

**As Passed by the House**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**Sub. H. B. No. 6**

**Representatives Callender, Wilkin**

**Cosponsors: Representatives Cross, DeVitis, Ghanbari, Hillyer, Jones, Reineke,  
Seitz, Stein, Vitale**

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**A BILL**

To amend sections 303.213, 519.213, 713.081, 1  
1710.06, 3706.02, 3706.03, 4906.10, 4906.13, 2  
4906.20, 4906.201, 4928.01, 4928.02, 4928.142, 3  
4928.143, 4928.20, 4928.61, 4928.62, 4928.641, 4  
4928.645, 4928.66, 4928.6610, 5501.311, 5727.47, 5  
and 5727.75; to amend, for the purpose of 6  
adopting a new section number as indicated in 7  
parentheses, section 519.214 (519.215); and to 8  
enact new section 519.214 and sections 3706.40, 9  
3706.42, 3706.44, 3706.46, 3706.47, 3706.48, 10  
3706.481, 3706.482, 3706.483, 3706.485, 11  
3706.486, 3706.49, 3706.50, 4905.311, 4906.101, 12  
4906.203, 4928.147, 4928.148, 4928.46, 4928.47, 13  
4928.471, 4928.647, 4928.661, 4928.75, and 14  
4928.80; to repeal section 4928.6616; and to 15  
repeal, effective January 1, 2020, sections 16  
1710.061, 4928.64, 4928.643, 4928.644, and 17  
4928.65 of the Revised Code to create the Ohio 18  
Clean Air Program, to facilitate and encourage 19  
electricity production and use from clean air 20  
resources, and to proactively engage the buying 21

power of consumers in this state for the purpose 22  
of improving air quality in this state. 23

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

**Section 1.** That sections 303.213, 519.213, 713.081, 24  
3706.02, 3706.03, 4906.10, 4906.13, 4906.20, 4906.201, 4928.01, 25  
4928.02, 4928.66, 4928.6610, 5727.47, and 5727.75 be amended; 26  
section 519.214 (519.215) be amended for the purpose of adopting 27  
a new section number as indicated in parentheses; and new 28  
section 519.214 and sections 3706.40, 3706.42, 3706.44, 3706.46, 29  
3706.47, 3706.48, 3706.481, 3706.482, 3706.483, 3706.485, 30  
3706.486, 3706.49, 3706.50, 4905.311, 4906.101, 4906.203, 31  
4928.147, 4928.148, 4928.46, 4928.47, 4928.471, 4928.647, 32  
4928.661, 4928.75, and 4928.80 of the Revised Code be enacted to 33  
read as follows: 34

**Sec. 303.213.** (A) As used in this section, "small wind 35  
farm" means wind turbines and associated facilities ~~with a~~ 36  
~~single interconnection to the electrical grid and designed for,~~ 37  
~~or capable of, operation at an aggregate capacity of less than~~ 38  
five megawatts that are not subject to the jurisdiction of the 39  
power siting board under sections 4906.20 and 4906.201 of the 40  
Revised Code. 41

(B) Notwithstanding division (A) of section 303.211 of the 42  
Revised Code, sections 303.01 to 303.25 of the Revised Code 43  
confer power on a board of county commissioners or board of 44  
zoning appeals to adopt zoning regulations governing the 45  
location, erection, construction, reconstruction, change, 46  
alteration, maintenance, removal, use, or enlargement of any 47

small wind farm, whether publicly or privately owned, or the use 48  
of land for that purpose, which regulations may be more strict 49  
than the regulations prescribed in rules adopted under division 50  
(B) (2) of section 4906.20 of the Revised Code. 51

(C) The designation under this section of a small wind 52  
farm as a public utility for purposes of sections 303.01 to 53  
303.25 of the Revised Code shall not affect the classification 54  
of a small wind farm for purposes of state or local taxation. 55

(D) Nothing in division (C) of this section shall be 56  
construed as affecting the classification of a 57  
telecommunications tower as defined in division (B) or (E) of 58  
section 303.211 of the Revised Code or any other public utility 59  
for purposes of state and local taxation. 60

**Sec. 519.213.** (A) As used in this section, "small wind 61  
farm" means wind turbines and associated facilities ~~with a~~ 62  
~~single interconnection to the electrical grid and designed for,~~ 63  
~~or capable of, operation at an aggregate capacity of less than~~ 64  
~~five megawatts~~ that are not subject to the jurisdiction of the 65  
power siting board under sections 4906.20 and 4906.201 of the 66  
Revised Code. 67

(B) Notwithstanding division (A) of section 519.211 of the 68  
Revised Code, sections 519.02 to 519.25 of the Revised Code 69  
confer power on a board of township trustees or board of zoning 70  
appeals with respect to the location, erection, construction, 71  
reconstruction, change, alteration, maintenance, removal, use, 72  
or enlargement of any small wind farm, whether publicly or 73  
privately owned, or the use of land for that purpose, which 74  
regulations may be more strict than the regulations prescribed 75  
in rules adopted under division (B) (2) of section 4906.20 of the 76  
Revised Code. 77

(C) The designation under this section of a small wind farm as a public utility for purposes of sections 519.02 to 519.25 of the Revised Code shall not affect the classification of a small wind farm or any other public utility for purposes of state or local taxation.

(D) Nothing in division (C) of this section shall be construed as affecting the classification of a telecommunications tower as defined in division (B) or (E) of section 519.211 of the Revised Code or any other public utility for purposes of state and local taxation.

Sec. 519.214. (A) If the power siting board issues a certificate to an economically significant wind farm or a large wind farm as those terms are defined in section 4906.13 of the Revised Code, to be located in whole or in part in the unincorporated area of a township, the certificate shall become effective on the ninetieth day after the day it is issued, unless, not later than that day, a referendum petition is filed with the board of elections to require the certificate to be submitted to the electors of the unincorporated area of the township for approval or rejection.

