

**As Introduced**

**134th General Assembly**

**Regular Session**

**2021-2022**

**H. B. No. 389**

**Representatives Leland, Seitz**

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

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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  
4928.6636, 4928.6639, 4928.6641, 4928.6644, 3  
4928.6646, 4928.6647, 4928.6650, 4928.6653, 4  
4928.6655, 4928.6657, and 4928.6660 of the 5  
Revised Code to permit electric distribution 6  
utilities to establish energy efficiency and 7  
peak 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, 4928.6646, 4928.6647, 11  
4928.6650, 4928.6653, 4928.6655, 4928.6657, and 4928.6660 of the 12  
Revised Code be enacted to read as follows: 13

**Sec. 4928.02.** It is the policy of this state to do the 14  
following throughout this state: 15

(A) Ensure the availability to consumers of adequate, 16  
reliable, safe, efficient, nondiscriminatory, and reasonably 17

priced retail electric service;	18
(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;	19 20 21 22
(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;	23 24 25 26
(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;	27 28 29 30 31 32
(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;	33 34 35 36 37 38 39
(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;	40 41 42 43
(G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;	44 45 46

(H) Ensure effective competition in the provision of 47  
retail electric service by avoiding anticompetitive subsidies 48  
flowing from a noncompetitive retail electric service to a 49  
competitive retail electric service or to a product or service 50  
other than retail electric service, and vice versa, including by 51  
prohibiting the recovery of any generation-related costs through 52  
distribution or transmission rates; 53

(I) Ensure retail electric service consumers protection 54  
against unreasonable sales practices, market deficiencies, and 55  
market power; 56

(J) Provide coherent, transparent means of giving 57  
appropriate incentives to technologies that can adapt 58  
successfully to potential environmental mandates; 59

(K) Encourage implementation of distributed generation 60  
across customer classes through regular review and updating of 61  
administrative rules governing critical issues such as, but not 62  
limited to, interconnection standards, standby charges, and net 63  
metering; 64

(L) Protect at-risk populations, including, but not 65  
limited to, when considering the implementation of any new 66  
advanced energy or renewable energy resource; 67

(M) Encourage the education of small business owners in 68  
this state regarding the use of, and encourage the use of, 69  
energy efficiency programs and alternative energy resources in 70  
their businesses; 71

(N) Encourage electric distribution utilities to develop 72  
voluntary portfolios of energy savings programs to help their 73  
customers to save energy; 74

(O) Facilitate the state's effectiveness in the global 75

economy-; 76

~~(O)~~-(P) Encourage cost-effective, timely, and efficient 77  
access to and sharing of customer usage data with customers and 78  
competitive suppliers to promote customer choice and grid 79  
modernization-; 80

~~(P)~~-(Q) Ensure that a customer's data is provided in a 81  
standard format and provided to third parties in as close to 82  
real time as is economically justifiable in order to spur 83  
economic investment and improve the energy options of individual 84  
customers. 85

In carrying out this policy, the commission shall consider 86  
rules as they apply to the costs of electric distribution 87  
infrastructure, including, but not limited to, line extensions, 88  
for the purpose of development in this state. 89

Sec. 4928.6630. As used in sections 4928.6630 to 4928.6660 90  
of the Revised Code: 91

"Behavioral energy savings" means energy savings that 92  
occurs as a result of a change in a residential retail electric 93  
customer's pattern of electricity use. 94

"Nonresidential retail customer" means a customer that is 95  
not a residential customer or a mercantile customer. 96

"Energy savings" includes energy efficiency savings and 97  
peak demand reduction savings. 98

Sec. 4928.6631. An electric distribution utility may 99  
submit an application to the public utilities commission for 100  
approval of a portfolio of energy savings programs to assist 101  
retail electric customers in achieving energy savings. 102

