

**As Introduced**

**133rd General Assembly  
Regular Session  
2019-2020**

**H. B. No. 798**

**Representative Hoops**



**A BILL**

To amend sections 3706.46, 3706.49, 3706.55, 1  
3706.61, 4928.143, and 4928.471 and to enact 2  
sections 3706.491, 3706.551, 4906.105, 4928.149, 3  
4928.473, 5301.075, 5301.076, 5301.077, 4  
5311.195, 5311.196, and 5311.197 of the Revised 5  
Code to delay for one year the charges and 6  
payments for nuclear resource and renewable 7  
energy credits, and revise certain other laws, 8  
enacted by H.B. 6 of the 133rd General Assembly, 9  
to amend Power Siting Board law and other 10  
electric utility law, to prohibit certain 11  
restrictions on solar energy systems, and to 12  
declare an emergency. 13

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

**Section 1.** That sections 3706.46, 3706.49, 3706.55, 14  
3706.61, 4928.143, and 4928.471 be amended and sections 15  
3706.491, 3706.551, 4906.105, 4928.149, 4928.473, 5301.075, 16  
5301.076, 5301.077, 5311.195, 5311.196, and 5311.197 of the 17  
Revised Code be enacted to read as follows: 18

**Sec. 3706.46.** (A) (1) Beginning for all bills rendered on 19

or after January 1, ~~2021~~2022, by an electric distribution 20  
utility in this state, such electric distribution utility shall 21  
collect from all of its retail electric customers in this state, 22  
each month, a charge or charges which, in the aggregate, are 23  
sufficient to produce the following revenue requirements: 24

(a) One hundred fifty million dollars annually for total 25  
disbursements required under section 3706.55 of the Revised Code 26  
from the nuclear generation fund; 27

(b) Twenty million dollars annually for total 28  
disbursements required under section 3706.55 of the Revised Code 29  
from the renewable generation fund. 30

(2) The public utilities commission shall determine the 31  
method by which the revenue is allocated or assigned to each 32  
electric distribution utility for billing and collection, 33  
provided that the method of allocation shall be based on the 34  
relative number of customers, relative quantity of kilowatt hour 35  
sales, or a combination of the two. The level and structure of 36  
the charge shall be authorized by the commission through a 37  
process that the commission shall determine is not for an 38  
increase in any rate, joint rate, toll, classification, charge, 39  
or rental, notwithstanding anything to the contrary in Title 40  
XLIX of the Revised Code. 41

(B) In authorizing the level and structure of any charge 42  
or charges to be billed and collected by each electric 43  
distribution utility, the commission shall ensure that the per- 44  
customer monthly charge for residential customers does not 45  
exceed eighty-five cents and that the per-customer monthly 46  
charge for industrial customers eligible to become self- 47  
assessing purchasers pursuant to division (C) of section 5727.81 48  
of the Revised Code does not exceed two thousand four hundred 49

dollars. For nonresidential customers that are not self- 50  
assessing purchasers, the level and design of the charge or 51  
charges shall be established in a manner that avoids abrupt or 52  
excessive total net electric bill impacts for typical customers. 53

(C) Each charge authorized by the commission under this 54  
section shall be subject to adjustment so as to reconcile actual 55  
revenue collected with the revenue needed to meet the revenue 56  
requirements under division (A) (1) of this section. The 57  
commission shall authorize each electric distribution utility to 58  
adopt accounting practices to facilitate such reconciliation. 59  
Notwithstanding any other provisions of the Revised Code, the 60  
charge or charges authorized by the commission may continue 61  
beyond December 31, ~~2027~~2028, only if it is necessary to 62  
reconcile actual revenue collected under this section during the 63  
period ending on December 31, ~~2027~~2028, with the actual revenue 64  
needed to meet the revenue requirements under division (A) (1) of 65  
this section for required disbursements under section 3706.55 of 66  
the Revised Code that may be due and owing during the same 67  
period. Such continuation shall be authorized only for such 68  
period of time beyond December 31, ~~2027~~2028, as may be 69  
reasonably necessary to complete the reconciliation. 70

**Sec. 3706.49.** (A) There is hereby created the nuclear 71  
generation fund and the renewable generation fund. Each fund 72  
shall be in the custody of the treasurer of state but shall not 73  
be part of the state treasury. Each fund shall consist of the 74  
charges collected under section 3706.46 of the Revised Code and 75  
deposited in accordance with section 3706.53 of the Revised 76  
Code. The interest generated by each fund shall be retained by 77  
each respective fund and used for the purposes set forth in 78  
sections 3706.40 to 3706.65 of the Revised Code. 79

