distribution utility or electric services company 163
has made a good faith effort to acquire sufficient qualifying 164
renewable energy or, as applicable, solar energy resources to so 165
comply, including, but not limited to, by banking or seeking 166
renewable energy resource credits or by seeking the resources 167

through long-term contracts. Additionally, the commission shall 168
consider the availability of qualifying renewable energy or 169
solar energy resources in this state and other jurisdictions in 170
the PJM interconnection regional transmission organization, 171
L.L.C., or its successor and the midcontinent independent system 172
operator or its successor. 173

(c) If, pursuant to division (C) (4) (b) of this section, 174
the commission determines that qualifying renewable energy or 175
solar energy resources are not reasonably available to permit 176
the electric distribution utility or electric services company 177
to comply, during the period of review, with the subject ~~minimum-~~ 178
~~benchmark prescribed percentage requirement~~ under division (B) 179
(1) or (2) of this section, the commission shall modify that 180
compliance obligation of the utility or company as it determines 181
appropriate to accommodate the finding. Commission modification 182
shall not automatically reduce the obligation for the electric 183
distribution utility's or electric services company's compliance 184
in subsequent years. If it modifies the electric distribution 185
utility or electric services company obligation under division 186
(C) (4) (c) of this section, the commission may require the 187
utility or company, if sufficient renewable energy resource 188
credits exist in the marketplace, to acquire additional 189
renewable energy resource credits in subsequent years equivalent 190
to the utility's or company's modified obligation under division 191
(C) (4) (c) of this section. 192

(5) The commission shall establish a process to provide 193
for at least an annual review of the renewable energy resource 194
market in this state and in the service territories of the 195
regional transmission organizations that manage transmission 196
systems located in this state. The commission shall use the 197
results of this study to identify any needed changes to the 198

amount of the renewable energy compliance payment specified 199
under divisions (C) (2) (a) and (b) of this section. Specifically, 200
the commission may increase the amount to ensure that payment of 201
compliance payments is not used to achieve compliance with this 202
section in lieu of actually acquiring or realizing energy 203
derived from qualifying renewable energy resources. However, if 204
the commission finds that the amount of the compliance payment 205
should be otherwise changed, the commission shall present this 206
finding to the general assembly for legislative enactment. 207

(D) The commission annually shall submit to the general 208
assembly in accordance with section 101.68 of the Revised Code a 209
report describing all of the following: 210

(1) The compliance of electric distribution utilities and 211
electric services companies with division (B) of this section; 212

(2) The average annual cost of renewable energy credits 213
purchased by utilities and companies for the year covered in the 214
report; 215

(3) Any strategy for utility and company compliance or for 216
encouraging the use of qualifying renewable energy resources in 217
supplying this state's electricity needs in a manner that 218
considers available technology, costs, job creation, and 219
economic impacts. 220

The commission shall begin providing the information 221
described in division (D) (2) of this section in each report 222
submitted after September 10, 2012. The commission shall allow 223
and consider public comments on the report prior to its 224
submission to the general assembly. Nothing in the report shall 225
be binding on any person, including any utility or company for 226
the purpose of its compliance with ~~any benchmark~~ the 227

requirements under division (B) of this section, or the 228
enforcement of that provision under division (C) of this 229
section. 230

(E) All costs incurred by an electric distribution utility 231
in complying with the requirements of this section shall be 232
bypassable by any consumer that has exercised choice of supplier 233
under section 4928.03 of the Revised Code. 234

Sec. 4928.66. (A) (1) (a) ~~Beginning in 2009, In each~~ 235
calendar year through and including 2027, an electric 236
distribution utility shall implement energy efficiency programs 237
that achieve energy savings equivalent to ~~at least three-tenths-~~ 238
~~of one per cent the result of subtracting the cumulative energy~~ 239
savings achieved since 2009 from the product of multiplying the 240
total, annual average, and normalized kilowatt-hour sales of the 241
electric distribution utility during the preceding three 242
calendar years to customers in this state by four and two-tenths 243
of one per cent. If the result is zero or less for the year for 244
which the calculation is being made, the utility shall not be 245
required to achieve additional energy savings for that year, but 246
may achieve additional energy savings for that year. An energy 247
efficiency program may include a combined heat and power system 248
placed into service or retrofitted on or after the effective 249
date of the amendment of this section by S.B. 315 of the 129th 250
general assembly, September 10, 2012, or a waste energy recovery 251
system placed into service or retrofitted on or after September 252
10, 2012, except that a waste energy recovery system described 253
in division (A) (38) (b) of section 4928.01 of the Revised Code 254
may be included only if it was placed into service between 255
January 1, 2002, and December 31, 2004. For a waste energy 256
recovery or combined heat and power system, the savings shall be 257
as estimated by the public utilities commission. ~~The savings-~~ 258