Sec. 4928.6633. An electric distribution utility's 103

<u>application for a portfolio shall include the following</u>	104
<u>information about the energy savings programs proposed for the</u>	105
<u>portfolio:</u>	106
<u>(A) Descriptions of the size and scope of the programs;</u>	107
<u>(B) The programs' costs, planned energy savings, and cost-</u>	108
<u>effectiveness;</u>	109
<u>(C) The utility's projection of the expected number of</u>	110
<u>customers opting out of the programs under section 4928.6657 of</u>	111
<u>the Revised Code;</u>	112
<u>(D) The program costs, availability, and planned energy</u>	113
<u>savings listed by programs for residential customer and</u>	114
<u>nonresidential retail customer classes and any programs that</u>	115
<u>could impact all customer classes;</u>	116
<u>(E) A proposed mechanism for the recovery of program costs</u>	117
<u>and utility incentives and for lost distribution revenues, if</u>	118
<u>applicable;</u>	119
<u>(F) A plan to improve customers' smart technology</u>	120
<u>capability for demand side management and to improve utility</u>	121
<u>control to reduce peak demand;</u>	122
<u>(G) A description of how the portfolio will meet the</u>	123
<u>requirements under section 4928.6636 of the Revised Code;</u>	124
<u>(H) If the financial parameters described in section</u>	125
<u>4928.6647 of the Revised Code do not allow the portfolio design</u>	126
<u>to be consistent with the energy savings measures under section</u>	127
<u>4928.6639 of the Revised Code, a reflection and explanation of</u>	128
<u>why consistency is not possible;</u>	129
<u>(I) Any other information that the utility determines is</u>	130
<u>appropriate for commission review.</u>	131

Sec. 4928.6634. (A) Not later than one hundred twenty days 132  
after receiving an application under section 4928.6631 of the 133  
Revised Code, the public utilities commission shall issue an 134  
order to approve or modify and approve the application, if the 135  
commission finds that the application meets the requirements 136  
under section 4928.6633 of the Revised Code and includes the 137  
program required under section 4928.6636 of the Revised Code. 138  
The commission may modify an application only as necessary for 139  
the application to comply with sections 4928.6633, 4928.6639, 140  
4928.6641, 4928.6644, 4928.6647, and 4928.6653 of the Revised 141  
Code. 142

An order approving or modifying and approving an 143  
application shall authorize accounting mechanisms under which 144  
the utility may defer and recover costs that would otherwise 145  
exceed the rate cap established under section 4928.6650 of the 146  
Revised Code. 147

(B) Not later than ninety days after the date of the 148  
commission's final order, the utility shall accept the modified 149  
application or withdraw the application if either or both of the 150  
following occurs: 151

(1) The commission modifies and approves the application. 152

(2) A higher than expected number of customers opt out of 153  
the portfolio. 154

(C) A portfolio approved by the commission shall be for a 155  
term of not more than five years. To replace or extend a 156  
portfolio that is terminating, a utility shall file a new 157  
portfolio application with the commission. 158

Sec. 4928.6636. An electric distribution utility portfolio 159  
approved under section 4928.6634 of the Revised Code shall 160

include at least one program planned to benefit low-income 161  
residential customers with an annual income at or below two 162  
hundred per cent of the federal poverty level. Total proposed 163  
residential program costs for programs projected to reach low- 164  
income residential customers pursuant to this section shall be 165  
not less than fifteen per cent of the total program costs 166  
proposed for all residential programs in the portfolio. 167

**Sec. 4928.6639. An electric distribution utility portfolio** 168  
**shall be designed to do the following:** 169

(A) Achieve gross annual energy savings of at least one- 170  
half of one per cent of the gross annual energy savings of the 171  
prior year's retail electric sales to participating customers, 172  
except as limited by the requirement under section 4928.6647 of 173  
the Revised Code; 174

(B) Achieve not more than thirty per cent of the planned 175  
annual gross energy savings through residential programs 176  
designed to deliver only behavioral energy savings; 177

(C) Emphasize smart technology measures, including, but 178  
not limited to, energy star qualified smart thermostats; 179

