

**As Introduced**

**135th General Assembly**

**Regular Session**

**2023-2024**

**H. B. No. 79**

**Representatives Seitz, Sweeney**

**Cosponsors: Representatives Weinstein, Isaacsohn, Hoops, Klopfenstein,  
Upchurch, McNally, Brennan, Carruthers, Dell'Aquila, Skindell, Miller, A., Abdullahi**

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**A BILL**

To amend section 4928.02 and to enact sections 1  
4928.6630, 4928.6631, 4928.6633, 4928.6634, 2  
4928.6635, 4928.6636, 4928.6637, 4928.6639, 3  
4928.6641, 4928.6644, 4928.6645, 4928.6646, 4  
4928.6647, 4928.6650, 4928.6653, 4928.6655, 5  
4928.6657, 4928.6660, and 4928.6665 of the 6  
Revised Code to permit electric distribution 7  
utilities to establish energy efficiency and 8  
demand reduction portfolios. 9

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

**Section 1.** That section 4928.02 be amended and sections 10  
4928.6630, 4928.6631, 4928.6633, 4928.6634, 4928.6635, 11  
4928.6636, 4928.6637, 4928.6639, 4928.6641, 4928.6644, 12  
4928.6645, 4928.6646, 4928.6647, 4928.6650, 4928.6653, 13  
4928.6655, 4928.6657, 4928.6660, and 4928.6665 of the Revised 14  
Code be enacted to read as follows: 15

**Sec. 4928.02.** It is the policy of this state to do the 16  
following throughout this state: 17

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

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

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

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

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

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

(G) Recognize the continuing emergence of competitive

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

<u>customers to save energy;</u>	76
<u>(O) Facilitate the state's effectiveness in the global economy;</u>	77
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<u>(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;</u>	79
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<u>(P) 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.</u>	83
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<u>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.</u>	88
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<u>Sec. 4928.6630. As used in sections 4928.6630 to 4928.6665 of the Revised Code:</u>	92
<u>Sec. 4928.6630. As used in sections 4928.6630 to 4928.6665 of the Revised Code:</u>	93
<u>"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.</u>	94
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<u>"Nonresidential retail customer" means a customer that is not a residential customer or a mercantile customer.</u>	97
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<u>"Energy savings" includes energy efficiency savings and peak demand reduction savings.</u>	99
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<u>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</u>	101
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<u>retail electric customers in achieving energy savings.</u>	104
<u>Sec. 4928.6633. An electric distribution utility's</u>	105
<u>application for a portfolio shall include the following</u>	106
<u>information about the energy savings programs proposed for the</u>	107
<u>portfolio:</u>	108
<u>(A) Descriptions of the size and scope of the programs;</u>	109
<u>(B) The programs' costs, planned energy savings, and cost-</u>	110
<u>effectiveness;</u>	111
<u>(C) The utility's projection of the expected number of</u>	112
<u>customers opting out of the programs under section 4928.6657 of</u>	113
<u>the Revised Code;</u>	114
<u>(D) The program costs, availability, and planned energy</u>	115
<u>savings listed by programs for residential customer and</u>	116
<u>nonresidential retail customer classes and any programs that</u>	117
<u>could impact all customer classes;</u>	118
<u>(E) (1) Proposed mechanisms for the recovery of the</u>	119
<u>following:</u>	120
<u>(a) Program costs, excluding internal utility employee</u>	121
<u>labor costs already being recovered in the utility's rates</u>	122
<u>established under its most recent rate case under section</u>	123
<u>4909.18 of the Revised Code;</u>	124
<u>(b) Utility incentives;</u>	125
<u>(c) Lost distribution revenues, if applicable, including</u>	126
<u>any mechanism under division (D) of section 4928.66 of the</u>	127
<u>Revised Code, provided that a mechanism for recovery of lost</u>	128
<u>distribution revenues collected for a particular year may only</u>	129
<u>be collected for a period that shall not exceed the length of</u>	130
<u>the term of the portfolio approved by the public utilities</u>	131

