

I\_134\_1663-7

134th General Assembly  
Regular Session  
2021-2022

. B. No.

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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  
4928.6645, 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



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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

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

<u>(O)</u> Facilitate the state's effectiveness in the global economy-;	76
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<del>(O)</del> <u>(P)</u> 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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<del>(P)</del> <u>(Q)</u> 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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<u>Sec. 4928.6630. As used in sections 4928.6630 to 4928.6665 of the Revised Code:</u>	91
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<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>	93
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<u>"Nonresidential retail customer" means a customer that is not a residential customer or a mercantile customer.</u>	96
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<u>"Energy savings" includes energy efficiency savings and peak demand reduction savings.</u>	98
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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 retail electric customers in achieving energy savings.</u>	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, provided</u>	125
<u>that a mechanism for recovery of lost distribution revenues</u>	126
<u>collected for a particular year may only be collected for a</u>	127
<u>period that shall not exceed the length of the term of the</u>	128
<u>portfolio approved by the public utilities commission.</u>	129
<u>(2) If applicable, any lost distribution revenue mechanism</u>	130
<u>approved under this section shall be normalized for weather. No</u>	131

<u>mechanism approved under this section may result in any double</u>	132
<u>recovery.</u>	133
<u>(F) A plan to improve the following:</u>	134
<u>(1) Customers' smart technology capability for demand side</u>	135
<u>management;</u>	136
<u>(2) Utility control to reduce demand or impacts of</u>	137
<u>intermittent resources on the grid, which plan shall require</u>	138
<u>working in coordination with electric services companies.</u>	139
<u>(G) A description of how the portfolio will meet the</u>	140
<u>requirements under section 4928.6636 of the Revised Code;</u>	141
<u>(H) If the financial parameters described in section</u>	142
<u>4928.6647 of the Revised Code do not allow the portfolio design</u>	143
<u>to be consistent with the energy savings measures under section</u>	144
<u>4928.6639 of the Revised Code, an explanation of why consistency</u>	145
<u>is not possible;</u>	146
<u>(I) Any other information that the utility determines is</u>	147
<u>appropriate for commission review.</u>	148
<b><u>Sec. 4928.6634. (A) The public utilities commission, at</u></b>	149
<b><u>its discretion, may conduct hearings on a portfolio application.</u></b>	150
<u>(B) Not later than one hundred eighty days after receiving</u>	151
<u>an application under section 4928.6631 of the Revised Code, the</u>	152
<u>commission shall issue an order to approve or modify and approve</u>	153
<u>the application, if the commission finds that the application</u>	154
<u>meets the requirements under section 4928.6633 of the Revised</u>	155
<u>Code and includes the program required under section 4928.6636</u>	156
<u>of the Revised Code, and shall deny the application if these</u>	157
<u>requirements are not met. The commission may modify an</u>	158
<u>application only as necessary for the application to comply with</u>	159

sections 4928.6633, 4928.6639, 4928.6641, 4928.6644, 4928.6647, 160  
and 4928.6653 of the Revised Code. 161

An order approving or modifying and approving an 162  
application shall authorize accounting mechanisms under which 163  
the utility may defer and recover costs that would otherwise 164  
exceed the rate cap established under section 4928.6650 of the 165  
Revised Code. 166

(C) Not later than ninety days after the date of the 167  
commission's final order, the utility shall accept the modified 168  
application or withdraw the application if either or both of the 169  
following occurs: 170

(1) The commission modifies and approves the application. 171

(2) A higher than expected number of customers opt out of 172  
the portfolio. 173

(D) A portfolio approved by the commission shall be for a 174  
term of not more than five years. To replace or extend a 175  
portfolio that is terminating, a utility shall file a new 176  
portfolio application with the commission. 177

**Sec. 4928.6636. An electric distribution utility portfolio** 178  
approved under section 4928.6634 of the Revised Code shall 179  
include at least one program planned to benefit low-income 180  
residential customers with an annual income at or below two 181  
hundred per cent of the federal poverty level. Total proposed 182  
residential program costs for programs projected to reach low- 183  
income residential customers pursuant to this section shall be 184  
not less than fifteen per cent of the total program costs 185  
proposed for all residential programs in the portfolio. 186

**Sec. 4928.6639. An electric distribution utility portfolio** 187  
shall be designed to do the following: 188

(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; 189  
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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; 194  
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(C) Emphasize smart technology measures, including, but not limited to, energy star qualified smart thermostats and appliance controllers; 197  
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(D) Determine gross energy savings as follows: 200