(D) Determine gross energy savings as follows: 180

(1) Directly through standard evaluation, measurement, and 181  
verification protocols, such as a bill savings analysis; 182

(2) For gross energy savings not determined directly 183  
pursuant to division (D)(1) of this section, with a baseline 184  
established for federal energy standards for appliances and 185  
other equipment or standards under the Ohio building code under 186  
Chapter 3781. of the Revised Code. 187

(E) For gross energy savings determined under division (D) 188

(2) of this section, only permit customer incentives on 189  
equipment that exceeds federal energy standards or Ohio building 190  
code standards; 191

(F) Exclude gross energy savings from any physical device 192  
or equipment that has not been delivered or installed with the 193  
permission or at the request of a participating customer. 194

**Sec. 4928.6641.** An electric distribution utility's 195  
portfolio approved under sections 4928.6630 to 4928.6660 of the 196  
Revised Code shall be cost-effective based on a utility cost 197  
test that compares the total cost of the portfolio's measurable 198  
programs to any of the following: 199

(A) Avoided electric generation, transmission, and 200  
distribution costs; 201

(B) Reductions in market prices for energy and capacity; 202

(C) Reductions in utility credit and collection costs; 203

(D) Any other quantifiable utility system benefits. 204

**Sec. 4928.6644.** Customer incentives offered by an electric 205  
distribution utility through a portfolio under sections 206  
4928.6630 to 4928.6660 of the Revised Code shall provide a 207  
meaningful inducement for customers to participate in the cost- 208  
effective delivery of projected energy savings. Utility 209  
incentives through such a portfolio shall not exceed ten per 210  
cent of net program costs on an after-tax basis and shall not 211  
count toward the net cost of the portfolio under section 212  
4928.6647 of the Revised Code. 213

**Sec. 4928.6646.** The recovery of any lost distribution 214  
revenues under an electric distribution utility portfolio 215  
approved under section 4928.6634 of the Revised Code shall not 216

count toward the net cost of the portfolio under section 217  
4928.6647 of the Revised Code. 218

**Sec. 4928.6647.** The net cost of an electric distribution 219  
utility's portfolio under sections 4928.6630 to 4928.6660 of the 220  
Revised Code shall not exceed two and one-quarter per cent of 221  
the utility's annual total electric operating revenues for the 222  
previous year as reported in the utility's FERC financial 223  
report, FERC form 1, account 400, required by the federal energy 224  
regulatory commission. The utility's net cost equals the 225  
utility's total program costs for a portfolio approved by the 226  
public utilities commission minus eighty per cent of any 227  
revenues the utility collects during the same program year from 228  
capacity, environmental, and other attributes of the utility's 229  
energy savings programs, including bidding efficiency into the 230  
wholesale market operated by PJM interconnection, L.L.C. The 231  
utility shall retain twenty per cent of revenues received from 232  
utility incentives that are bid into the wholesale market, which 233  
incentives shall be separate from customer incentives described 234  
in section 4928.6644 of the Revised Code. 235

**Sec. 4928.6650.** (A) A utility's portfolio costs shall not 236  
result in a rate that produces an average monthly charge for 237  
residential customers that is greater than one dollar and fifty 238  
cents per customer per month. 239

(B) If a higher than expected number of residential 240  
customers opt out of the portfolio under section 4928.6657 of 241  
the Revised Code, the utility automatically is authorized to 242  
reduce spending under its approved portfolio to ensure that the 243  
utility complies with division (A) of this section. 244

**Sec. 4928.6653.** The following applies to gross annual 245  
energy savings from transmission and distribution system 246