<u>commission.</u>	132
<u>(2) If applicable, any lost distribution revenue mechanism</u>	133
<u>approved under this section or division (D) of section 4928.66</u>	134
<u>of the Revised Code shall be normalized for weather. No</u>	135
<u>mechanism approved under this section may result in any double</u>	136
<u>recovery.</u>	137
<u>(F) A plan to improve the following:</u>	138
<u>(1) Customers' smart technology capability for demand side</u>	139
<u>management;</u>	140
<u>(2) Utility control to reduce demand or impacts of</u>	141
<u>intermittent resources on the grid, which plan shall require</u>	142
<u>working in coordination with electric services companies.</u>	143
<u>(G) A description of how the portfolio will meet the</u>	144
<u>requirements under section 4928.6636 of the Revised Code;</u>	145
<u>(H) If the financial parameters described in section</u>	146
<u>4928.6647 of the Revised Code do not allow the portfolio design</u>	147
<u>to be consistent with the energy savings measures under section</u>	148
<u>4928.6639 of the Revised Code, an explanation of why consistency</u>	149
<u>is not possible;</u>	150
<u>(I) Any other information that the utility determines is</u>	151
<u>appropriate for commission review.</u>	152
<b><u>Sec. 4928.6634. (A) The public utilities commission, at</u></b>	153
<b><u>its discretion, may conduct hearings on a portfolio application.</u></b>	154
<u>(B) Not later than one hundred eighty days after receiving</u>	155
<u>an application under section 4928.6631 of the Revised Code, the</u>	156
<u>commission shall issue an order to approve or modify and approve</u>	157
<u>the application, if the commission finds that the application</u>	158
<u>meets the requirements under section 4928.6633 of the Revised</u>	159

Code and includes the program required under section 4928.6636 160  
of the Revised Code, and shall deny the application if these 161  
requirements are not met. The commission may modify an 162  
application only as necessary for the application to comply with 163  
sections 4928.6633, 4928.6639, 4928.6641, 4928.6644, 4928.6647, 164  
and 4928.6653 of the Revised Code. 165

An order approving or modifying and approving an 166  
application shall authorize accounting mechanisms under which 167  
the utility may defer and recover costs that would otherwise 168  
exceed the rate cap established under section 4928.6650 of the 169  
Revised Code. 170

(C) Not later than ninety days after the date of the 171  
commission's final order, the utility shall accept the modified 172  
application or withdraw the application if either or both of the 173  
following occurs: 174

(1) The commission modifies and approves the application. 175

(2) A higher than expected number of customers opt out of 176  
the portfolio. 177

(D) A portfolio approved by the commission shall be for a 178  
term of not more than five years. To replace or extend a 179  
portfolio that is terminating, a utility shall file a new 180  
portfolio application with the commission. 181

**Sec. 4928.6635.** (A) As used in this section, "proceeding" 182  
means a proceeding relating to a portfolio application under 183  
section 4928.6634 of the Revised Code. 184

(B) No electric distribution utility or its affiliate may 185  
do either of the following to induce any party to a proceeding 186  
to enter into a settlement of a proceeding pending before the 187  
commission: 188

(1) Make a cash payment to that party that is not 189  
specifically tied to the provision of services related to the 190  
utility offering energy efficiency programs; 191

(2) Enter into any agreement or any financial or private 192  
arrangement with that party that is not made part of the public 193  
case record. 194

**Sec. 4928.6636.** An electric distribution utility portfolio 195  
approved under section 4928.6634 of the Revised Code shall 196  
include at least one program planned to benefit low-income 197  
residential customers with an annual income at or below two 198  
hundred per cent of the federal poverty level. Total proposed 199  
residential program costs for programs projected to reach low- 200  
income residential customers pursuant to this section shall be 201  
not less than fifteen per cent of the total program costs 202  
proposed for all residential programs in the portfolio. 203