(B) (1) A referendum petition submitted under division (A) of this section shall be signed by a number of qualified electors residing in the unincorporated area of the township equal to not less than eight per cent of the total votes cast for all candidates for governor in the unincorporated area of the township at the most recent general election at which a governor was elected.

(2) Each part petition shall contain a brief description of the wind farm the certificate authorizes that is sufficient to identify the certificate. In addition to the requirements of

this section, the requirements of section 3501.38 of the Revised 108  
Code shall apply to the petition. 109

(3) The form of the petition shall be substantially as 110  
follows: 111

"PETITION FOR REFERENDUM OF WIND FARM CERTIFICATE 112

A proposal to approve or reject the wind farm certificate 113  
issued for ..... (description of wind farm) in the 114  
unincorporated area of ..... Township, ..... County, 115  
Ohio, adopted on ..... (date) by the Board of Township 116  
Trustees of ..... Township, ..... County, Ohio. 117

We, the undersigned, being electors residing in the 118  
unincorporated area of ..... Township, equal to not less 119  
than eight per cent of the total vote cast for all candidates 120  
for governor in the area at the preceding general election at 121  
which a governor was elected, request the Board of Elections to 122  
submit this proposal to the electors of the unincorporated area 123  
of ..... Township for approval or rejection at a special 124  
election to be held on the day of the primary or general 125  
election to be held on ..... (date), pursuant to section 126  
519.214 of the Revised Code. 127

..... Signature 128

..... Residence address 129

..... Date of signing 130

STATEMENT OF CIRCULATOR 131

I, ..... (name of circulator), declare under penalty 132  
of election falsification that I reside at the address appearing 133  
below my signature; that I am the circulator of the foregoing 134  
part petition containing ..... (number) signatures; that I 135

have witnessed the affixing of every signature; that all signers 136  
were to the best of my knowledge and belief qualified to sign; 137  
and that every signature is to the best of my knowledge and 138  
belief the signature of the person whose signature it purports 139  
to be or of an attorney in fact acting pursuant to section 140  
3501.382 of the Revised Code. 141

..... (Signature of circulator) 142

..... (Circulator's residence address) 143

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A 144  
FELONY OF THE FIFTH DEGREE." 145

(C) Upon receiving the referendum petition, the board of 146  
elections shall notify the board of township trustees that the 147  
petition has been filed. If the board of elections determines 148  
that the referendum petition is sufficient and valid, the board 149  
shall notify the board of township trustees of that fact and 150  
shall submit the certificate to the electors of the 151  
unincorporated area of the township for approval or rejection at 152  
a special election held on the day of the next primary or 153  
general election occurring at least ninety days after the board 154  
receives the petition. 155

(D) The certificate shall not take effect unless it is 156  
approved by a majority of the electors voting on it. If the 157  
certificate is approved by a majority of the electors voting on 158  
it, the certificate shall take immediate effect. 159

**Sec. ~~519.214~~ 519.215.** Township zoning commissions, boards 160  
of township trustees, and township boards of zoning appeals 161  
shall comply with section 5502.031 of the Revised Code. 162

**Sec. 713.081.** (A) As used in this section, "small wind 163  
farm" means wind turbines and associated facilities ~~with a~~ 164

~~single interconnection to the electrical grid and designed for,~~ 165  
~~or capable of, operation at an aggregate capacity of less than~~ 166  
~~five megawatts that are not subject to the jurisdiction of the~~ 167  
power siting board under sections 4906.20 and 4906.201 of the 168  
Revised Code. 169

(B) Sections 713.06 to 713.15 of the Revised Code confer 170  
power on the legislative authority of a municipal corporation 171  
with respect to the location, erection, construction, 172  
reconstruction, change, alteration, maintenance, removal, use, 173  
or enlargement of any small wind farm as a public utility, 174  
whether publicly or privately owned, or the use of land for that 175  
purpose, which regulations may be more strict than the 176  
regulations prescribed in rules adopted under division (B) (2) of 177  
section 4906.20 of the Revised Code. 178

(C) The designation under this section of a small wind 179  
farm as a public utility for purposes of sections 713.06 to 180  
713.15 of the Revised Code shall not affect the classification 181  
of a small wind farm or any other public utility for purposes of 182  
state or local taxation. 183

**Sec. 3706.02.** (A) There is hereby created the Ohio air 184  
quality development authority. Such authority is a body both 185  
corporate and politic in this state, and the carrying out of its 186  
purposes and the exercise by it of the powers conferred by 187  
Chapter 3706. of the Revised Code shall be held to be, and are 188  
hereby determined to be, essential governmental functions and 189  
public purposes of the state, but the authority shall not be 190  
immune from liability by reason thereof. 191

(B) The authority shall consist of ~~seven~~ thirteen members 192  
as follows: ~~five~~ 193

(1) Five members appointed by the governor, with the 194  
advice and consent of the senate, no more than three of whom 195  
shall be members of the same political party,~~and the~~ 196

(2) The director of environmental protection~~and the~~, who 197  
shall be a member ex officio without compensation; 198

(3) The director of health, who shall be ~~members~~ a member 199  
ex officio without compensation; 200

(4) Four legislative members, who shall be nonvoting 201  
members ex officio without compensation. The speaker of the 202  
house of representatives, the president of the senate, and the 203  
minority leader of each house shall each appoint one of the 204  
legislative members. The legislative members may not vote but 205  
may otherwise participate fully in all the board's deliberations 206  
and activities.~~Each appointive~~ 207

(5) Two members of the general public, who shall be voting 208  
members without compensation. The speaker of the house of 209  
representatives and the president of the senate shall each 210  
appoint one member. These members' terms of office shall be for 211  
four years. 212