(B) The treasurer of state shall distribute the moneys in the funds in accordance with directions provided by the Ohio air quality development authority. ~~Before giving directions under this division~~ Except with regard to the administrative costs described in section 3706.491 of the Revised Code, the authority shall consult with the public utilities commission ~~before giving directions under this division.~~

Sec. 3706.491. Except as provided in division (B) of this section, each fiscal year, beginning July 1, 2022, and ending June 30, 2029, and subject to controlling board approval, the Ohio air quality development authority may use, from the renewable generation fund and nuclear generation fund, created under section 3706.49 of the Revised Code, up to one hundred fifty thousand dollars from each fund, for a maximum total of three hundred thousand dollars, to pay for the authority's administrative costs for that year under sections 3706.40 to 3706.65 of the Revised Code.

(B) Amounts approved under division (A) of this section for fiscal year 2023 may be used for costs incurred in fiscal years 2020, 2021, and 2022 but may not exceed three hundred thousand dollars per fiscal year.

**Sec. 3706.55.** (A) For the period beginning with April of ~~2021-2022~~ and ending with January of ~~2028~~2029, the Ohio air quality development authority shall, in April of ~~2021-2022~~ and every three months thereafter through the end of the period, and not later than the twenty-first day of the month, direct the treasurer of state to remit money from the funds created under section 3706.49 of the Revised Code as follows:

(1) Subject to sections 3706.59 and 3706.61 of the Revised Code, from the nuclear generation fund to the owner or operator

of a qualifying nuclear resource, in the amount equivalent to 110  
the number of credits earned by the resource during the quarter 111  
that ended twelve months prior to the last day of the previous 112  
quarter multiplied by the credit price, and as directed by the 113  
authority in accordance with section 3706.61 of the Revised 114  
Code; 115

(2) Subject to section 3706.59 of the Revised Code, from 116  
the renewable generation fund to the owners or operators of 117  
qualifying renewable resources, in the amount equivalent to the 118  
number of credits earned by the resources during the quarter 119  
that ended twelve months prior to the last day of the previous 120  
quarter multiplied by the credit price. 121

(B) Notwithstanding section 4905.32 of the Revised Code, 122  
upon the completion of an annual management and financial audit 123  
required under section 3706.61 of the Revised Code during the 124  
period beginning in 2021 and ending in 2028, any amounts 125  
remaining in the nuclear generation fund and the renewable 126  
generation fund as of the thirty-first day of December 31, 2027 127  
of each year, minus the remittances that are required to be made 128  
between that date and January 21, 2028the twenty-first day of 129  
January of the succeeding year, shall be refunded to customers 130  
in a manner that shall be determined by the authority in 131  
consultation with the public utilities commission. 132

**Sec. 3706.551.** (A) Notwithstanding the renewable energy 133  
credit application deadlines for qualifying renewable resources 134  
under sections 3706.41 and 3706.43 of the Revised Code, the Ohio 135  
air quality development authority shall accept, review, and 136  
approve an application from a qualifying renewable resource if 137  
the resource submitted the application before March 1, 2020. 138

(B) The April 7, 2020, deadline for the first quarterly 139

report required under section 3706.45 of the Revised Code shall 140  
not apply to a qualifying renewable resource whose application 141  
for renewable energy credits is approved under division (A) of 142  
this section. 143

**Sec. 3706.61.** (A) In each year beginning in 2021 and 144  
ending in ~~2027~~2028, the public utilities commission shall, not 145  
later than the first day of May of each of those years, ~~conduct~~ 146  
complete a retrospective management and financial ~~review-audit,~~ 147  
including a financial need assessment, of the owner or operator 148  
of a qualifying nuclear resource and any such resource that 149  
receives payments for nuclear resource credits under section 150  
3706.55 of the Revised Code. In doing so, the commission ~~may~~ 151  
shall retain independent consultants and ~~advisors-auditors who~~ 152  
are knowledgeable and experienced in the particular subject to 153  
perform all ~~or any portion of~~ the annual ~~reviews-audits,~~ the cost 154  
of which shall be paid, at the direction of the Ohio air quality 155  
development authority, by the treasurer of state from the 156  
nuclear generation fund in accordance with section 3706.55 of 157  
the Revised Code. The consultants and auditors shall comply with 158  
generally accepted accounting principles and appropriate 159  
accounting standards in conducting an audit and making an audit 160  
report. 161

