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## Substitute Bill Comparative Synopsis

### Sub. H.B. 389

### 134<sup>th</sup> General Assembly

#### House Public Utilities

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This table summarizes how I\_134\_1663-7, the latest substitute version of H.B. 389, differs from the As Introduced version of the bill. It addresses only the topics on which the two versions differ substantively. It does not list topics on which the two bills are substantively the same.

Previous Version (H.B. 389, As Introduced)	Latest Version (I_134_1663-7)
<b>Portfolio application requirement: peak demand reduction vs. demand and intermittent resource impact reduction</b>	
Requires an electric distribution utility's (EDU's) portfolio application to include a plan to improve utility control to reduce peak demand (R.C. 4928.6633(F)).	Modifies the requirement regarding a plan to improve utility control to be "utility control to reduce <i>demand or impacts of intermittent resources on the grid</i> " and specifies that the plan must require working in coordination with electric services companies (ESCs) (R.C. 4928.6633(F)(3)).
<b>Portfolio application requirement: net cost calculation vs. energy savings explanation</b>	
Requires a portfolio application to include a <i>reflection</i> and explanation if a portfolio's net cost parameters (see " <b>Net cost limit for an EDU's portfolio</b> ," below) are not consistent with the requirement for a portfolio to achieve at least 0.5% energy savings and meet other energy savings requirements (R.C. 4928.6633(H)).	Deletes the requirement that the portfolio include a <i>reflection</i> if the net cost parameters are inconsistent with the energy savings requirements (R.C. 4928.6633(H)).

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<b>Portfolio application requirement: cost recovery mechanism</b>	
Specifies that included with the information that a portfolio application must contain is information about its proposed mechanism to recover program costs, utility incentives, and lost distribution revenues, if applicable (R.C. 4928.6633(E)).	Changes this application information requirement to include proposed <i>mechanisms</i> for recovery of program costs, “ <i>excluding internal utility employee labor costs already being recovered in the [EDU’s] rates established under its most recent rate case,</i> ” and adds a condition limiting applicable mechanisms for recovery of lost distribution revenues so that revenues collected for a particular year may only be collected for a period not to exceed the length of the approved portfolio’s term (R.C. 4928.6633(E)(1)(a) and (c)).
<b>Cost recovery mechanism: weather normalized, if applicable</b>	
No provision.	Specifies that, if applicable, any approved cost recovery mechanism for lost distribution revenues must be normalized for weather (R.C. 4928.6633(E)(2)).
<b>Cost recovery mechanism: double recovery prohibited</b>	
No provision.	Prohibits double recovery of costs under a portfolio cost recovery mechanism (R.C. 4928.6633(E)(2)).
<b>Portfolio design requirement: smart technology measures</b>	
Requires a portfolio to be designed to emphasize smart technology measures, including, but not limited to, ENERGY STAR® qualified smart thermostats (R.C. 4928.6639(C)).	Includes “appliance controllers” as one of the smart technology measures that a portfolio must be designed to emphasize (R.C. 4928.6639(C)).
<b>Portfolio design requirement: determining gross energy savings through metering that measures demand</b>	
No provision.	Adds that, if available, a gross energy savings determination could also be made directly <i>through metering that has the capability to measure demand in kilowatts</i> (R.C. 4928.6639(D)(1)).