Each appointed member shall be a resident of the state, 213  
and a qualified elector therein. The members of the authority 214  
first appointed shall continue in office for terms expiring on 215  
June 30, 1971, June 30, 1973, June 30, 1975, June 30, 1977, and 216  
June 30, 1978, respectively, the term of each member to be 217  
designated by the governor. ~~Appointed~~ Except as provided in 218  
division (B) (5) of this section, appointed members' terms of 219  
office shall be for eight years, commencing on the first day of 220  
July and ending on the thirtieth day of June. Each appointed 221  
member shall hold office from the date of ~~his~~ appointment until 222



the end of the term for which ~~he was~~ appointed. Any member 223  
appointed to fill a vacancy occurring prior to the expiration of 224  
the term for which ~~his~~ the member's predecessor was appointed 225  
shall hold office for the remainder of such term. Any appointed 226  
member shall continue in office subsequent to the expiration 227  
date of ~~his~~ the member's term until ~~his~~ the member's successor 228  
takes office, or until a period of sixty days has elapsed, 229  
whichever occurs first. A member of the authority is eligible 230  
for reappointment. Each appointed member of the authority, 231  
before entering upon ~~his~~ official duties, shall take an oath as 232  
provided by Section 7 of Article XV, Ohio Constitution. The 233  
governor may at any time remove any member of the authority for 234  
misfeasance, nonfeasance, or malfeasance in office. The 235  
authority shall elect one of its appointed members as ~~chairman~~ 236  
chairperson and another as ~~vice chairman~~ vice-chairperson, and 237  
shall appoint a secretary-treasurer who need not be a member of 238  
the authority. Four members of the authority shall constitute a 239  
quorum, and the affirmative vote of four members shall be 240  
necessary for any action taken by vote of the authority. No 241  
vacancy in the membership of the authority shall impair the 242  
rights of a quorum by such vote to exercise all the rights and 243  
perform all the duties of the authority. 244

~~Before~~ (C) Except as provided in division (D) of this 245  
section, before the issuance of any air quality revenue bonds 246  
under Chapter 3706. of the Revised Code, each appointed member 247  
of the authority shall give a surety bond to the state in the 248  
penal sum of twenty-five thousand dollars and the secretary- 249  
treasurer shall give such a bond in the penal sum of fifty 250  
thousand dollars, each such surety bond to be conditioned upon 251  
the faithful performance of the duties of the office, to be 252  
executed by a surety company authorized to transact business in 253

this state, and to be approved by the governor and filed in the 254  
office of the secretary of state. ~~Each~~ Except as provided in 255  
division (B) (4) of this section, each appointed member of the 256  
authority shall receive an annual salary of five thousand 257  
dollars, payable in monthly installments. Each member shall be 258  
reimbursed for ~~his~~ the actual expenses necessarily incurred in 259  
the performance of ~~his~~ official duties. All expenses incurred in 260  
carrying out Chapter 3706. of the Revised Code shall be payable 261  
solely from funds provided under Chapter 3706. of the Revised 262  
Code, appropriated for such purpose by the general assembly, or 263  
provided by the controlling board. No liability or obligation 264  
shall be incurred by the authority beyond the extent to which 265  
moneys have been so provided or appropriated. 266

(D) The six members appointed under divisions (B) (4) and 267  
(5) of this section shall be exempt from the requirement under 268  
division (C) of this section to give a surety bond. 269

**Sec. 3706.03.** (A) It is hereby declared to be the public 270  
policy of the state through the operations of the Ohio air 271  
quality development authority under this chapter to contribute 272  
toward one or more of the following: ~~to~~ 273

(1) To provide for the conservation of air as a natural 274  
resource of the state, ~~and to~~ ; 275

(2) To prevent or abate the pollution thereof, ~~to~~ ; 276

(3) To provide for the comfort, health, safety, and 277  
general welfare of all employees, as well as all other 278  
inhabitants of the state, ~~to~~ ; 279

(4) To assist in the financing of air quality facilities 280  
for industry, commerce, distribution, and research, including 281  
public utility companies, ~~to~~ ; 282

(5) To create or preserve jobs and employment 283  
opportunities or improve the economic welfare of the people, or 284  
assist and cooperate with governmental agencies in achieving 285  
such purposes; 286

(6) To maintain operations of certified clean air 287  
resources, as defined in section 3706.40 of the Revised Code, 288  
that, through continued operation, are expected to provide the 289  
greatest quantity of carbon-dioxide-free electric energy 290  
generation. 291

(B) In furtherance of such public policy the Ohio air 292  
quality development authority ~~may initiate~~ do any of the 293  
following: 294

(1) Initiate, acquire, construct, maintain, repair, and 295  
operate air quality projects or cause the same to be operated 296  
pursuant to a lease, sublease, or agreement with any person or 297  
governmental agency; ~~may make~~ 298

(2) Make loans and grants to governmental agencies for the 299  
acquisition or construction of air quality facilities by such 300  
governmental agencies; ~~may make~~ 301

(3) Make loans to persons for the acquisition or 302  
construction of air quality facilities by such persons; ~~may~~ 303  
~~enter~~ 304

(4) Enter into commodity contracts with, or make loans for 305  
the purpose of entering into commodity contracts to, any person, 306  
governmental agency, or entity located within or without the 307  
state in connection with the acquisition or construction of air 308  
quality facilities; ~~and may issue~~ 309

(5) Issue air quality revenue bonds of this state payable 310  
solely from revenues, to pay the cost of such projects, 311

including any related commodity contracts. 312

(C) Any air quality project shall be determined by the 313  
authority to be not inconsistent with any applicable air quality 314  
standards duly established and then required to be met pursuant 315  
to the "Clean Air Act," 84 Stat. 1679 (1970), 42 U.S.C.A. 1857, 316  
as amended. Any resolution of the authority providing for 317  
acquiring or constructing such projects or for making a loan or 318  
grant for such projects shall include a finding by the authority 319  
that such determination has been made. Determinations by 320  
resolution of the authority that a project is an air quality 321  
facility under this chapter and is consistent with the purposes 322  
of section 13 of Article VIII, Ohio Constitution, and this 323  
chapter, shall be conclusive as to the validity and 324  
enforceability of the air quality revenue bonds issued to 325  
finance such project and of the resolutions, trust agreements or 326  
indentures, leases, subleases, sale agreements, loan agreements, 327  
and other agreements made in connection therewith, all in 328  
accordance with their terms. 329