(B) Any owner or operator subject to ~~a review-an audit~~ 162  
under division (A) of this section ~~may~~shall, for purposes of the 163  
~~review-audit,~~ provide the commission or the commission's 164  
consultants or ~~advisors-auditors~~ with any information ~~the owner-~~ 165  
~~or operator chooses~~requested by the commission or its 166  
consultants or auditors. The owner or operator shall promptly 167  
and fully respond to any document, information, data, or other 168  
request that may be directed to its attention by the commission 169  
or the commission's consultants or ~~advisors-auditors~~ for the 170

purpose of the ~~review~~audit. Any material failure to timely and 171  
fully respond shall result in suspension of further receipt of 172  
payments for nuclear resource credits under section 3706.55 of 173  
the Revised Code until the failure is cured to the satisfaction 174  
of the commission. 175

(C) The commission shall submit a report summarizing the 176  
findings and recommendations of each annual ~~review~~audit to the 177  
president and minority leader of the senate, the speaker and 178  
minority leader of the house of representatives, and the ~~Ohio~~- 179  
~~air quality development~~ authority, and shall make the report 180  
publicly available, provided that the report shall not reveal 181  
any confidential or proprietary information. The submission 182  
shall include a copy of the owner's or operator's own certified 183  
annual audit that was obtained during the ~~review~~audit performed 184  
under this section. 185

(D) In consultation with the commission, the ~~Ohio air~~- 186  
~~quality development~~ authority shall consider the findings and 187  
recommendations of the ~~review~~audit and ~~may~~ shall cease or 188  
reduce payments for nuclear resource credits under section 189  
3706.55 of the Revised Code if the authority determines any of 190  
the following: 191

(1) That the federal ~~energy regulatory commission or the~~ 192  
~~nuclear regulatory commission~~ government or PJM interconnection, 193  
L.L.C., or its successor organization has established a monetary 194  
benefit or other ~~incentive payment~~ financial support program 195  
designed to continue the resource's commercial operation; 196

(2) That either requirement under division (A) or (B) (2) 197  
of section 3706.43 of the Revised Code is no longer being met; 198

(3) That the resource's owner or operator applies, before 199

May 1, ~~2027~~2028, to decommission the resource; 200

(4) That, for the purpose of ensuring that the funding for 201  
nuclear resource credits remains reasonable, the market price 202  
index exceeds the strike price on the first day of June in the 203  
year in which the report is submitted, in which case the 204  
authority shall apply the credit price adjustment for the 205  
twelve-month period that begins on that day and ends the thirty- 206  
first day of May, or, for ~~2027~~2028, for the seven-month period 207  
that begins on that day and ends the thirty-first day of 208  
December. 209

(5) That, for the purpose of ensuring that the funding for 210  
nuclear resource credits helps to maintain the economic 211  
viability of the resource at the lowest cost to consumers, 212  
payments for nuclear resource credits shall be limited to the 213  
amount necessary to increase the net income or profit margin of 214  
the resource from a negative amount to not more than zero for 215  
the annual audit period. In determining whether any resource 216  
operated with no net income or profit margin, the authority 217  
shall consider all revenue received or accrued from all sources 218  
and only reasonable and prudent expenses. 219

As used in this division, "reasonable and prudent 220  
expenses" shall include depreciation but shall not include 221  
lobbying costs, political or charitable donations, share 222  
buybacks, management bonuses, or incentive compensation. 223

(E) (1) If the authority determines it necessary to make 224  
reductions under division (D) of this section, the commission 225  
shall do all of the following, as necessary: 226

(a) Reduce the revenue requirement under division (A) (1) 227  
(a) of section 3706.46 of the Revised Code; 228



(b) Except when the authority has applied the credit price 229  
adjustment under division (D) (4) of this section, reduce the 230  
price of a nuclear resource credit under section 3706.45 of the 231  
Revised Code, in accordance with a reduced revenue requirement; 232

(c) Reduce the charge or charges under section 3706.46 of 233  
the Revised Code, to conform with a reduced revenue requirement; 234

(d) Adjust the percentages under section 3706.53 of the 235  
Revised Code in accordance with a reduced revenue requirement. 236

