

As Reported by the House Public Utilities Committee

134th General Assembly

Regular Session

2021-2022

Sub. H. B. No. 389

Representatives Leland, Seitz

**Cosponsors: Representatives Hoops, Ray, Stein, Lightbody, Boggs, Wilkin,
Ingram, Sweeney, Brinkman, Carfagna, Gross, Hillyer**

A BILL

To amend section 4928.02 and to enact sections 1
4928.6630, 4928.6631, 4928.6633, 4928.6634, 2
4928.6636, 4928.6639, 4928.6641, 4928.6644, 3
4928.6645, 4928.6646, 4928.6647, 4928.6650, 4
4928.6653, 4928.6655, 4928.6657, 4928.6660, and 5
4928.6665 of the Revised Code to permit electric 6
distribution utilities to establish energy 7
efficiency and demand reduction portfolios. 8

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

Section 1. That section 4928.02 be amended and sections 9
4928.6630, 4928.6631, 4928.6633, 4928.6634, 4928.6636, 10
4928.6639, 4928.6641, 4928.6644, 4928.6645, 4928.6646, 11
4928.6647, 4928.6650, 4928.6653, 4928.6655, 4928.6657, 12
4928.6660, and 4928.6665 of the Revised Code be enacted to read 13
as follows: 14

Sec. 4928.02. It is the policy of this state to do the 15
following throughout this state: 16

(A) Ensure the availability to consumers of adequate, 17

reliable, safe, efficient, nondiscriminatory, and reasonably
priced retail electric service; 18
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(B) Ensure the availability of unbundled and comparable 20
retail electric service that provides consumers with the 21
supplier, price, terms, conditions, and quality options they 22
elect to meet their respective needs; 23

(C) Ensure diversity of electricity supplies and 24
suppliers, by giving consumers effective choices over the 25
selection of those supplies and suppliers and by encouraging the 26
development of distributed and small generation facilities; 27

(D) Encourage innovation and market access for cost- 28
effective supply- and demand-side retail electric service 29
including, but not limited to, demand-side management, time- 30
differentiated pricing, waste energy recovery systems, smart 31
grid programs, and implementation of advanced metering 32
infrastructure; 33

(E) Encourage cost-effective and efficient access to 34
information regarding the operation of the transmission and 35
distribution systems of electric utilities in order to promote 36
both effective customer choice of retail electric service and 37
the development of performance standards and targets for service 38
quality for all consumers, including annual achievement reports 39
written in plain language; 40

(F) Ensure that an electric utility's transmission and 41
distribution systems are available to a customer-generator or 42
owner of distributed generation, so that the customer-generator 43
or owner can market and deliver the electricity it produces; 44

(G) Recognize the continuing emergence of competitive 45
electricity markets through the development and implementation 46

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| of flexible regulatory treatment; | 47 |
| (H) Ensure effective competition in the provision of | 48 |
| retail electric service by avoiding anticompetitive subsidies | 49 |
| flowing from a noncompetitive retail electric service to a | 50 |
| competitive retail electric service or to a product or service | 51 |
| other than retail electric service, and vice versa, including by | 52 |
| prohibiting the recovery of any generation-related costs through | 53 |
| distribution or transmission rates; | 54 |
| (I) Ensure retail electric service consumers protection | 55 |
| against unreasonable sales practices, market deficiencies, and | 56 |
| market power; | 57 |
| (J) Provide coherent, transparent means of giving | 58 |
| appropriate incentives to technologies that can adapt | 59 |
| successfully to potential environmental mandates; | 60 |
| (K) Encourage implementation of distributed generation | 61 |
| across customer classes through regular review and updating of | 62 |
| administrative rules governing critical issues such as, but not | 63 |
| limited to, interconnection standards, standby charges, and net | 64 |
| metering; | 65 |
| (L) Protect at-risk populations, including, but not | 66 |
| limited to, when considering the implementation of any new | 67 |
| advanced energy or renewable energy resource; | 68 |
| (M) Encourage the education of small business owners in | 69 |
| this state regarding the use of, and encourage the use of, | 70 |
| energy efficiency programs and alternative energy resources in | 71 |
| their businesses; | 72 |
| (N) <u>Encourage electric distribution utilities to develop</u> | 73 |
| <u>voluntary portfolios of energy savings programs to help their</u> | 74 |
| <u>customers to save energy;</u> | 75 |