Sec. 3706.40. As used in sections 3706.40 to 3706.50 of 330  
the Revised Code: 331

(A) "Clean air resource" means both of the following: 332

(1) An electric generating facility in this state fueled 333  
by nuclear power that satisfies all of the following criteria: 334

(a) The facility is not wholly or partially owned by a 335  
municipal or cooperative corporation or a group, association, or 336  
consortium of those corporations. 337

(b) The facility is not used to supply customers of a 338  
wholly owned municipal or cooperative corporation or a group, 339  
association, or consortium of those corporations. 340

<u>(c) Either of the following:</u>	341
<u>(i) The facility has made a significant historical</u>	342
<u>contribution to the air quality of the state by minimizing</u>	343
<u>emissions that result from electricity generated in this state.</u>	344
<u>(ii) The facility will make a significant contribution</u>	345
<u>toward minimizing emissions that result from electric generation</u>	346
<u>in this state.</u>	347
<u>(d) The facility is interconnected with the transmission</u>	348
<u>grid that is subject to the operational control of PJM</u>	349
<u>interconnection, L.L.C., or its successor organization.</u>	350
<u>(e) The facility is a major utility facility in this state</u>	351
<u>as defined in section 4906.01 of the Revised Code.</u>	352
<u>(f) The facility's owner maintains operations in this</u>	353
<u>state.</u>	354
<u>(2) An electric generating facility in this state that</u>	355
<u>uses or will use solar energy as the primary energy source that</u>	356
<u>satisfies all of the criteria in divisions (A) (1) (a) to (e) of</u>	357
<u>this section and that has obtained a certificate from the power</u>	358
<u>siting board prior to June 1, 2019.</u>	359
<u>(B) "Program year" means the twelve-month period beginning</u>	360
<u>the first day of June of a given year of the Ohio clean air</u>	361
<u>program and ending the thirty-first day of May of the following</u>	362
<u>year.</u>	363
<u>(C) "Electric distribution utility" and "renewable energy</u>	364
<u>resource" have the same meanings as in section 4928.01 of the</u>	365
<u>Revised Code.</u>	366
<u>(D) "Annual capacity factor" means the actual energy</u>	367
<u>produced in a year divided by the energy that would have been</u>	368

produced if the facility was operating continuously at the 369  
maximum rating. 370

(E) "Clean air credit" means a credit that represents the 371  
clean air attributes of one megawatt hour of electric energy 372  
produced from a certified clean air resource. 373

(F) "Credit price adjustment" means a reduction to the 374  
price for each clean air credit equal to the market price index 375  
minus the strike price. 376

(G) "Strike price" means forty-six dollars per megawatt 377  
hour. 378

(H) "Market price index" means the sum, expressed in 379  
dollars per megawatt hour, of both of the following for the 380  
upcoming program year: 381

(1) Projected energy prices, determined using futures 382  
contracts for the PJM AEP-Dayton hub; 383

(2) Projected capacity prices, determined using PJM's 384  
rest-of-RTO market clearing price. 385

**Sec. 3706.42.** (A) There is hereby created the Ohio clean 386  
air program, which shall terminate on December 31, 2026. 387

(B) Any person owning or controlling an electric 388  
generating facility that meets the definition of a clean air 389  
resource in section 3706.40 of the Revised Code may submit a 390  
written application with the Ohio air quality development 391  
authority for certification as a clean air resource to be 392  
eligible to participate in the Ohio clean air program. 393  
Applications shall be submitted by the first day of February for 394  
any program year beginning the first day of June of the same 395  
calendar year. 396

<u>(C) Applications shall include all of the following</u>	397
<u>information:</u>	398
<u>(1) The in-service date and estimated remaining useful</u>	399
<u>life of the resource;</u>	400
<u>(2) For an existing resource, the quantity of megawatt</u>	401
<u>hours generated by the resource annually during each of the</u>	402
<u>previous five calendar years during which the resource was</u>	403
<u>generating, and the annual capacity factor for each of those</u>	404
<u>calendar years;</u>	405
<u>(3) A forecast estimate of the annual quantity of megawatt</u>	406
<u>hours to be generated by the resource and the projected annual</u>	407
<u>capacity factor over the remaining useful life of the resource;</u>	408
<u>(4) A forecast estimate of the emissions that would occur</u>	409
<u>in this state during the remaining useful life of the resource</u>	410
<u>if the resource discontinued operations prior to the end of the</u>	411
<u>resource's useful life;</u>	412
<u>(5) Verified documentation demonstrating all of the</u>	413
<u>following:</u>	414
<u>(a) That certification as a clean air resource and</u>	415
<u>participation in the Ohio clean air program will permit the</u>	416
<u>resource to reduce future emissions per unit of electrical</u>	417
<u>energy generated in this state;</u>	418
<u>(b) That without certification as a clean air resource,</u>	419
<u>the positive contributions to the air quality of this state that</u>	420
<u>the resource has made and is capable of making in the future may</u>	421
<u>be diminished or eliminated;</u>	422
<u>(c) That the clean air resource meets the definition of a</u>	423
<u>clean air resource in section 3706.40 of the Revised Code;</u>	424

(d) That the person seeking certification owns or controls 425  
the resource. 426

(6) The resource's nameplate capacity; 427

(7) Any other data or information that the authority 428  
requests and determines is necessary to evaluate an application 429  
for certification as a clean air resource or to demonstrate that 430  
certification would be in the public interest. 431

(D) The authority shall post on the authority's web site 432  
all applications and nonconfidential supporting materials 433  
submitted under this section. 434

(E) Interested persons may file comments not later than 435  
twenty days after the date that an application is posted on the 436  
authority's web site. All comments shall be posted on the 437  
authority's web site. An applicant may respond to those comments 438  
not later than ten days thereafter. 439