(2) Any revisions made by the commission under division 237  
(E) (1) of this section shall be made through a process that the 238  
commission shall determine is not for an increase in any rate, 239  
joint rate, toll, classification, charge, or rental, 240  
notwithstanding anything to the contrary in Title XLIX of the 241  
Revised Code. 242

(F) If the payments for nuclear resource credits are 243  
suspended or ceased under this section, the commission shall 244  
instruct the electric distribution utilities to accordingly 245  
suspend or cease billing and collecting customer charges under 246  
section 3706.46 of the Revised Code. 247

(G) Chapter 4903. of the Revised Code shall not apply to 248  
this section. 249

**Sec. 4906.105.** The power siting board shall submit a 250  
report to the general assembly, not later than December 1, 2021, 251  
on whether the current requirements for the planning of the 252  
power transmission system and associated facilities investment 253  
in this state are cost effective and in the interest of 254  
consumers. The board shall hold at least one public meeting 255  
before completing the report and shall complete the report in 256  
consultation with JobsOhio. The report shall include any 257

<u>recommendations for legislative changes to ensure transmission</u>	258
<u>planning is cost effective and in the interest of the public,</u>	259
<u>including recommendations regarding all of the following:</u>	260
<u>(A) Whether the definition of a major utility facility</u>	261
<u>should include electric transmission lines and associated</u>	262
<u>facilities the costs of which are recovered as a transmission</u>	263
<u>asset by the transmission owners;</u>	264
<u>(B) Whether the criteria for an accelerated certificate</u>	265
<u>application should be modified;</u>	266
<u>(C) Whether the certification process is sufficiently</u>	267
<u>transparent;</u>	268
<u>(D) Whether the board should require the following for, or</u>	269
<u>determine if the following apply to, a transmission project</u>	270
<u>certification application:</u>	271
<u>(1) That alternative transmission projects were</u>	272
<u>considered;</u>	273
<u>(2) That the project was competitively bid or compared to</u>	274
<u>the results of a competitive bid;</u>	275
<u>(3) That the project has been considered in the context of</u>	276
<u>the utility's larger transmission plan;</u>	277
<u>(4) That the project has been considered in the context of</u>	278
<u>the regional transmission planning process of PJM</u>	279
<u>interconnection regional transmission organization, L.L.C.;</u>	280
<u>(5) That the project could not have been deferred or</u>	281
<u>redesigned to achieve the same operational result at a lower</u>	282
<u>overall cost;</u>	283
<u>(6) That the project has provided historical information</u>	284

for an existing transmission project or information for a 285  
planned or proposed project. 286

**Sec. 4928.143.** (A) For the purpose of complying with 287  
section 4928.141 of the Revised Code, an electric distribution 288  
utility may file an application for public utilities commission 289  
approval of an electric security plan as prescribed under 290  
division (B) of this section. The utility may file that 291  
application prior to the effective date of any rules the 292  
commission may adopt for the purpose of this section, and, as 293  
the commission determines necessary, the utility immediately 294  
shall conform its filing to those rules upon their taking 295  
effect. 296

(B) Notwithstanding any other provision of Title XLIX of 297  
the Revised Code to the contrary except division (D) of this 298  
section, divisions (I), (J), and (K) of section 4928.20, 299  
division (E) of section 4928.64, and section 4928.69 of the 300  
Revised Code: 301

(1) An electric security plan shall include provisions 302  
relating to the supply and pricing of electric generation 303  
service. In addition, if the proposed electric security plan has 304  
a term longer than three years, it may include provisions in the 305  
plan to permit the commission to test the plan pursuant to 306  
division (E) of this section and any transitional conditions 307  
that should be adopted by the commission if the commission 308  
terminates the plan as authorized under that division. 309

(2) The plan may provide for or include, without 310  
limitation, any of the following: 311

(a) Automatic recovery of any of the following costs of 312  
the electric distribution utility, provided the cost is 313

prudently incurred: the cost of fuel used to generate the 314  
electricity supplied under the offer; the cost of purchased 315  
power supplied under the offer, including the cost of energy and 316  
capacity, and including purchased power acquired from an 317  
affiliate; the cost of emission allowances; and the cost of 318  
federally mandated carbon or energy taxes; 319