**Sec. 4928.6637.** (A) As used in this section, "trade 204  
allies" means entities that, on behalf of a customer 205  
participating in an electric distribution utility's energy 206  
efficiency program, install equipment or measures that qualify 207  
for an incentive included in a portfolio approved under section 208  
4928.6634 of the Revised Code. 209

(B) An electric distribution utility portfolio approved 210  
under section 4928.6634 of the Revised Code shall include 211  
provisions intended to reasonably accommodate the participation 212  
of small businesses as trade allies in all the counties within 213  
the electric distribution utility's service area under the 214  
utility's proposed energy efficiency programs. 215

**Sec. 4928.6639.** An electric distribution utility portfolio 216  
shall be designed to do the following: 217



(A) Achieve gross annual energy savings of at least one-half of one per cent of the gross annual energy savings of the prior year's retail electric sales to participating customers, except as limited by the requirement under section 4928.6647 of the Revised Code; 218  
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(B) Achieve not more than thirty per cent of the planned annual gross energy savings through residential programs designed to deliver only behavioral energy savings; 223  
224  
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(C) Emphasize smart technology measures, including, but not limited to, energy star qualified smart thermostats and appliance controllers; 226  
227  
228

(D) Determine gross energy savings as follows: 229

(1) Directly through standard evaluation, measurement, and verification protocols, such as a bill savings analysis, or, if available, through metering that has the capability to measure demand in kilowatts; 230  
231  
232  
233

(2) For gross energy savings not determined directly pursuant to division (D)(1) of this section, with a baseline established for federal energy standards for appliances and other equipment or standards under the Ohio building code under Chapter 3781. of the Revised Code; 234  
235  
236  
237  
238

(3) For demand savings when residential advanced metering is not available, the amount of kilowatt hours shifted to periods other than periods of high demand, if this method of determining gross energy savings is included in the approved portfolio. 239  
240  
241  
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243

(E) For gross energy savings determined under division (D)(2) of this section, only permit customer incentives on equipment that exceeds federal energy standards or Ohio building 244  
245  
246

<u>code standards;</u>	247
<u>(F) Exclude gross energy savings from any physical device</u>	248
<u>or equipment that has not been delivered or installed with the</u>	249
<u>permission or at the request of a participating customer.</u>	250
<b><u>Sec. 4928.6641. An electric distribution utility's</u></b>	251
<u>portfolio approved under sections 4928.6630 to 4928.6665 of the</u>	252
<u>Revised Code shall be cost-effective based on a utility cost</u>	253
<u>test that compares the total cost of the portfolio's measurable</u>	254
<u>programs to any of the following:</u>	255
<u>(A) Avoided electric generation, transmission, and</u>	256
<u>distribution costs;</u>	257
<u>(B) Reductions in market prices for energy and capacity;</u>	258
<u>(C) Reductions in utility credit and collection costs;</u>	259
<u>(D) Any other quantifiable utility system benefits.</u>	260
<b><u>Sec. 4928.6644. Customer incentives offered by an electric</u></b>	261
<u>distribution utility through a portfolio under sections</u>	262
<u>4928.6630 to 4928.6665 of the Revised Code shall provide a</u>	263
<u>meaningful inducement for customers to participate in the cost-</u>	264
<u>effective delivery of projected energy savings. Utility</u>	265
<u>incentives through such a portfolio shall not exceed ten per</u>	266
<u>cent of net program costs on an after-tax basis and shall not</u>	267
<u>count toward the net cost of the portfolio under section</u>	268
<u>4928.6647 of the Revised Code or the rate cap under section</u>	269
<u>4928.6650 of the Revised Code. The public utilities commission</u>	270
<u>may adopt rules to implement this section.</u>	271
<b><u>Sec. 4928.6645. If an electric distribution utility with a</u></b>	272
<u>portfolio approved by the public utilities commission under</u>	273
<u>sections 4928.6630 to 4928.6665 of the Revised Code produces or</u>	274

pays for any advertisement or marketing material to promote 275  
energy savings programs established under the portfolio, the 276  
advertisement or marketing material shall include a description 277  
of the specific energy savings programs that the utility is 278  
promoting and offering to its customers. 279