(O) Facilitate the state's effectiveness in the global economy-; 76
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~~(O)~~ (P) Encourage cost-effective, timely, and efficient access to and sharing of customer usage data with customers and competitive suppliers to promote customer choice and grid modernization-; 78
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~~(P)~~ (Q) Ensure that a customer's data is provided in a standard format and provided to third parties in as close to real time as is economically justifiable in order to spur economic investment and improve the energy options of individual customers. 82
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In carrying out this policy, the commission shall consider rules as they apply to the costs of electric distribution infrastructure, including, but not limited to, line extensions, for the purpose of development in this state. 87
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Sec. 4928.6630. As used in sections 4928.6630 to 4928.6665 of the Revised Code: 91
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"Behavioral energy savings" means energy savings that occurs as a result of a change in a residential retail electric customer's pattern of electricity use. 93
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"Nonresidential retail customer" means a customer that is not a residential customer or a mercantile customer. 96
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"Energy savings" includes energy efficiency savings and peak demand reduction savings. 98
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Sec. 4928.6631. An electric distribution utility may submit an application to the public utilities commission for approval of a portfolio of energy savings programs to assist retail electric customers in achieving energy savings. 100
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| <u>Sec. 4928.6633. An electric distribution utility's</u> | 104 |
| <u>application for a portfolio shall include the following</u> | 105 |
| <u>information about the energy savings programs proposed for the</u> | 106 |
| <u>portfolio:</u> | 107 |
| <u>(A) Descriptions of the size and scope of the programs;</u> | 108 |
| <u>(B) The programs' costs, planned energy savings, and cost-</u> | 109 |
| <u>effectiveness;</u> | 110 |
| <u>(C) The utility's projection of the expected number of</u> | 111 |
| <u>customers opting out of the programs under section 4928.6657 of</u> | 112 |
| <u>the Revised Code;</u> | 113 |
| <u>(D) The program costs, availability, and planned energy</u> | 114 |
| <u>savings listed by programs for residential customer and</u> | 115 |
| <u>nonresidential retail customer classes and any programs that</u> | 116 |
| <u>could impact all customer classes;</u> | 117 |
| <u>(E) (1) Proposed mechanisms for the recovery of the</u> | 118 |
| <u>following:</u> | 119 |
| <u>(a) Program costs, excluding internal utility employee</u> | 120 |
| <u>labor costs already being recovered in the utility's rates</u> | 121 |
| <u>established under its most recent rate case under section</u> | 122 |
| <u>4909.18 of the Revised Code;</u> | 123 |
| <u>(b) Utility incentives;</u> | 124 |
| <u>(c) Lost distribution revenues, if applicable, including</u> | 125 |
| <u>any mechanism under division (D) of section 4928.66 of the</u> | 126 |
| <u>Revised Code, provided that a mechanism for recovery of lost</u> | 127 |
| <u>distribution revenues collected for a particular year may only</u> | 128 |
| <u>be collected for a period that shall not exceed the length of</u> | 129 |
| <u>the term of the portfolio approved by the public utilities</u> | 130 |
| <u>commission.</u> | 131 |

(2) If applicable, any lost distribution revenue mechanism 132
approved under this section or division (D) of section 4928.66 133
of the Revised Code shall be normalized for weather. No 134
mechanism approved under this section may result in any double 135
recovery. 136

(F) A plan to improve the following: 137

(1) Customers' smart technology capability for demand side 138
management; 139

(2) Utility control to reduce demand or impacts of 140
intermittent resources on the grid, which plan shall require 141
working in coordination with electric services companies. 142

(G) A description of how the portfolio will meet the 143
requirements under section 4928.6636 of the Revised Code; 144

(H) If the financial parameters described in section 145
4928.6647 of the Revised Code do not allow the portfolio design 146
to be consistent with the energy savings measures under section 147
4928.6639 of the Revised Code, an explanation of why consistency 148
is not possible; 149

(I) Any other information that the utility determines is 150
appropriate for commission review. 151

Sec. 4928.6634. (A) The public utilities commission, at 152
its discretion, may conduct hearings on a portfolio application. 153

(B) Not later than one hundred eighty days after receiving 154
an application under section 4928.6631 of the Revised Code, the 155
commission shall issue an order to approve or modify and approve 156
the application, if the commission finds that the application 157
meets the requirements under section 4928.6633 of the Revised 158
Code and includes the program required under section 4928.6636 159

of the Revised Code, and shall deny the application if these 160
requirements are not met. The commission may modify an 161
application only as necessary for the application to comply with 162
sections 4928.6633, 4928.6639, 4928.6641, 4928.6644, 4928.6647, 163
and 4928.6653 of the Revised Code. 164