(b) A reasonable allowance for construction work in 320  
progress for any of the electric distribution utility's cost of 321  
constructing an electric generating facility or for an 322  
environmental expenditure for any electric generating facility 323  
of the electric distribution utility, provided the cost is 324  
incurred or the expenditure occurs on or after January 1, 2009. 325  
Any such allowance shall be subject to the construction work in 326  
progress allowance limitations of division (A) of section 327  
4909.15 of the Revised Code, except that the commission may 328  
authorize such an allowance upon the incurrence of the cost or 329  
occurrence of the expenditure. No such allowance for generating 330  
facility construction shall be authorized, however, unless the 331  
commission first determines in the proceeding that there is need 332  
for the facility based on resource planning projections 333  
submitted by the electric distribution utility. Further, no such 334  
allowance shall be authorized unless the facility's construction 335  
was sourced through a competitive bid process, regarding which 336  
process the commission may adopt rules. An allowance approved 337  
under division (B) (2) (b) of this section shall be established as 338  
a nonbypassable surcharge for the life of the facility. 339

(c) The establishment of a nonbypassable surcharge for the 340  
life of an electric generating facility that is owned or 341  
operated by the electric distribution utility, was sourced 342  
through a competitive bid process subject to any such rules as 343  
the commission adopts under division (B) (2) (b) of this section, 344

and is newly used and useful on or after January 1, 2009, which 345  
surcharge shall cover all costs of the utility specified in the 346  
application, excluding costs recovered through a surcharge under 347  
division (B) (2) (b) of this section. However, no surcharge shall 348  
be authorized unless the commission first determines in the 349  
proceeding that there is need for the facility based on resource 350  
planning projections submitted by the electric distribution 351  
utility. Additionally, if a surcharge is authorized for a 352  
facility pursuant to plan approval under division (C) of this 353  
section and as a condition of the continuation of the surcharge, 354  
the electric distribution utility shall dedicate to Ohio 355  
consumers the capacity and energy and the rate associated with 356  
the cost of that facility. Before the commission authorizes any 357  
surcharge pursuant to this division, it may consider, as 358  
applicable, the effects of any decommissioning, deratings, and 359  
retirements. 360

(d) Terms, conditions, or charges relating to limitations 361  
on customer shopping for retail electric generation service, 362  
bypassability, standby, back-up, or supplemental power service, 363  
default service, carrying costs, amortization periods, and 364  
accounting or deferrals, including future recovery of such 365  
deferrals, as would have the effect of stabilizing or providing 366  
certainty regarding retail electric service; 367

(e) Automatic increases or decreases in any component of 368  
the standard service offer price; 369

(f) Consistent with sections 4928.23 to 4928.2318 of the 370  
Revised Code, both of the following: 371

(i) Provisions for the electric distribution utility to 372  
securitize any phase-in, inclusive of carrying charges, of the 373  
utility's standard service offer price, which phase-in is 374

authorized in accordance with section 4928.144 of the Revised Code; 375  
376

(ii) Provisions for the recovery of the utility's cost of securitization. 377  
378

(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; 379  
380  
381  
382  
383

(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 384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404

system. 405

(i) Provisions under which the electric distribution 406  
utility may implement economic development, job retention, and 407  
energy efficiency programs, which provisions may allocate 408  
program costs across all classes of customers of the utility and 409  
those of electric distribution utilities in the same holding 410  
company system. 411

(C) (1) The burden of proof in the proceeding shall be on 412  
the electric distribution utility. The commission shall issue an 413  
order under this division for an initial application under this 414  
section not later than one hundred fifty days after the 415  
application's filing date and, for any subsequent application by 416  
the utility under this section, not later than two hundred 417  
seventy-five days after the application's filing date. Subject 418  
to division (D) of this section, the commission by order shall 419  
approve or modify and approve an application filed under 420  
division (A) of this section if it finds that the electric 421  
security plan so approved, including its pricing and all other 422  
terms and conditions, including any deferrals and any future 423  
recovery of deferrals, is more favorable in the aggregate as 424  
compared to the expected results that would otherwise apply 425  
under section 4928.142 of the Revised Code. Additionally, if the 426  
commission so approves an application that contains a surcharge 427  
under division (B) (2) (b) or (c) of this section, the commission 428  
shall ensure that the benefits derived for any purpose for which 429  
the surcharge is established are reserved and made available to 430  
those that bear the surcharge. Otherwise, the commission by 431  
order shall disapprove the application. 432