**Sec. 4928.6646.** The recovery of any lost distribution 280  
revenues under an electric distribution utility portfolio 281  
approved under section 4928.6634 of the Revised Code shall not 282  
count toward the net cost of the portfolio under section 283  
4928.6647 of the Revised Code or the rate cap under section 284  
4928.6650 of the Revised Code. The recovery of any lost 285  
distribution revenues is not subject to sections 4928.6655 and 286  
4928.6657 of the Revised Code. 287

**Sec. 4928.6647.** The net cost of an electric distribution 288  
utility's portfolio under sections 4928.6630 to 4928.6665 of the 289  
Revised Code shall not exceed two and one-quarter per cent of 290  
the difference between the utility's annual total electric 291  
operating revenues for the previous year as reported in the 292  
utility's FERC financial report, FERC form 1, account 400, 293  
required by the federal energy regulatory commission less the 294  
purchased power expense, account 555, for the same year. The 295  
utility's net cost equals the utility's total program costs for 296  
a portfolio approved by the public utilities commission minus 297  
eighty per cent of any revenues the utility collects during the 298  
same program year from capacity, environmental, and other 299  
attributes of the utility's energy savings programs, including 300  
bidding efficiency into the wholesale market operated by PJM 301  
interconnection, L.L.C. The utility shall retain twenty per cent 302  
of revenues received from program energy savings that are bid 303  
into the wholesale market, which revenues shall be separate from 304  
utility incentives described in section 4928.6644 of the Revised 305

Code. 306

Sec. 4928.6650. (A) A utility's portfolio costs shall not 307  
result in a rate that produces a monthly charge for residential 308  
customers that is greater than one dollar and fifty cents per 309  
customer per month. 310

(B) If a higher than expected number of residential 311  
customers opt out of the portfolio under section 4928.6657 of 312  
the Revised Code, the utility automatically is authorized to 313  
reduce spending under its approved portfolio to ensure that the 314  
utility complies with division (A) of this section. 315

Sec. 4928.6653. The following applies to gross annual 316  
energy savings from transmission and distribution system 317  
investments that result in measurable energy savings: 318

(A) The investments shall not be considered to be a 319  
program within an electric distribution utility portfolio under 320  
sections 4928.6630 to 4928.6665 of the Revised Code for cost 321  
recovery and incentive purposes under the portfolio. 322

(B) The energy savings shall count toward determining 323  
whether the utility achieved its annual gross energy savings 324  
required under division (A) of section 4928.6639 of the Revised 325  
Code. 326

Sec. 4928.6655. (A) Mercantile customers shall be 327  
automatically opted out of any opportunities to participate in 328  
an electric distribution utility's portfolio and any portfolio 329  
cost recovery unless they affirmatively choose to opt in to the 330  
utility's portfolio in writing. 331

(B) After the public utilities commission approves a 332  
utility's portfolio pursuant to section 4928.6634 of the Revised 333  
Code, the utility shall send, to all mercantile customers in its 334

certified territory, a written notice describing the option for 335  
such customers to affirmatively opt in to portfolio 336  
participation. 337

(1) The opt-in notice shall provide the cost of 338  
participating in the portfolio to the mercantile customer. 339

(2) A mercantile customer submitting a written opt-in 340  
application, as prescribed by the utility, shall be deemed to 341  
have opted in. 342

(C) Mercantile customers that opt in shall remain as an 343  
opt-in customer for a period of not less than twelve months from 344  
the date the customer first receives the benefit of 345  
participation. 346