An order approving or modifying and approving an 165
application shall authorize accounting mechanisms under which 166
the utility may defer and recover costs that would otherwise 167
exceed the rate cap established under section 4928.6650 of the 168
Revised Code. 169

(C) Not later than ninety days after the date of the 170
commission's final order, the utility shall accept the modified 171
application or withdraw the application if either or both of the 172
following occurs: 173

(1) The commission modifies and approves the application. 174

(2) A higher than expected number of customers opt out of 175
the portfolio. 176

(D) A portfolio approved by the commission shall be for a 177
term of not more than five years. To replace or extend a 178
portfolio that is terminating, a utility shall file a new 179
portfolio application with the commission. 180

Sec. 4928.6636. An electric distribution utility portfolio 181
approved under section 4928.6634 of the Revised Code shall 182
include at least one program planned to benefit low-income 183
residential customers with an annual income at or below two 184
hundred per cent of the federal poverty level. Total proposed 185
residential program costs for programs projected to reach low- 186
income residential customers pursuant to this section shall be 187
not less than fifteen per cent of the total program costs 188

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| <u>proposed for all residential programs in the portfolio.</u> | 189 |
| <u>Sec. 4928.6639. An electric distribution utility portfolio</u> | 190 |
| <u>shall be designed to do the following:</u> | 191 |
| <u>(A) Achieve gross annual energy savings of at least one-</u> | 192 |
| <u>half of one per cent of the gross annual energy savings of the</u> | 193 |
| <u>prior year's retail electric sales to participating customers,</u> | 194 |
| <u>except as limited by the requirement under section 4928.6647 of</u> | 195 |
| <u>the Revised Code;</u> | 196 |
| <u>(B) Achieve not more than thirty per cent of the planned</u> | 197 |
| <u>annual gross energy savings through residential programs</u> | 198 |
| <u>designed to deliver only behavioral energy savings;</u> | 199 |
| <u>(C) Emphasize smart technology measures, including, but</u> | 200 |
| <u>not limited to, energy star qualified smart thermostats and</u> | 201 |
| <u>appliance controllers;</u> | 202 |
| <u>(D) Determine gross energy savings as follows:</u> | 203 |
| <u>(1) Directly through standard evaluation, measurement, and</u> | 204 |
| <u>verification protocols, such as a bill savings analysis, or, if</u> | 205 |
| <u>available, through metering that has the capability to measure</u> | 206 |
| <u>demand in kilowatts;</u> | 207 |
| <u>(2) For gross energy savings not determined directly</u> | 208 |
| <u>pursuant to division (D)(1) of this section, with a baseline</u> | 209 |
| <u>established for federal energy standards for appliances and</u> | 210 |
| <u>other equipment or standards under the Ohio building code under</u> | 211 |
| <u>Chapter 3781. of the Revised Code;</u> | 212 |
| <u>(3) For demand savings when residential advanced metering</u> | 213 |
| <u>is not available, the amount of kilowatt hours shifted to</u> | 214 |
| <u>periods other than periods of high demand, if this method of</u> | 215 |
| <u>determining gross energy savings is included in the approved</u> | 216 |

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| <u>portfolio.</u> | 217 |
| <u>(E) For gross energy savings determined under division (D)</u> | 218 |
| <u>(2) of this section, only permit customer incentives on</u> | 219 |
| <u>equipment that exceeds federal energy standards or Ohio building</u> | 220 |
| <u>code standards;</u> | 221 |
| <u>(F) Exclude gross energy savings from any physical device</u> | 222 |
| <u>or equipment that has not been delivered or installed with the</u> | 223 |
| <u>permission or at the request of a participating customer.</u> | 224 |
| <u>Sec. 4928.6641. An electric distribution utility's</u> | 225 |
| <u>portfolio approved under sections 4928.6630 to 4928.6665 of the</u> | 226 |
| <u>Revised Code shall be cost-effective based on a utility cost</u> | 227 |
| <u>test that compares the total cost of the portfolio's measurable</u> | 228 |
| <u>programs to any of the following:</u> | 229 |
| <u>(A) Avoided electric generation, transmission, and</u> | 230 |
| <u>distribution costs;</u> | 231 |
| <u>(B) Reductions in market prices for energy and capacity;</u> | 232 |
| <u>(C) Reductions in utility credit and collection costs;</u> | 233 |
| <u>(D) Any other quantifiable utility system benefits.</u> | 234 |
| <u>Sec. 4928.6644. Customer incentives offered by an electric</u> | 235 |
| <u>distribution utility through a portfolio under sections</u> | 236 |
| <u>4928.6630 to 4928.6665 of the Revised Code shall provide a</u> | 237 |
| <u>meaningful inducement for customers to participate in the cost-</u> | 238 |
| <u>effective delivery of projected energy savings. Utility</u> | 239 |
| <u>incentives through such a portfolio shall not exceed ten per</u> | 240 |
| <u>cent of net program costs on an after-tax basis and shall not</u> | 241 |
| <u>count toward the net cost of the portfolio under section</u> | 242 |
| <u>4928.6647 of the Revised Code or the rate cap under section</u> | 243 |
| <u>4928.6650 of the Revised Code. The public utilities commission</u> | 244 |