(2) (a) If the commission modifies and approves an 433  
application under division (C) (1) of this section, the electric 434

distribution utility may withdraw the application, thereby 435  
terminating it, and may file a new standard service offer under 436  
this section or a standard service offer under section 4928.142 437  
of the Revised Code. 438

(b) If the utility terminates an application pursuant to 439  
division (C) (2) (a) of this section or if the commission 440  
disapproves an application under division (C) (1) of this 441  
section, the commission shall issue such order as is necessary 442  
to continue the provisions, terms, and conditions of the 443  
utility's most recent standard service offer, along with any 444  
expected increases or decreases in fuel costs from those 445  
contained in that offer, until a subsequent offer is authorized 446  
pursuant to this section or section 4928.142 of the Revised 447  
Code, respectively. 448

(D) Regarding the rate plan requirement of division (A) of 449  
section 4928.141 of the Revised Code, if an electric 450  
distribution utility that has a rate plan that extends beyond 451  
December 31, 2008, files an application under this section for 452  
the purpose of its compliance with division (A) of section 453  
4928.141 of the Revised Code, that rate plan and its terms and 454  
conditions are hereby incorporated into its proposed electric 455  
security plan and shall continue in effect until the date 456  
scheduled under the rate plan for its expiration, and that 457  
portion of the electric security plan shall not be subject to 458  
commission approval or disapproval under division (C) of this 459  
section, and the earnings test provided for in division (F) of 460  
this section shall not apply until after the expiration of the 461  
rate plan. However, that utility may include in its electric 462  
security plan under this section, and the commission may 463  
approve, modify and approve, or disapprove subject to division 464  
(C) of this section, provisions for the incremental recovery or 465



the deferral of any costs that are not being recovered under the 466  
rate plan and that the utility incurs during that continuation 467  
period to comply with section 4928.141, division (B) of section 468  
4928.64, or division (A) of section 4928.66 of the Revised Code. 469

(E) If an electric security plan approved under division 470  
(C) of this section, except one withdrawn by the utility as 471  
authorized under that division, has a term, exclusive of phase- 472  
ins or deferrals, that exceeds three years from the effective 473  
date of the plan, the commission shall test the plan in the 474  
fourth year, and if applicable, every fourth year thereafter, to 475  
determine whether the plan, including its then-existing pricing 476  
and all other terms and conditions, including any deferrals and 477  
any future recovery of deferrals, continues to be more favorable 478  
in the aggregate and during the remaining term of the plan as 479  
compared to the expected results that would otherwise apply 480  
under section 4928.142 of the Revised Code. The commission shall 481  
also determine the prospective effect of the electric security 482  
plan to determine if that effect is substantially likely to 483  
provide the electric distribution utility with a return on 484  
common equity that is significantly in excess of the return on 485  
common equity that is likely to be earned by publicly traded 486  
companies, including utilities, that face comparable business 487  
and financial risk, with such adjustments for capital structure 488  
as may be appropriate. The burden of proof for demonstrating 489  
that significantly excessive earnings will not occur shall be on 490  
the electric distribution utility. ~~For affiliated Ohio electric-~~ 491  
~~distribution utilities that operate under a joint electric-~~ 492  
~~security plan, their total earned return on common equity shall-~~ 493  
~~be used for purposes of assessing significantly excessive-~~ 494  
~~earnings.~~ If the test results are in the negative or the 495  
commission finds that continuation of the electric security plan 496

will result in a return on equity that is significantly in 497  
excess of the return on common equity that is likely to be 498  
earned by publicly traded companies, including utilities, that 499  
will face comparable business and financial risk, with such 500  
adjustments for capital structure as may be appropriate, during 501  
the balance of the plan, the commission may terminate the 502  
electric security plan, but not until it shall have provided 503  
interested parties with notice and an opportunity to be heard. 504  
The commission may impose such conditions on the plan's 505  
termination as it considers reasonable and necessary to 506  
accommodate the transition from an approved plan to the more 507  
advantageous alternative. In the event of an electric security 508  
plan's termination pursuant to this division, the commission 509  
shall permit the continued deferral and phase-in of any amounts 510  
that occurred prior to that termination and the recovery of 511  
those amounts as contemplated under that electric security plan. 512