**Sec. 3706.44.** (A) (1) On or before the thirty-first day of 440  
March, the Ohio air quality development authority shall review 441  
all applications timely submitted under section 3706.42 of the 442  
Revised Code and issue an order certifying a clean air resource 443  
that meets the definition of a clean air resource in section 444  
3706.40 of the Revised Code. 445

(2) A clean air resource shall remain certified as a clean 446  
air resource as long as the resource continues to meet the 447  
definition of a clean air resource in section 3706.40 of the 448  
Revised Code. 449

(B) In the event the authority does not issue an order 450  
under division (A) of this section by the thirty-first day of 451  
March, each electric generating facility included in a timely 452  
and properly filed application shall be deemed a clean air 453



resource. 454

(C) (1) The authority may decertify a clean air resource at 455  
any time if it determines that certification is not in the 456  
public interest. 457

(2) Before decertifying a clean air resource, the 458  
authority shall do both of the following: 459

(a) Allow the resource to provide additional information 460  
in support of remaining certified; 461

(b) Hold a public hearing and allow for public comment. 462

**Sec. 3706.46.** (A) For the purpose of funding benefits 463  
provided by the Ohio clean air program, there is hereby created 464  
the Ohio clean air program fund. The fund shall be in the 465  
custody of the state treasurer but shall not be part of the 466  
state treasury. The fund shall consist of the charges under 467  
section 3706.47 of the Revised Code. All interest generated by 468  
the fund shall be retained in the fund and used for the purpose 469  
of funding the Ohio clean air program. 470

(B) The treasurer shall distribute the moneys in the Ohio 471  
clean air program fund in accordance with the directions 472  
provided by the Ohio air quality development authority. 473

**Sec. 3706.47.** (A) Beginning January 1, 2020, and ending on 474  
December 31, 2026, each retail electric customer of an electric 475  
distribution utility in this state shall pay a per-account 476  
monthly charge, which shall be billed and collected by each 477  
electric distribution utility and remitted to the state 478  
treasurer for deposit into the Ohio clean air program fund, 479  
created under section 3706.46 of the Revised Code. 480

(B) The monthly charges established under division (A) of 481

this section shall be in accordance with the following: 482

(1) For customers classified by the utility as 483  
residential: 484

(a) For the year 2020, fifty cents; 485

(b) For the years 2021, 2022, 2023, 2024, 2025, and 2026, 486  
one dollar. 487

(2) For customers classified by the utility as commercial, 488  
except as provided in division (B)(4) of this section, a charge 489  
that is determined by a structure and design that the public 490  
utilities commission shall, not later than October 1, 2019, 491  
establish. The commission shall establish the structure and 492  
design of the charge such that the average charge across all 493  
customers subject to the charge under division (B)(2) of this 494  
section is: 495

(a) For the year 2020, ten dollars; and 496

(b) For the years 2021, 2022, 2023, 2024, 2025, and 2026, 497  
fifteen dollars. 498

(3) For customers classified by the utility as industrial, 499  
except as provided in division (B)(4) of this section, a charge 500  
that is determined by a structure and design that the commission 501  
shall, not later than October 1, 2019, establish. The commission 502  
shall establish the structure and design of the charge such that 503  
the average charge across all customers subject to the charge 504  
under division (B)(3) of this section is two hundred fifty 505  
dollars; 506

(4) For customers classified by the utility as commercial 507  
or industrial that exceeded forty-five million kilowatt hours of 508  
electricity at a single location in the preceding year, two 509

thousand five hundred dollars. 510

(C) The commission shall comply with divisions (B) (2) and 511  
(3) of this section in a manner that avoids abrupt or excessive 512  
total electric bill impacts for typical customers with a 513  
classification of commercial or industrial. 514

(D) For purposes of division (B) of this section, the 515  
classification of residential, commercial, and industrial 516  
customers shall be consistent with the utility's reporting under 517  
its approved rate schedules. 518

**Sec. 3706.48.** Each owner of a certified clean air resource 519  
shall report to the Ohio air quality development authority, not 520  
later than seven days after the close of each month during a 521  
program year, the number of megawatt hours the resource produced 522  
in the previous month. 523

**Sec. 3706.481.** A certified clean air resource shall earn a 524  
clean air credit for each megawatt hour of electricity it 525  
produces. 526

**Sec. 3706.482.** (A) Not later than fourteen days after the 527  
close of each month during a program year, the Ohio air quality 528  
development authority shall direct the treasurer of state to 529  
remit money from the Ohio clean air program fund, subject to 530  
section 3706.486 of the Revised Code, to each owner of a 531  
certified clean air resource in the amount equivalent to the 532  
number of credits earned by the resource during the previous 533  
month multiplied by the credit price. 534

(B) The price for each clean air credit shall be nine 535  
dollars, except as provided in division (C) of this section. 536

(C) To ensure that the purchase of clean air credits 537  
remains affordable to retail customers if electricity prices 538

increase, on the first day of April during the first program 539  
year and annually on that date in subsequent program years, the 540  
authority shall apply the credit price adjustment for the 541  
upcoming program year if the market price index exceeds the 542  
strike price on that date. This division shall apply only to 543  
clean air resources fueled by nuclear power. 544

Sec. 3706.483. The Ohio air quality development authority 545  
shall adopt rules to provide for this state a system of 546  
registering clean air credits by specifying that the generation 547  
attribute tracking system may be used for that purpose and not 548  
by creating a registry. 549

Sec. 3706.485. (A) An electric distribution utility shall 550  
submit an application to the Ohio air quality development 551  
authority for reimbursement from the Ohio clean air program fund 552  
of the net costs that are recoverable under section 4928.641 of 553  
the Revised Code. The public utilities commission shall certify 554  
the utility's net costs to be recovered in accordance with 555  
division (F) of section 4928.641 of the Revised Code. 556

(B) Not later than ninety days after the receipt of an 557  
application under division (A) of this section, the authority 558  
shall direct the treasurer of state to remit money from the Ohio 559  
clean air program fund to the electric distribution utility as 560  
reimbursement for those costs. 561