may adopt rules to implement this section. 245

Sec. 4928.6645. If an electric distribution utility with a 246
portfolio approved by the public utilities commission under 247
sections 4928.6630 to 4928.6665 of the Revised Code produces or 248
pays for any advertisement or marketing material to promote 249
energy savings programs established under the portfolio, the 250
advertisement or marketing material shall include a description 251
of the specific energy savings programs that the utility is 252
promoting and offering to its customers. 253

Sec. 4928.6646. The recovery of any lost distribution 254
revenues under an electric distribution utility portfolio 255
approved under section 4928.6634 of the Revised Code shall not 256
count toward the net cost of the portfolio under section 257
4928.6647 of the Revised Code or the rate cap under section 258
4928.6650 of the Revised Code. The recovery of any lost 259
distribution revenues is not subject to sections 4928.6655 and 260
4928.6657 of the Revised Code. 261

Sec. 4928.6647. The net cost of an electric distribution 262
utility's portfolio under sections 4928.6630 to 4928.6665 of the 263
Revised Code shall not exceed two and one-quarter per cent of 264
the difference between the utility's annual total electric 265
operating revenues for the previous year as reported in the 266
utility's FERC financial report, FERC form 1, account 400, 267
required by the federal energy regulatory commission less the 268
purchased power expense, account 555, for the same year. The 269
utility's net cost equals the utility's total program costs for 270
a portfolio approved by the public utilities commission minus 271
eighty per cent of any revenues the utility collects during the 272
same program year from capacity, environmental, and other 273
attributes of the utility's energy savings programs, including 274

bidding efficiency into the wholesale market operated by PJM 275
interconnection, L.L.C. The utility shall retain twenty per cent 276
of revenues received from program energy savings that are bid 277
into the wholesale market, which revenues shall be separate from 278
utility incentives described in section 4928.6644 of the Revised 279
Code. 280

Sec. 4928.6650. (A) A utility's portfolio costs shall not 281
result in a rate that produces a monthly charge for residential 282
customers that is greater than one dollar and fifty cents per 283
customer per month. 284

(B) If a higher than expected number of residential 285
customers opt out of the portfolio under section 4928.6657 of 286
the Revised Code, the utility automatically is authorized to 287
reduce spending under its approved portfolio to ensure that the 288
utility complies with division (A) of this section. 289

Sec. 4928.6653. The following applies to gross annual 290
energy savings from transmission and distribution system 291
investments that result in measurable energy savings: 292

(A) The investments shall not be considered to be a 293
program within an electric distribution utility portfolio under 294
sections 4928.6630 to 4928.6665 of the Revised Code for cost 295
recovery and incentive purposes under the portfolio. 296

(B) The energy savings shall count toward determining 297
whether the utility achieved its annual gross energy savings 298
required under division (A) of section 4928.6639 of the Revised 299
Code. 300

Sec. 4928.6655. (A) Mercantile customers shall be 301
automatically opted out of any opportunities to participate in 302
an electric distribution utility's portfolio and any portfolio 303

cost recovery unless they affirmatively choose to opt in to the 304
utility's portfolio in writing. 305

(B) After the public utilities commission approves a 306
utility's portfolio pursuant to section 4928.6634 of the Revised 307
Code, the utility shall send, to all mercantile customers in its 308
certified territory, a written notice describing the option for 309
such customers to affirmatively opt in to portfolio 310
participation. 311