~~requirement, using such a three year average, shall increase to~~ 259
~~an additional five tenths of one per cent in 2010, seven tenths~~ 260
~~of one per cent in 2011, eight tenths of one per cent in 2012,~~ 261
~~nine tenths of one per cent in 2013, and one per cent in 2014.~~ 262
~~In 2015 and 2016, an electric distribution utility shall achieve~~ 263
~~energy savings equal to the result of subtracting the cumulative~~ 264
~~energy savings achieved since 2009 from the product of~~ 265
~~multiplying the baseline for energy savings, described in~~ 266
~~division (A) (2) (a) of this section, by four and two tenths of~~ 267
~~one per cent. If the result is zero or less for the year for~~ 268
~~which the calculation is being made, the utility shall not be~~ 269
~~required to achieve additional energy savings for that year, but~~ 270
~~may achieve additional energy savings for that year. Thereafter,~~ 271
~~the annual savings requirements shall be, for years 2017, 2018,~~ 272
~~2019, and 2020, one per cent of the baseline, and two per cent~~ 273
~~each year thereafter, achieving cumulative energy savings in~~ 274
~~excess of twenty two per cent by the end of 2027. For Also for~~ 275
~~purposes of a waste energy recovery or combined heat and power~~ 276
~~system, an electric distribution utility shall not apply more~~ 277
~~than the total annual percentage of the electric distribution~~ 278
~~utility's industrial-customer load, relative to the electric~~ 279
~~distribution utility's total load, to the annual energy savings~~ 280
~~requirement.~~ 281

(b) ~~Beginning in 2009~~In each calendar year through and 282
including 2020, an electric distribution utility shall implement 283
peak demand reduction programs designed to achieve a ~~one per~~ 284
~~cent reduction in peak demand in 2009 and an additional seventy~~ 285
~~five hundredths of one per cent reduction each year through~~ 286
~~2014. In 2015 and 2016, an electric distribution utility shall~~ 287
~~achieve a reduction in peak demand equal to the result of~~ 288
~~subtracting the cumulative peak demand reductions achieved since~~ 289

2009 from the product of multiplying the ~~baseline for average~~ 290
peak demand ~~reduction, described in division (A) (2) (a) of this~~ 291
~~section, on the utility in the preceding three calendar years by~~ 292
four and seventy-five hundredths of one per cent. If the result 293
is zero or less for the year for which the calculation is being 294
made, the utility shall not be required to achieve an additional 295
reduction in peak demand for that year, but may achieve an 296
additional reduction in peak demand for that year. ~~In 2017 and~~ 297
~~each year thereafter through 2020, the utility shall achieve an~~ 298
~~additional seventy-five hundredths of one per cent reduction in~~ 299
~~peak demand.~~ 300

(2) For the purposes of divisions (A) (1) (a) and (b) of 301
this section: 302

(a) The ~~baseline for energy savings under division (A) (1)~~ 303
~~(a) of this section shall be the average of the total kilowatt~~ 304
hours the electric distribution utility sold in the preceding 305
three calendar years. The ~~baseline for a peak demand reduction~~ 306
under division (A) (1) (b) of this section shall be and the 307
average peak demand ~~on the utility in the preceding three~~ 308
~~calendar years, except that described in divisions (A) (1) (a) and~~ 309
(b) of this section may be reduced by the commission may reduce 310
~~either baseline~~ to adjust for new economic growth in the 311
utility's certified territory. Neither ~~baseline average~~ shall 312
include the load and usage of any of the following customers: 313

(i) Beginning January 1, 2017, a customer for which a 314
reasonable arrangement has been approved under section 4905.31 315
of the Revised Code; 316

(ii) A customer that has opted out of the utility's 317
portfolio plan under section 4928.6611 of the Revised Code; 318

(iii) A customer that has opted out of the utility's 319
portfolio plan under Section 8 of S.B. 310 of the 130th general 320
assembly. 321

(b) The commission may amend the ~~benchmarks~~requirements 322
set forth in division (A) (1) (a) or (b) of this section if, after 323
application by the electric distribution utility, the commission 324
determines that the amendment is necessary because the utility 325
cannot reasonably achieve the ~~benchmarks~~requirements due to 326
regulatory, economic, or technological reasons beyond its 327
reasonable control. 328