(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; 201  
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(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; 205  
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(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. 210  
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(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 215  
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<u>code standards;</u>	218
<u>(F) Exclude gross energy savings from any physical device</u>	219
<u>or equipment that has not been delivered or installed with the</u>	220
<u>permission or at the request of a participating customer.</u>	221
<b><u>Sec. 4928.6641. An electric distribution utility's</u></b>	222
<u>portfolio approved under sections 4928.6630 to 4928.6665 of the</u>	223
<u>Revised Code shall be cost-effective based on a utility cost</u>	224
<u>test that compares the total cost of the portfolio's measurable</u>	225
<u>programs to any of the following:</u>	226
<u>(A) Avoided electric generation, transmission, and</u>	227
<u>distribution costs;</u>	228
<u>(B) Reductions in market prices for energy and capacity;</u>	229
<u>(C) Reductions in utility credit and collection costs;</u>	230
<u>(D) Any other quantifiable utility system benefits.</u>	231
<b><u>Sec. 4928.6644. Customer incentives offered by an electric</u></b>	232
<u>distribution utility through a portfolio under sections</u>	233
<u>4928.6630 to 4928.6665 of the Revised Code shall provide a</u>	234
<u>meaningful inducement for customers to participate in the cost-</u>	235
<u>effective delivery of projected energy savings. Utility</u>	236
<u>incentives through such a portfolio shall not exceed ten per</u>	237
<u>cent of net program costs on an after-tax basis and shall not</u>	238
<u>count toward the net cost of the portfolio under section</u>	239
<u>4928.6647 of the Revised Code or the rate cap under section</u>	240
<u>4928.6650 of the Revised Code. The public utilities commission</u>	241
<u>may adopt rules to implement this section.</u>	242
<b><u>Sec. 4928.6645. If an electric distribution utility with a</u></b>	243
<u>portfolio approved by the public utilities commission under</u>	244
<u>sections 4928.6630 to 4928.6665 of the Revised Code produces or</u>	245

pays for any advertisement or marketing material to promote 246  
energy savings programs established under the portfolio, the 247  
advertisement or marketing material shall include a description 248  
of the specific energy savings programs that the utility is 249  
promoting and offering to its customers. 250

**Sec. 4928.6646.** The recovery of any lost distribution 251  
revenues under an electric distribution utility portfolio 252  
approved under section 4928.6634 of the Revised Code shall not 253  
count toward the net cost of the portfolio under section 254  
4928.6647 of the Revised Code or the rate cap under section 255  
4928.6650 of the Revised Code. The recovery of any lost 256  
distribution revenues is not subject to sections 4928.6655 and 257  
4928.6657 of the Revised Code. 258

**Sec. 4928.6647.** The net cost of an electric distribution 259  
utility's portfolio under sections 4928.6630 to 4928.6665 of the 260  
Revised Code shall not exceed two and one-quarter per cent of 261  
the difference between the utility's annual total electric 262  
operating revenues for the previous year as reported in the 263  
utility's FERC financial report, FERC form 1, account 400, 264  
required by the federal energy regulatory commission less the 265  
purchased power expense, account 555, for the same year. The 266  
utility's net cost equals the utility's total program costs for 267  
a portfolio approved by the public utilities commission minus 268  
eighty per cent of any revenues the utility collects during the 269  
same program year from capacity, environmental, and other 270  
attributes of the utility's energy savings programs, including 271  
bidding efficiency into the wholesale market operated by PJM 272  
interconnection, L.L.C. The utility shall retain twenty per cent 273  
of revenues received from program energy savings that are bid 274  
into the wholesale market, which revenues shall be separate from 275  
utility incentives described in section 4928.6644 of the Revised 276

<u>Code.</u>	277
<u>Sec. 4928.6650. (A) A utility's portfolio costs shall not</u>	278
<u>result in a rate that produces a monthly charge for residential</u>	279
<u>customers that is greater than one dollar and fifty cents per</u>	280
<u>customer per month.</u>	281
<u>(B) If a higher than expected number of residential</u>	282
<u>customers opt out of the portfolio under section 4928.6657 of</u>	283
<u>the Revised Code, the utility automatically is authorized to</u>	284
<u>reduce spending under its approved portfolio to ensure that the</u>	285
<u>utility complies with division (A) of this section.</u>	286
<u>Sec. 4928.6653. The following applies to gross annual</u>	287
<u>energy savings from transmission and distribution system</u>	288
<u>investments that result in measurable energy savings:</u>	289
<u>(A) The investments shall not be considered to be a</u>	290
<u>program within an electric distribution utility portfolio under</u>	291
<u>sections 4928.6630 to 4928.6665 of the Revised Code for cost</u>	292
<u>recovery and incentive purposes under the portfolio.</u>	293
<u>(B) The energy savings shall count toward determining</u>	294
<u>whether the utility achieved its annual gross energy savings</u>	295
<u>required under division (A) of section 4928.6639 of the Revised</u>	296
<u>Code.</u>	297
<u>Sec. 4928.6655. Mercantile customers shall be</u>	298
<u>automatically opted out of any opportunities to participate in</u>	299
<u>an electric distribution utility's portfolio and any portfolio</u>	300
<u>cost recovery unless they choose to opt in.</u>	301
<u>After the public utilities commission approves a utility's</u>	302
<u>portfolio pursuant to section 4928.6634 of the Revised Code, the</u>	303
<u>utility shall send, to all mercantile customers in its certified</u>	304
<u>territory, a written notice describing the option for such</u>	305