(F) With regard to the provisions that are included in an 513  
electric security plan under this section, the commission shall 514  
consider, following the end of each annual period of the plan, 515  
if any such adjustments resulted in excessive earnings as 516  
measured by whether the earned return on common equity of the 517  
electric distribution utility is significantly in excess of the 518  
return on common equity that was earned during the same period 519  
by publicly traded companies, including utilities, that face 520  
comparable business and financial risk, with such adjustments 521  
for capital structure as may be appropriate. ~~In making its~~ 522  
~~determination of significantly excessive earnings under this~~ 523  
~~division, the commission shall, for affiliated Ohio electric~~ 524  
~~distribution utilities that operate under a joint electric~~ 525  
~~security plan, use the total of the utilities' earned return on~~ 526  
~~common equity.~~ Consideration also shall be given to the capital 527

requirements of future committed investments in this state. The 528  
burden of proof for demonstrating that significantly excessive 529  
earnings did not occur shall be on the electric distribution 530  
utility. If the commission finds that such adjustments, in the 531  
aggregate, did result in significantly excessive earnings, it 532  
shall require the electric distribution utility to return to 533  
consumers the amount of the excess by prospective adjustments; 534  
provided that, upon making such prospective adjustments, the 535  
electric distribution utility shall have the right to terminate 536  
the plan and immediately file an application pursuant to section 537  
4928.142 of the Revised Code. Upon termination of a plan under 538  
this division, rates shall be set on the same basis as specified 539  
in division (C) (2) (b) of this section, and the commission shall 540  
permit the continued deferral and phase-in of any amounts that 541  
occurred prior to that termination and the recovery of those 542  
amounts as contemplated under that electric security plan. In 543  
making its determination of significantly excessive earnings 544  
under this division, the commission shall not consider, directly 545  
or indirectly, the revenue, expenses, or earnings of any 546  
~~affiliate that is not an Ohio electric distribution utility or~~ 547  
parent company. 548

Sec. 4928.149. Every year beginning not later than the 549  
year 2022 and ending after 2030, an electric distribution 550  
utility with an ownership interest in a legacy generation 551  
resource shall make a good faith effort to divest from its 552  
legacy generation resource obligations. 553

**Sec. 4928.471.** (A) Except as provided in division (E) of 554  
this section, not earlier than thirty days after ~~the effective-~~ 555  
~~date of this section~~October 22, 2019, an electric distribution 556  
utility may file an application to implement a decoupling 557  
mechanism for the 2019 calendar year and each calendar year 558

thereafter. For an electric distribution utility that applies 559  
for a decoupling mechanism under this section, the base 560  
distribution rates for residential and commercial customers 561  
shall be decoupled to the base distribution revenue and revenue 562  
resulting from implementation of section 4928.66 of the Revised 563  
Code, excluding program costs and shared savings, and recovered 564  
pursuant to an approved electric security plan under section 565  
4928.143 of the Revised Code, as of the twelve-month period 566  
ending on December 31, 2018. An application under this division 567  
shall not be considered an application under section 4909.18 of 568  
the Revised Code. 569

(B) The public utilities commission shall issue an order 570  
approving an application for a decoupling mechanism filed under 571  
division (A) of this section not later than sixty days after the 572  
application is filed. In determining that an application is not 573  
unjust and unreasonable, the commission shall verify that the 574  
rate schedule or schedules are designed to recover the electric 575  
distribution utility's 2018 annual revenues as described in 576  
division (A) of this section and that the decoupling rate design 577  
is aligned with the rate design of the electric distribution 578  
utility's existing base distribution rates. The decoupling 579  
mechanism shall recover an amount equal to the base distribution 580  
revenue and revenue resulting from implementation of section 581  
4928.66 of the Revised Code, excluding program costs and shared 582  
savings, and recovered pursuant to an approved electric security 583  
plan under section 4928.143 of the Revised Code, as of the 584  
twelve-month period ending on December 31, 2018. The decoupling 585  
mechanism shall be adjusted annually thereafter to reconcile any 586  
over recovery or under recovery from the prior year and to 587  
enable an electric distribution utility to recover the same 588  
level of revenues described in division (A) of this section in 589

each year. 590

(C) The commission's approval of a decoupling mechanism 591  
under this section shall not affect any other rates, riders, 592  
charges, schedules, classifications, or services previously 593  
approved by the commission. The decoupling mechanism shall 594  
remain in effect until the next time that the electric 595  
distribution utility applies for and the commission approves 596  
base distribution rates for the utility under section 4909.18 of 597  
the Revised Code. 598