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<b>Portfolio design requirement: determining gross energy savings through demand period shifting</b>	
No provision.	Requires a portfolio to be designed to determine gross energy savings by the amount of kilowatt hours shifted to periods other than periods of high demand for demand savings when residential advanced metering is not available, if this method is included in the approved portfolio ( <i>R.C. 4928.6639(D)(3)</i> ).
<b>Portfolio application hearings</b>	
No provision.	Permits the Public Utilities Commission (PUCO), at its discretion, to conduct hearings on a portfolio application ( <i>R.C. 4928.6634(A)</i> ).
<b>Deadline for portfolio approval order</b>	
Requires PUCO, not later than 120 days after receiving a portfolio application, to issue an order to approve or modify and approve the application, if it meets portfolio application requirements established in the bill ( <i>R.C. 4928.6634(A)</i> ).	Changes, from 120 days to 180 days, the time period by which PUCO must issue an order to approve or modify and approve a portfolio application that meets the requirements of the bill ( <i>R.C. 4928.6634(B)</i> ).
<b>Portfolio application denial for not meeting requirements</b>	
No provision.	Expressly specifies that PUCO must deny portfolio applications if the application does not meet the bill's application requirements ( <i>R.C. 4928.6634(B)</i> ).
<b>Utility incentive limitations</b>	
Prohibits utility incentives from counting toward the portfolio's net cost (see " <b>Net cost limit for an EDU's portfolio</b> ," below) ( <i>R.C. 4928.6644</i> ).	Adds, to this prohibition, the prohibition that utility incentives may not count toward the bill's rate cap for residential customers (see " <b>Customers' monthly charge for portfolio costs</b> ," below) ( <i>R.C. 4928.6644</i> ).
<b>Rules for customer incentives and utility incentives</b>	
No provision.	Authorizes PUCO to adopt rules to implement the bill's provisions that (1) require customer incentives offered by an EDU in its portfolio to be meaningful inducements for customers to participate in energy savings and (2) specify that

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	utility incentives must not exceed 10% of net program costs on an after-tax basis and must not count toward the portfolio's net cost or the bill's rate cap for residential customers (R.C. 4928.6644).
<b>Requirement for advertisements/marketing materials</b>	
No provision.	Requires an EDU with an approved portfolio, if it produces or pays for any advertisement or marketing materials to promote energy savings programs under the portfolio, to include in the advertising and marketing a description of the specific energy savings programs that the EDU is promoting and offering to its customers (R.C. 4928.6645).
<b>Gross annual energy savings from transmission and distribution investments</b>	
Specifies that the EDU's annual gross energy from transmission and distribution investments that result in measurable <i>energy efficiency savings</i> must count toward determining the EDU's 0.5% energy savings requirement, but the investments must not be considered to be a portfolio program for cost recovery or incentive purposes (R.C. 4928.6653).	Specifies that the EDU's gross annual energy savings from such investments that result in measurable <i>energy savings</i> (which under the bill includes energy efficiency savings and peak demand reduction savings) must count toward determining the EDU's 0.5% energy savings requirement, but the investments must not be considered to be a portfolio program for cost recovery or incentive purposes (R.C. 4928.6653).
<b>Lost distribution revenue recovery limitation</b>	
Prohibits recovery of any lost distribution revenues under an approved portfolio from counting toward the net cost of the portfolio (see " <b>Net cost limit for an EDU's portfolio,</b> " below) (R.C. 4928.6646).	Adds the prohibition that lost distribution revenues also may not count toward the bill's rate cap for residential customers (see " <b>Customers' monthly charge for portfolio costs,</b> " below) (R.C. 4928.6646).
<b>Recovery of lost distribution revenues not subject to portfolio opt-in or opt-out</b>	
No provision.	Specifies that recovery of any lost distribution revenues is not subject to the bill's provisions allowing (1) mercantile customers to opt in to participation in an EDU's portfolio programs and any portfolio cost recovery and (2) residential and nonresidential customers to opt out and then opt

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	back in to participation (see “ <b>Customer opt-out/opt-in</b> ” below. (R.C. 4928.6646).
<b>Net cost limit for an EDU’s portfolio</b>	
Specifies that the net cost of an EDU’s portfolio must not exceed 2.25% of the EDU’s annual total electric operating revenues for the previous year as reported in the EDU’s FERC financial report, FERC form 1, account 400, required by the Federal Energy Regulatory Commission (FERC) (R.C. 4928.6647).	Modifies the net cost limitation to not exceed 2.25% of <i>the difference between</i> the EDU’s annual total electric operating revenues for the previous year as reported in the EDU’s FERC financial report, FERC form 1, account 400 <i>less the purchased power expense, account 555, for the same year</i> (R.C. 4928.6647).
<b>Wholesale market revenues retained by EDU</b>	
Requires an EDU to retain 20% of revenues received from utility incentives (which must be separate from customer incentives) that are bid into the wholesale market (R.C. 4928.6647).	Requires an EDU to retain 20% of revenues received from utility <i>program energy savings</i> (which revenues must be separate from <i>utility</i> incentives) that are bid into the wholesale market (R.C. 4928.6647).
<b>Customers’ monthly charge for portfolio costs</b>	
Prohibits an EDU’s portfolio costs from resulting in a rate that produces an <i>average monthly charge</i> for residential customers greater than \$1.50 per customer per month (R.C. 4928.6650(A)).	Changes the provision regarding an EDU’s rate for portfolio costs to prohibit a rate that produces a <i>monthly charge</i> greater than \$1.50 per customer per month (R.C. 4928.6650(A)).
<b>Customer opt-out/opt-in</b>	
Allows a residential and nonresidential retail customer (a customer that is not a residential or mercantile customer) to opt out of portfolio participation in and cost recovery for an EDU’s portfolio (R.C. 4928.6657).	Also allows a residential and nonresidential retail customer that previously opted out of participation to opt back in at the start of a new portfolio (R.C. 4928.6657(A)).
<b>Five-year customer opt-out</b>	
Permits residential customers and nonresidential retail customers to opt out of portfolio participation in and cost recovery for an EDU’s portfolio <i>every five years or at the start of a new portfolio</i> (R.C. 4928.6657).	Changes the provision to allow customers to opt out <i>at the start of a new portfolio</i> . (Under the bill, in R.C. 4928.6634(D), a portfolio must not exceed five years.) (R.C. 4928.6657).