Sec. 3706.486. (A) If the money in the Ohio clean air 562  
program fund is insufficient in a particular month to make the 563  
remittances in the amount required under division (A) of section 564  
3706.482 of the Revised Code, the Ohio air quality development 565  
authority shall, not later than fourteen days after the close of 566  
that month, direct the treasurer of state to remit money from 567  
the Ohio clean air program fund to pay for the unpaid credits 568

before any other remittances are made. Remittances made under 569  
division (A) of this section shall be made in the following 570  
order of priority: 571

(1) To the owners of clean air resources fueled by nuclear 572  
power; 573

(2) To the owners of clean air resources that use or will 574  
use solar energy. 575

(B) After any remittances are made under division (A) of 576  
this section, the remittances under sections 3706.482 and 577  
3706.485 of the Revised Code shall be made in the following 578  
order of priority: 579

(1) Under section 3706.482 of the Revised Code, to the 580  
owners of clean air resources fueled by nuclear power; 581

(2) Under section 3706.482 of the Revised Code, to the 582  
owners of clean air resources that use or will use solar energy; 583

(3) Under section 3706.485 of the Revised Code, to 584  
electric distribution utilities as reimbursement for costs as 585  
described in that section. 586

**Sec. 3706.49.** (A) To facilitate air quality development 587  
related capital formation and investment by or in a certified 588  
clean air resource, the Ohio air quality development authority 589  
may pledge a portion of moneys that may, in the future, be 590  
accumulated in the Ohio clean air program fund for the benefit 591  
of any certified clean air resource, provided the resource 592  
agrees to be bound by the conditions the authority may attach to 593  
the pledge. 594

(B) The authority shall not be required to direct 595  
distribution of moneys in the Ohio clean air program fund unless 596

or until there are adequate moneys available in the Ohio clean 597  
air program fund. Nothing herein shall cause any such pledge to 598  
be construed or applied to create, directly or indirectly, a 599  
general obligation of or for this state. 600

**Sec. 3706.50.** (A) In the years 2021, 2022, 2023, 2024, 601  
2025, 2026, and 2027, an unaffiliated and independent third 602  
party shall conduct an annual audit of the Ohio clean air 603  
program. 604

(B) Not later than ninety days after the effective date of 605  
this section, the authority shall adopt rules that are necessary 606  
to begin implementation of the Ohio clean air program. The rules 607  
adopted under this division shall include provisions for both of 608  
the following: 609

(1) Tracking the number of clean air credits earned by 610  
each certified clean air resource during each month of a program 611  
year, based on the information reported under section 3706.48 of 612  
the Revised Code; 613

(2) The annual audit required under division (A) of this 614  
section. 615

(C) Not later than two hundred seventy-five days after the 616  
effective date of this section, the authority shall adopt rules 617  
that are necessary for the further implementation and 618  
administration of the Ohio clean air program. 619

**Sec. 4905.311.** In order to promote job growth and 620  
retention in this state, the public utilities commission, when 621  
ruling on a reasonable arrangement application under section 622  
4905.31 of the Revised Code, shall attempt to minimize electric 623  
rates to the maximum amount possible on trade-exposed industrial 624  
manufacturers. 625

**Sec. 4906.10.** (A) The power siting board shall render a 626  
decision upon the record either granting or denying the 627  
application as filed, or granting it upon such terms, 628  
conditions, or modifications of the construction, operation, or 629  
maintenance of the major utility facility as the board considers 630  
appropriate. The certificate shall be subject to section 631  
4906.101 of the Revised Code and conditioned upon the facility 632  
being in compliance with standards and rules adopted under 633  
sections 1501.33, 1501.34, and 4561.32 and Chapters 3704., 634  
3734., and 6111. of the Revised Code. An applicant may withdraw 635  
an application if the board grants a certificate on terms, 636  
conditions, or modifications other than those proposed by the 637  
applicant in the application. 638

The board shall not grant a certificate for the 639  
construction, operation, and maintenance of a major utility 640  
facility, either as proposed or as modified by the board, unless 641  
it finds and determines all of the following: 642

(1) The basis of the need for the facility if the facility 643  
is an electric transmission line or gas pipeline; 644

(2) The nature of the probable environmental impact; 645

(3) That the facility represents the minimum adverse 646  
environmental impact, considering the state of available 647  
technology and the nature and economics of the various 648  
alternatives, and other pertinent considerations; 649

(4) In the case of an electric transmission line or 650  
generating facility, that the facility is consistent with 651  
regional plans for expansion of the electric power grid of the 652  
electric systems serving this state and interconnected utility 653  
systems and that the facility will serve the interests of 654

electric system economy and reliability; 655

(5) That the facility will comply with Chapters 3704., 656  
3734., and 6111. of the Revised Code and all rules and standards 657  
adopted under those chapters and under sections 1501.33, 658  
1501.34, and 4561.32 of the Revised Code. In determining whether 659  
the facility will comply with all rules and standards adopted 660  
under section 4561.32 of the Revised Code, the board shall 661  
consult with the office of aviation of the division of multi- 662  
modal planning and programs of the department of transportation 663  
under section 4561.341 of the Revised Code. 664

(6) That the facility will serve the public interest, 665  
convenience, and necessity; 666

(7) In addition to the provisions contained in divisions 667  
(A) (1) to (6) of this section and rules adopted under those 668  
divisions, what its impact will be on the viability as 669  
agricultural land of any land in an existing agricultural 670  
district established under Chapter 929. of the Revised Code that 671  
is located within the site and alternative site of the proposed 672  
major utility facility. Rules adopted to evaluate impact under 673  
division (A) (7) of this section shall not require the 674  
compilation, creation, submission, or production of any 675  
information, document, or other data pertaining to land not 676  
located within the site and alternative site. 677

(8) That the facility incorporates maximum feasible water 678  
conservation practices as determined by the board, considering 679  
available technology and the nature and economics of the various 680  
alternatives. 681