(D) If the commission determines that approving a 599  
decoupling mechanism will result in a double recovery by the 600  
electric distribution utility, the commission shall not approve 601  
the application unless the utility cures the double recovery. 602

(E) Divisions (A), (B), and (C) of this section shall not 603  
apply to an electric distribution utility that has base 604  
distribution rates that became effective between December 31, 605  
2018, and ~~the effective date of this section~~ October 22, 2019, 606  
pursuant to an application for an increase in base distribution 607  
rates filed under section 4909.18 of the Revised Code. 608

(F) Subject to section 4928.473 of the Revised Code, a 609  
decoupling mechanism that has been approved by the commission 610  
under this section and in effect on the effective date of the 611  
amendments to this section by ..B. ... of the 133rd general 612  
assembly shall terminate sixty days after the effective date 613  
of ..B. ... of the 133rd general assembly. 614

Sec. 4928.473. An electric distribution utility's 615  
decoupling mechanism authorized by the public utilities 616  
commission under section 4928.471 of the Revised Code shall 617  
terminate pursuant to division (F) of that section, except as 618

may be necessary to reconcile the difference between revenue 619  
collected under the mechanism and the allowable cost recovery 620  
associated with the mechanism occurring prior to its termination 621  
date. No such recovery from a decoupling mechanism shall be 622  
authorized by the commission beyond the period of time required 623  
to complete this final reconciliation. 624

**Sec. 5301.075.** As used sections 5301.076 and 5301.077 of 625  
the Revised Code, "solar collector system" means a solar 626  
collector or other solar energy device, the primary purpose of 627  
which is to provide for the collection, storage, and 628  
distribution of solar energy for electricity generation, space 629  
heating, space cooling, or water heating. 630

**Sec. 5301.076.** No covenant, condition, or restriction set 631  
forth in a deed, and no rule, regulation, bylaw, or other 632  
governing document or agreement of a homeowners, neighborhood, 633  
civic, or other association, shall impose or be construed to 634  
impose any unreasonable limitation on the installation of a 635  
solar collector system on the roof or exterior walls of 636  
improvements, provided the property owner owns or has the right 637  
to exclusive use of the roof or exterior walls. For purposes of 638  
this section, "unreasonable limitation" includes a limitation 639  
that significantly increases the cost, or significantly 640  
decreases the efficiency, of the solar collector system. 641

**Sec. 5301.077.** If a property owner installs or intends to 642  
install a solar collector system, the property owner may 643  
negotiate to obtain a solar access easement described in section 644  
5301.63 of the Revised Code. 645

**Sec. 5311.195.** As used in sections 5311.196 and 5311.197 646  
of the Revised Code, "solar collector system" means a solar 647  
collector or other solar energy device, the primary purpose of 648

which is to provide for the collection, storage, and 649  
distribution of solar energy for electricity generation, space 650  
heating, space cooling, or water heating. 651

**Sec. 5311.196.** No declaration, bylaw, rule, regulation, or 652  
agreement of a condominium property, or construction of any of 653  
these items by the board of managers of its unit owners 654  
association, shall impose or be construed to impose any 655  
unreasonable limitation on the installation of a solar collector 656  
system on the roof or exterior walls of improvements, provided 657  
there is no competing use of the roof or exterior walls. For 658  
purposes of this section, "unreasonable limitation" includes a 659  
limitation that significantly increases the cost, or 660  
significantly decreases the efficiency, of the solar collector 661  
system. 662

**Sec. 5311.197.** If a unit owner installs or intends to 663  
install a solar collector system, the unit owner may negotiate 664  
to obtain a solar access easement described in section 5301.63 665  
of the Revised Code. 666

**Section 2.** That existing sections 3706.46, 3706.49, 667  
3706.55, 3706.61, 4928.143, and 4928.471 of the Revised Code are 668  
hereby repealed. 669

**Section 3.** This act is hereby declared to be an emergency 670  
measure necessary for the immediate preservation of the public 671  
peace, health, and safety. The reason for such emergency is to 672  
ensure the oversight of ratepayer dollars by delaying, prior to 673  
their implementation on January 1, 2021, the charges ratepayers 674  
must pay for nuclear resource and renewable energy credits under 675  
H.B. 6 of the 133rd General Assembly. Therefore, this act shall 676  
go into immediate effect. 677