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<b>Opt-out/opt-in notice and deadline</b>	
Requires an EDU to send all residential and nonresidential customers in its certified territory a written notice describing the opt-out option and grants customers at least 21 days from the postmark date on the notice to opt out ( <i>R.C. 4928.6657</i> ).	Adds to the notice requirement that it include a description of the option to opt back in and applies the same 21-day deadline to opt in as applies to the option to opt out ( <i>R.C. 4928.6657(A)</i> ).
<b>Opt-out methods</b>	
Specifies that residential and nonresidential customers may opt out with a return postcard or notice that is postmarked or submitted <i>by other means</i> ( <i>R.C. 4928.6657</i> ).	Specifies that residential and nonresidential customer may opt out or opt back in by returning a postcard or similar notice to the EDU or by using alternative methods, such as a telephonic or an internet method, provided that the methods allow for a verification of the customer's election to opt out or opt in ( <i>R.C. 4928.6657(B)</i> ).
<b>Continuance of election to opt out</b>	
No provision.	Specifies that, if a portfolio is renewed upon expiration or if PUCO approves a new portfolio, a residential and nonresidential customer's election to opt out of participation in a previous portfolio remains in effect until the customer exercises the option to opt in as described in the bill ( <i>R.C. 4928.6657(C)</i> ).
<b>PUCO report to General Assembly</b>	
Requires PUCO, by December 31, to review each portfolio report received from EDUs, and submit a report to the General Assembly that includes a compilation of EDU reports received and an overview of EDU compliance and energy savings ( <i>R.C. 4928.6660(C)</i> ).	Requires PUCO to submit this compilation and overview report to the General Assembly, by July 1, 2026, and every three years thereafter ( <i>R.C. 4928.6665(C)</i> ).

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<b>Recovery of incremental costs of review process</b>	
Requires, based on the results of PUCO's review of an EDU's report, PUCO's incremental costs of each review process and the EDU's incentives to be recovered through the affected EDU's portfolio cost recovery mechanism (R.C. 4928.6660(D)).	Requires, based on the results of PUCO's review of a report, <i>reasonable costs for evaluation, measurement, and verification (EMV) for each utility's program</i> to be recovered through the affected EDU's portfolio cost recovery mechanism (R.C. 4928.6665(D)).
<b>PUCO review costs and EDU incentives: not portfolio costs nor included in net cost calculations</b>	
Prohibits PUCO review costs (described above) and EDU incentives from being included in the EDU's net cost calculation (R.C. 4928.6660(D)).	Prohibits <i>EMV costs</i> for each EDU program from being included in the EDU's net cost calculation or rate cap calculation (R.C. 4928.6665(D)).
<b>Conveyance of customer incentives to ESC</b>	
No provision.	Regarding conveyance of an energy savings incentive associated with participation in an EDU's energy savings program: (1) allows customers to convey an incentive to an ESC that promotes energy savings and the use of EDU energy savings programs and thereby is eligible under the bill to be considered a third party to whom an incentive may be conveyed and (2) makes a conveyance subject to the customer's written consent and verification of the customer's identity (R.C. 4928.6660).