(B) If the board determines that the location of all or a 682  
part of the proposed facility should be modified, it may 683



condition its certificate upon that modification, provided that 684  
the municipal corporations and counties, and persons residing 685  
therein, affected by the modification shall have been given 686  
reasonable notice thereof. 687

(C) A copy of the decision and any opinion issued 688  
therewith shall be served upon each party. 689

**Sec. 4906.101.** (A) If the power siting board issues a 690  
certificate to a large wind farm as defined in section 4906.13 691  
of the Revised Code and the large wind farm is to be located in 692  
the unincorporated area of a township, the certificate shall be 693  
conditioned upon the right of referendum as provided in section 694  
519.214 of the Revised Code. 695

(B) If the certificate is rejected in a referendum under 696  
section 519.214 of the Revised Code, one of the following 697  
applies: 698

(1) If the large wind farm is to be located in the 699  
unincorporated area of a single township, the certificate shall 700  
be invalid; 701

(2) If the large wind farm is to be located in the 702  
unincorporated area of more than one township, one of the 703  
following applies: 704

(a) If less than all of the townships with electors voting 705  
on the referendum reject the certificate, the power siting board 706  
shall modify the certificate to exclude the area of each 707  
township whose electors rejected the certificate. 708

(b) If all the townships with electors voting on the 709  
referendum reject the certificate, the certificate is invalid. 710

**Sec. 4906.13.** (A) As used in this section and sections 711

4906.20, 4906.201, 4906.203, and 4906.98 of the Revised Code, 712

"economically: 713

"Economically significant wind farm" means wind turbines 714

and associated facilities with a single interconnection to the 715

electrical grid and designed for, or capable of, operation at an 716

aggregate capacity of five or more megawatts but less than fifty 717

megawatts. The term excludes any such wind farm in operation on 718

June 24, 2008. The term also excludes one or more wind turbines 719

and associated facilities that are primarily dedicated to 720

providing electricity to a single customer at a single location 721

and that are designed for, or capable of, operation at an 722

aggregate capacity of less than twenty megawatts, as measured at 723

the customer's point of interconnection to the electrical grid. 724

"Large wind farm" means an electric generating plant that 725

consists of wind turbines and associated facilities with a 726

single interconnection to the electrical grid that is a major 727

utility facility as defined in section 4906.01 of the Revised 728

Code. 729

(B) No public agency or political subdivision of this 730

state may require any approval, consent, permit, certificate, or 731

other condition for the construction or operation of a major 732

utility facility or economically significant wind farm 733

authorized by a certificate issued pursuant to Chapter 4906. of 734

the Revised Code. Nothing herein shall prevent the application 735

of state laws for the protection of employees engaged in the 736

construction of such facility or wind farm nor of municipal 737

regulations that do not pertain to the location or design of, or 738

pollution control and abatement standards for, a major utility 739

facility or economically significant wind farm for which a 740

certificate has been granted under this chapter. 741

**Sec. 4906.20.** (A) ~~No~~ Subject to section 4906.203 of the 742  
Revised Code, no person shall commence to construct an 743  
economically significant wind farm in this state without first 744  
having obtained a certificate from the power siting board. An 745  
economically significant wind farm with respect to which such a 746  
certificate is required shall be constructed, operated, and 747  
maintained in conformity with that certificate and any terms, 748  
conditions, and modifications it contains. A certificate shall 749  
be issued only pursuant to this section. The certificate may be 750  
transferred, subject to the approval of the board, to a person 751  
that agrees to comply with those terms, conditions, and 752  
modifications. 753

(B) The board shall adopt rules governing the 754  
certificating of economically significant wind farms under this 755  
section. Initial rules shall be adopted within one hundred 756  
twenty days after June 24, 2008. 757

(1) The rules shall provide for an application process for 758  
certificating economically significant wind farms that is 759  
identical to the extent practicable to the process applicable to 760  
certificating major utility facilities under sections 4906.06, 761  
4906.07, 4906.08, 4906.09, 4906.10, 4906.11, and 4906.12 of the 762  
Revised Code and shall prescribe a reasonable schedule of 763  
application filing fees structured in the manner of the schedule 764  
of filing fees required for major utility facilities. 765

(2) Additionally, the rules shall prescribe reasonable 766  
regulations regarding any wind turbines and associated 767  
facilities of an economically significant wind farm, including, 768  
but not limited to, their location, erection, construction, 769  
reconstruction, change, alteration, maintenance, removal, use, 770  
or enlargement and including erosion control, aesthetics, 771

recreational land use, wildlife protection, interconnection with 772  
power lines and with regional transmission organizations, 773  
independent transmission system operators, or similar 774  
organizations, ice throw, sound and noise levels, blade shear, 775  
shadow flicker, decommissioning, and necessary cooperation for 776  
site visits and enforcement investigations. 777

(a) The rules also shall prescribe a minimum setback for a 778  
wind turbine of an economically significant wind farm. That 779  
minimum shall be equal to a horizontal distance, from the 780  
turbine's base to the property line of the wind farm property, 781  
equal to one and one-tenth times the total height of the turbine 782  
structure as measured from its base to the tip of its highest 783  
blade and be at least one thousand one hundred twenty-five feet 784  
in horizontal distance from the tip of the turbine's nearest 785  
blade at ninety degrees to the property line of the nearest 786  
adjacent property at the time of the certification application. 787

(b) (i) For any existing certificates and amendments 788  
thereto, and existing certification applications that have been 789  
found by the chairperson to be in compliance with division (A) 790  
of section 4906.06 of the Revised Code before the effective date 791  
of the amendment of this section by H.B. 59 of the 130th general 792  
assembly, September 29, 2013, the distance shall be seven 793  
hundred fifty feet instead of one thousand one hundred twenty- 794  
five feet. 795

(ii) Any amendment made to an existing certificate after 796  
the effective date of the amendment of this section by H.B. 483 797  
of the 130th general assembly, September 15, 2014, shall be 798  
subject to the setback provision of this section as amended by 799  
that act. The amendments to this section by that act shall not 800  
be construed to limit or abridge any rights or remedies in 801

equity or under the common law. 802

(c) The setback shall apply in all cases except those in 803  
which all owners of property adjacent to the wind farm property 804  
waive application of the setback to that property pursuant to a 805  
procedure the board shall establish by rule and except in which, 806  
in a particular case, the board determines that a setback 807  
greater than the minimum is necessary. 808