<u>investments that result in measurable energy efficiency savings:</u>	247
<u>(A) The investments shall not be considered to be a</u>	248
<u>program within an electric distribution utility portfolio under</u>	249
<u>sections 4928.6630 to 4928.6660 of the Revised Code for cost</u>	250
<u>recovery and incentive purposes under the portfolio.</u>	251
<u>(B) The energy savings shall count toward determining</u>	252
<u>whether the utility achieved its annual gross energy savings</u>	253
<u>required under division (A) of section 4928.6639 of the Revised</u>	254
<u>Code.</u>	255
<u><b>Sec. 4928.6655.</b> Mercantile customers shall be</u>	256
<u>automatically opted out of any opportunities to participate in</u>	257
<u>an electric distribution utility's portfolio and any portfolio</u>	258
<u>cost recovery unless they choose to opt in.</u>	259
<u>After the public utilities commission approves a utility's</u>	260
<u>portfolio pursuant to section 4928.6634 of the Revised Code, the</u>	261
<u>utility shall send, to all mercantile customers in its certified</u>	262
<u>territory, a written notice describing the option for such</u>	263
<u>customers to opt in to portfolio participation. If a mercantile</u>	264
<u>customer, as prescribed by the utility, indicates its intent to</u>	265
<u>opt in, the customer shall be deemed to have opted in.</u>	266
<u>Mercantile customers that opt in shall remain as an opt-in</u>	267
<u>customer for a period of not less than twelve months from the</u>	268
<u>date the customer first receives the benefit of participation.</u>	269
<u><b>Sec. 4928.6657.</b> Every five years or at the start of a new</u>	270
<u>portfolio, an electric distribution utility that has a portfolio</u>	271
<u>approved under section 4928.6634 of the Revised Code shall</u>	272
<u>provide residential customers and nonresidential retail</u>	273
<u>customers with the option to opt out of portfolio participation</u>	274
<u>and cost recovery for the portfolio. Within five business days</u>	275

after a portfolio is approved by the public utilities 276  
commission, the utility shall send, to all residential customers 277  
and nonresidential retail customers in its certified territory, 278  
a written notice describing the option to opt out of 279  
participation in the portfolio. The time period during which a 280  
customer may opt out of participation shall extend at least 281  
twenty-one days from the date of the postmark on the written 282  
notice. If a customer, as prescribed by the utility, indicates 283  
the customer's intent to opt out with a return postcard or 284  
notice that is postmarked or submitted by other means before the 285  
opt-out deadline has elapsed, the customer shall be deemed to 286  
have opted out. 287

**Sec. 4928.6660.** (A) An electric distribution utility's 288  
portfolio approved by the commission under section 4928.6634 of 289  
the Revised Code shall be subject to an annual cost- 290  
effectiveness and compliance review over the term of the 291  
portfolio. As part of the annual review, the utility shall 292  
review the cost-effectiveness of its portfolio according to the 293  
utility cost test and inputs described in section 4928.6641 of 294  
the Revised Code. Based on the cost-effectiveness review, the 295  
utility may update its portfolio as needed. 296

(B) Not later than the fifteenth day of April each year, 297  
the utility shall file with the public utilities commission a 298  
report of its annual review for the preceding year. 299

(C) Not later than the thirty-first day of December, the 300  
commission shall review each report received pursuant to 301  
division (B) of this section and, in accordance with section 302  
101.68 of the Revised Code, submit a report to the general 303  
assembly that includes a compilation of utility reports received 304  
and an overview of utility compliance and energy savings. 305

(D) Based on the results of the commission's review of a 306  
utility's report, the commission's incremental costs of each 307  
review process and the utility's incentives shall be recovered 308  
through the affected utility's portfolio cost recovery 309  
mechanism. The commission's review costs and the utility's 310  
incentives shall not be considered as portfolio costs or 311  
included in any calculations required under section 4928.6647 of 312  
the Revised Code. 313

(E) During the review under this section and subject to 314  
the general assembly's findings regarding the utility's 315  
performance and compliance described in the commission's report, 316  
the utility shall continue to offer customers a portfolio of 317  
energy savings programs. 318

**Section 2.** That existing section 4928.02 of the Revised 319  
Code is hereby repealed. 320