**Sec. 4928.6657.** (A) At the start of a new portfolio, an 347  
electric distribution utility that has a portfolio approved 348  
under section 4928.6634 of the Revised Code shall provide 349  
residential customers and nonresidential retail customers with 350  
the option to opt out of portfolio participation and cost 351  
recovery for the portfolio or, for customers that have 352  
previously opted out, to opt in to such participation. Within 353  
five business days after a portfolio is approved by the public 354  
utilities commission, the utility shall send, to all residential 355  
customers and nonresidential retail customers in its certified 356  
territory, a written notice describing the options to opt out of 357  
and opt back in to participation in the portfolio. Within thirty 358  
days after the portfolio's approval, the utility shall send, to 359  
the residential customers and nonresidential retail customers, a 360  
second written notice with the same content as the first notice. 361  
The time period during which a customer may opt out of, or opt 362  
in to, participation shall extend at least forty-five days from 363  
the date of the postmark on the first written notice. If a 364

customer, as prescribed by the utility, indicates the customer's 365  
intent to opt out or opt in before the deadline has elapsed, the 366  
customer shall be deemed to have opted out or opted in, as 367  
applicable. 368

(B) The opt-out and opt-in process shall permit customers 369  
to express the intent to opt out or to opt in by returning a 370  
postcard or similar notice to the utility. The process also 371  
shall include alternative methods, such as a telephonic or an 372  
internet method, provided that these alternative methods allow 373  
for a verification of the customer's election to opt out or opt 374  
in. 375

(C) If, upon the expiration of its term, a portfolio is 376  
renewed or if a new portfolio is approved by the commission, a 377  
customer's election to opt out of participation in a previous 378  
portfolio pursuant to division (A) of this section remains in 379  
effect until the customer elects to opt in as prescribed in the 380  
notices required under division (A) of this section. 381

**Sec. 4928.6660.** An electric services company that promotes 382  
energy savings and the use of electric distribution utility 383  
energy savings programs shall be eligible to be considered a 384  
third party to whom the customer may convey an energy savings 385  
incentive associated with participation in a utility energy 386  
savings program if all of the following are true: 387

(A) The electric services company has obtained the 388  
customer's written consent. 389

(B) The electric services company has verified the 390  
customer's identity by providing the customer's electric 391  
distribution utility account number. 392

(C) The electric services company has explained how the 393

incentive being conveyed meets the energy savings program 394  
eligibility requirements. 395

(D) The electric services company produces evidence that 396  
the customer completed the program. This evidence may be in the 397  
form of a product identification code, product serial number, or 398  
similar evidence that proves installation or delivery of an 399  
eligible product under the energy savings program. 400

**Sec. 4928.6665.** (A) An electric distribution utility's 401  
portfolio approved by the public utilities commission under 402  
section 4928.6634 of the Revised Code shall be subject to an 403  
annual cost-effectiveness and compliance review over the term of 404  
the portfolio. As part of the annual review, the utility shall 405  
review the cost-effectiveness of its portfolio according to the 406  
utility cost test and inputs described in section 4928.6641 of 407  
the Revised Code. Based on the cost-effectiveness review, the 408  
utility may update its portfolio as needed. 409

(B) Not later than the fifteenth day of April each year, 410  
the utility shall file with the commission a report of its 411  
annual review for the preceding year. 412

(C) Not later than July 1, 2026, and every three years 413  
thereafter, the commission shall review each report received 414  
pursuant to division (B) of this section and, in accordance with 415  
section 101.68 of the Revised Code, submit a report to the 416  
general assembly that includes a compilation of utility reports 417  
received and an overview of utility compliance and energy 418  
savings. 419

(D) Based on the results of the commission's review of a 420  
utility's report, reasonable costs for evaluation, measurement, 421  
and verification for each utility's program shall be recovered 422

through the affected utility's portfolio cost recovery 423  
mechanism. Such costs shall not be considered as portfolio costs 424  
or included in any calculations required under section 4928.6647 425  
of the Revised Code or the rate cap under section 4928.6650 of 426  
the Revised Code. 427

(E) During the review under this section and subject to 428  
the general assembly's findings regarding the utility's 429  
performance and compliance described in the commission's report, 430  
the utility shall continue to offer customers a portfolio of 431  
energy savings programs. 432

**Section 2.** That existing section 4928.02 of the Revised 433  
Code is hereby repealed. 434