(c) Compliance with divisions (A) (1) (a) and (b) of this 329
section shall be measured by including the effects of all 330
demand-response programs for mercantile customers of the subject 331
electric distribution utility, all waste energy recovery systems 332
and all combined heat and power systems, and all such mercantile 333
customer-sited energy efficiency, including waste energy 334
recovery and combined heat and power, and peak demand reduction 335
programs, adjusted upward by the appropriate loss factors. Any 336
mechanism designed to recover the cost of energy efficiency, 337
including waste energy recovery and combined heat and power, and 338
peak demand reduction programs under divisions (A) (1) (a) and (b) 339
of this section may exempt mercantile customers that commit 340
their demand-response or other customer-sited capabilities, 341
whether existing or new, for integration into the electric 342
distribution utility's demand-response, energy efficiency, 343
including waste energy recovery and combined heat and power, or 344
peak demand reduction programs, if the commission determines 345
that ~~that~~the exemption reasonably encourages such customers to 346
commit those capabilities to those programs. If a mercantile 347
customer makes such existing or new demand-response, energy 348
efficiency, including waste energy recovery and combined heat 349

and power, or peak demand reduction capability available to an 350
electric distribution utility pursuant to division (A)(2)(c) of 351
this section, the electric utility's ~~baseline averages~~ under 352
~~division divisions~~ (A)(2)(1)(a) and (b) of this section shall be 353
adjusted to exclude the effects of all such demand-response, 354
energy efficiency, including waste energy recovery and combined 355
heat and power, or peak demand reduction programs that may have 356
existed during the period used to establish the 357
~~baseline averages~~. The ~~baseline averages~~ also shall be normalized 358
for changes in numbers of customers, sales, weather, peak 359
demand, and other appropriate factors so that the compliance 360
measurement is not unduly influenced by factors outside the 361
control of the electric distribution utility. 362

(d) (i) Programs implemented by a utility may include the 363
following: 364

(I) Demand-response programs; 365

(II) Smart grid investment programs, provided that such 366
programs are demonstrated to be cost-beneficial; 367

(III) Customer-sited programs, including waste energy 368
recovery and combined heat and power systems; 369

(IV) Transmission and distribution infrastructure 370
improvements that reduce line losses; 371

(V) Energy efficiency savings and peak demand reduction 372
that are achieved, in whole or in part, as a result of funding 373
provided from the universal service fund established by section 374
4928.51 of the Revised Code to benefit low-income customers 375
through programs that include, but are not limited to, energy 376
audits, the installation of energy efficiency insulation, 377
appliances, and windows, and other weatherization measures. 378

(ii) No energy efficiency or peak demand reduction 379
achieved under divisions (A) (2) (d) (i) (IV) and (V) of this 380
section shall qualify for shared savings. 381

(iii) Division (A) (2) (c) of this section shall be applied 382
to include facilitating efforts by a mercantile customer or 383
group of those customers to offer customer-sited demand- 384
response, energy efficiency, including waste energy recovery and 385
combined heat and power, or peak demand reduction capabilities 386
to the electric distribution utility as part of a reasonable 387
arrangement submitted to the commission pursuant to section 388
4905.31 of the Revised Code. 389

(e) No programs or improvements described in division (A) 390
(2) (d) of this section shall conflict with any statewide 391
building code adopted by the board of building standards. 392

(B) In accordance with rules it shall adopt, the public 393
utilities commission shall produce and docket at the commission 394
an annual report containing the results of its verification of 395
the annual levels of energy efficiency and of peak demand 396
reductions achieved by each electric distribution utility 397
pursuant to division (A) of this section. A copy of the report 398
shall be provided to the consumers' counsel. 399

(C) If the commission determines, after notice and 400
opportunity for hearing and based upon its report under division 401
(B) of this section, that an electric distribution utility has 402
failed to comply with ~~an~~ the energy efficiency or peak demand 403
reduction ~~requirement~~ requirements of division (A) of this 404
section, the commission shall assess a forfeiture on the utility 405
as provided under sections 4905.55 to 4905.60 and 4905.64 of the 406
Revised Code, either in the amount, per day per undercompliance 407
or noncompliance, relative to the period of the report, equal to 408

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

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

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

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

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

(1) A mercantile customer of an electric distribution

utility; 438

(2) Any customer of an electric distribution utility to 439
which either of the following applies: 440

~~(1)~~(a) The customer receives service above the primary 441
voltage level as determined by the utility's tariff 442
classification. 443

~~(2)~~(b) The customer is a commercial or industrial 444
customer to which both of the following apply: 445

~~(a)~~(i) The customer receives electricity through a meter 446
of an end user or through more than one meter at a single 447
location in a quantity that exceeds forty-five million kilowatt 448
hours of electricity for the preceding calendar year. 449

~~(b)~~(ii) The customer has made a written request for 450
registration as a self-assessing purchaser pursuant to section 451
5727.81 of the Revised Code. 452

(B) "Energy intensity" means the amount of energy, from 453
electricity, used or consumed per unit of production. 454

(C) "Portfolio plan" means the comprehensive energy 455
efficiency and peak-demand reduction program portfolio plan 456
required under rules adopted by the public utilities commission 457
and codified in Chapter 4901:1-39 of the Administrative Code or 458
hereafter recodified or amended. 459

Section 2. That existing sections 4928.64, 4928.66, and 460
4928.6610 of the Revised Code are hereby repealed. 461

Section 3. Section 4928.6610 of the Revised Code, as 462
amended by this act, shall take effect January 1, 2019. 463