(1) The opt-in notice shall provide the cost of 312
participating in the portfolio to the mercantile customer. 313

(2) A mercantile customer submitting a written opt-in 314
application, as prescribed by the utility, shall be deemed to 315
have opted in. 316

(C) Mercantile customers that opt in shall remain as an 317
opt-in customer for a period of not less than twelve months from 318
the date the customer first receives the benefit of 319
participation. 320

Sec. 4928.6657. (A) At the start of a new portfolio, an 321
electric distribution utility that has a portfolio approved 322
under section 4928.6634 of the Revised Code shall provide 323
residential customers and nonresidential retail customers with 324
the option to opt out of portfolio participation and cost 325
recovery for the portfolio or, for customers that have 326
previously opted out, to opt in to such participation. Within 327
five business days after a portfolio is approved by the public 328
utilities commission, the utility shall send, to all residential 329
customers and nonresidential retail customers in its certified 330
territory, a written notice describing the options to opt out of 331
and opt back in to participation in the portfolio. The time 332

period during which a customer may opt out of, or opt in to, 333
participation shall extend at least twenty-one days from the 334
date of the postmark on the written notice. If a customer, as 335
prescribed by the utility, indicates the customer's intent to 336
opt out or opt in before the deadline has elapsed, the customer 337
shall be deemed to have opted out or opted in, as applicable. 338

(B) The opt-out and opt-in process shall permit customers 339
to express the intent to opt out or to opt in by returning a 340
postcard or similar notice to the utility. The process also 341
shall include alternative methods, such as a telephonic or an 342
internet method, provided that these alternative methods allow 343
for a verification of the customer's election to opt out or opt 344
in. 345

(C) If, upon the expiration of its term, a portfolio is 346
renewed or if a new portfolio is approved by the commission, a 347
customer's election to opt out of participation in a previous 348
portfolio pursuant to division (A) of this section remains in 349
effect until the customer elects to opt in as prescribed in the 350
notice required under division (A) of this section. 351

Sec. 4928.6660. An electric services company that promotes 352
energy savings and the use of electric distribution utility 353
energy savings programs shall be eligible to be considered a 354
third party to whom the customer may convey an energy savings 355
incentive associated with participation in a utility energy 356
savings program if all of the following are true: 357

(A) The electric services company has obtained the 358
customer's written consent. 359

(B) The electric services company has verified the 360
customer's identity by providing the customer's electric 361

distribution utility account number. 362

(C) The electric services company has explained how the 363
incentive being conveyed meets the energy savings program 364
eligibility requirements. 365

(D) The electric services company produces evidence that 366
the customer completed the program. This evidence may be in the 367
form of a product identification code, product serial number, or 368
similar evidence that proves installation or delivery of an 369
eligible product under the energy savings program. 370

Sec. 4928.6665. (A) An electric distribution utility's 371
portfolio approved by the public utilities commission under 372
section 4928.6634 of the Revised Code shall be subject to an 373
annual cost-effectiveness and compliance review over the term of 374
the portfolio. As part of the annual review, the utility shall 375
review the cost-effectiveness of its portfolio according to the 376
utility cost test and inputs described in section 4928.6641 of 377
the Revised Code. Based on the cost-effectiveness review, the 378
utility may update its portfolio as needed. 379

(B) Not later than the fifteenth day of April each year, 380
the utility shall file with the commission a report of its 381
annual review for the preceding year. 382

(C) Not later than July 1, 2026, and every three years 383
thereafter, the commission shall review each report received 384
pursuant to division (B) of this section and, in accordance with 385
section 101.68 of the Revised Code, submit a report to the 386
general assembly that includes a compilation of utility reports 387
received and an overview of utility compliance and energy 388
savings. 389

(D) Based on the results of the commission's review of a 390

utility's report, reasonable costs for evaluation, measurement, 391
and verification for each utility's program shall be recovered 392
through the affected utility's portfolio cost recovery 393
mechanism. Such costs shall not be considered as portfolio costs 394
or included in any calculations required under section 4928.6647 395
of the Revised Code or the rate cap under section 4928.6650 of 396
the Revised Code. 397

(E) During the review under this section and subject to 398
the general assembly's findings regarding the utility's 399
performance and compliance described in the commission's report, 400
the utility shall continue to offer customers a portfolio of 401
energy savings programs. 402

Section 2. That existing section 4928.02 of the Revised 403
Code is hereby repealed. 404