customers to opt in to portfolio participation. If a mercantile 306  
customer, as prescribed by the utility, indicates its intent to 307  
opt in, the customer shall be deemed to have opted in. 308

Mercantile customers that opt in shall remain as an opt-in 309  
customer for a period of not less than twelve months from the 310  
date the customer first receives the benefit of participation. 311

**Sec. 4928.6657.** (A) At the start of a new portfolio, an 312  
electric distribution utility that has a portfolio approved 313  
under section 4928.6634 of the Revised Code shall provide 314  
residential customers and nonresidential retail customers with 315  
the option to opt out of portfolio participation and cost 316  
recovery for the portfolio or, for customers that have 317  
previously opted out, to opt in to such participation. Within 318  
five business days after a portfolio is approved by the public 319  
utilities commission, the utility shall send, to all residential 320  
customers and nonresidential retail customers in its certified 321  
territory, a written notice describing the options to opt out of 322  
and opt back in to participation in the portfolio. The time 323  
period during which a customer may opt out of, or opt in to, 324  
participation shall extend at least twenty-one days from the 325  
date of the postmark on the written notice. If a customer, as 326  
prescribed by the utility, indicates the customer's intent to 327  
opt out or opt in before the deadline has elapsed, the customer 328  
shall be deemed to have opted out or opted in, as applicable. 329

(B) The opt-out and opt-in process shall permit customers 330  
to express the intent to opt out or to opt in by returning a 331  
postcard or similar notice to the utility. The process also 332  
shall include alternative methods, such as a telephonic or an 333  
internet method, provided that these alternative methods allow 334  
for a verification of the customer's election to opt out or opt 335  
in. 336

(C) If, upon the expiration of its term, a portfolio is 337  
renewed or if a new portfolio is approved by the commission, a 338  
customer's election to opt out of participation in a previous 339  
portfolio pursuant to division (A) of this section remains in 340  
effect until the customer elects to opt in as prescribed in the 341  
notice required under division (A) of this section. 342

Sec. 4928.6660. An electric services company that promotes 343  
energy savings and the use of electric distribution utility 344  
energy savings programs shall be eligible to be considered a 345  
third party to whom the customer may convey an energy savings 346  
incentive associated with participation in a utility energy 347  
savings program, subject to the customer's written consent and 348  
verification of the customer's identity. 349

Sec. 4928.6665. (A) An electric distribution utility's 350  
portfolio approved by the public utilities commission under 351  
section 4928.6634 of the Revised Code shall be subject to an 352  
annual cost-effectiveness and compliance review over the term of 353  
the portfolio. As part of the annual review, the utility shall 354  
review the cost-effectiveness of its portfolio according to the 355  
utility cost test and inputs described in section 4928.6641 of 356  
the Revised Code. Based on the cost-effectiveness review, the 357  
utility may update its portfolio as needed. 358

(B) Not later than the fifteenth day of April each year, 359  
the utility shall file with the commission a report of its 360  
annual review for the preceding year. 361

(C) Not later than July 1, 2026, and every three years 362  
thereafter, the commission shall review each report received 363  
pursuant to division (B) of this section and, in accordance with 364  
section 101.68 of the Revised Code, submit a report to the 365  
general assembly that includes a compilation of utility reports 366

received and an overview of utility compliance and energy 367  
savings. 368

(D) Based on the results of the commission's review of a 369  
utility's report, reasonable costs for evaluation, measurement, 370  
and verification for each utility's program shall be recovered 371  
through the affected utility's portfolio cost recovery 372  
mechanism. Such costs shall not be considered as portfolio costs 373  
or included in any calculations required under section 4928.6647 374  
of the Revised Code or the rate cap under section 4928.6650 of 375  
the Revised Code. 376

(E) During the review under this section and subject to 377  
the general assembly's findings regarding the utility's 378  
performance and compliance described in the commission's report, 379  
the utility shall continue to offer customers a portfolio of 380  
energy savings programs. 381

**Section 2.** That existing section 4928.02 of the Revised 382  
Code is hereby repealed. 383