**Sec. 4906.201.** (A) ~~An electric generating plant that~~ 809  
~~consists of wind turbines and associated facilities with a~~ 810  
~~single interconnection to the electrical grid that is designed~~ 811  
~~for, or capable of, operation at an aggregate capacity of fifty~~ 812  
~~megawatts or more~~ A large wind farm is subject to the minimum 813  
setback requirements established in rules adopted by the power 814  
siting board under division (B) (2) of section 4906.20 of the 815  
Revised Code. 816

(B) (1) For any existing certificates and amendments 817  
thereto, and existing certification applications that have been 818  
found by the chairperson to be in compliance with division (A) 819  
of section 4906.06 of the Revised Code before the effective date 820  
of the amendment of this section by H.B. 59 of the 130th general 821  
assembly, September 29, 2013, the distance shall be seven 822  
hundred fifty feet instead of one thousand one hundred twenty- 823  
five feet. 824

(2) Any amendment made to an existing certificate after 825  
the effective date of the amendment of this section by H.B. 483 826  
of the 130th general assembly, September 15, 2014, shall be 827  
subject to the setback provision of this section as amended by 828  
that act. The amendments to this section by that act shall not 829  
be construed to limit or abridge any rights or remedies in 830  
equity or under the common law. 831

Sec. 4906.203. (A) If the power siting board issues a 832  
certificate under section 4906.20 of the Revised Code to an 833  
economically significant wind farm to be located in the 834  
unincorporated area of a township, the certificate shall be 835  
conditioned upon the right of referendum as provided in section 836  
519.214 of the Revised Code. 837

(B) If the certificate is rejected in a referendum under 838  
section 519.214 of the Revised Code, one of the following 839  
applies: 840

(1) If the economically significant wind farm is to be 841  
located in the unincorporated area of a single township, the 842  
certificate is invalid; 843

(2) If the economically significant wind farm is to be 844  
located in the unincorporated area of more than one township, 845  
one of the following applies: 846

(a) If less than all of the townships with electors voting 847  
on the referendum reject the certificate, the power siting board 848  
shall modify the certificate to exclude the area of each 849  
township whose electors rejected the certificate. 850

(b) If all the townships with electors voting on the 851  
referendum reject the certificate, the certificate is invalid. 852

**Sec. 4928.01.** (A) As used in this chapter: 853

(1) "Ancillary service" means any function necessary to 854  
the provision of electric transmission or distribution service 855  
to a retail customer and includes, but is not limited to, 856  
scheduling, system control, and dispatch services; reactive 857  
supply from generation resources and voltage control service; 858  
reactive supply from transmission resources service; regulation 859  
service; frequency response service; energy imbalance service; 860

operating reserve-spinning reserve service; operating reserve- 861  
supplemental reserve service; load following; back-up supply 862  
service; real-power loss replacement service; dynamic 863  
scheduling; system black start capability; and network stability 864  
service. 865

(2) "Billing and collection agent" means a fully 866  
independent agent, not affiliated with or otherwise controlled 867  
by an electric utility, electric services company, electric 868  
cooperative, or governmental aggregator subject to certification 869  
under section 4928.08 of the Revised Code, to the extent that 870  
the agent is under contract with such utility, company, 871  
cooperative, or aggregator solely to provide billing and 872  
collection for retail electric service on behalf of the utility 873  
company, cooperative, or aggregator. 874

(3) "Certified territory" means the certified territory 875  
established for an electric supplier under sections 4933.81 to 876  
4933.90 of the Revised Code. 877

(4) "Competitive retail electric service" means a 878  
component of retail electric service that is competitive as 879  
provided under division (B) of this section. 880

(5) "Electric cooperative" means a not-for-profit electric 881  
light company that both is or has been financed in whole or in 882  
part under the "Rural Electrification Act of 1936," 49 Stat. 883  
1363, 7 U.S.C. 901, and owns or operates facilities in this 884  
state to generate, transmit, or distribute electricity, or a 885  
not-for-profit successor of such company. 886

(6) "Electric distribution utility" means an electric 887  
utility that supplies at least retail electric distribution 888  
service. 889

(7) "Electric light company" has the same meaning as in 890  
section 4905.03 of the Revised Code and includes an electric 891  
services company, but excludes any self-generator to the extent 892  
that it consumes electricity it so produces, sells that 893  
electricity for resale, or obtains electricity from a generating 894  
facility it hosts on its premises. 895

(8) "Electric load center" has the same meaning as in 896  
section 4933.81 of the Revised Code. 897

(9) "Electric services company" means an electric light 898  
company that is engaged on a for-profit or not-for-profit basis 899  
in the business of supplying or arranging for the supply of only 900  
a competitive retail electric service in this state. "Electric 901  
services company" includes a power marketer, power broker, 902  
aggregator, or independent power producer but excludes an 903  
electric cooperative, municipal electric utility, governmental 904  
aggregator, or billing and collection agent. 905

(10) "Electric supplier" has the same meaning as in 906  
section 4933.81 of the Revised Code. 907

(11) "Electric utility" means an electric light company 908  
that has a certified territory and is engaged on a for-profit 909  
basis either in the business of supplying a noncompetitive 910  
retail electric service in this state or in the businesses of 911  
supplying both a noncompetitive and a competitive retail 912  
electric service in this state. "Electric utility" excludes a 913  
municipal electric utility or a billing and collection agent. 914

(12) "Firm electric service" means electric service other 915  
than nonfirm electric service. 916

(13) "Governmental aggregator" means a legislative 917  
authority of a municipal corporation, a board of township 918



trustees, or a board of county commissioners acting as an 919  
aggregator for the provision of a competitive retail electric 920  
service under authority conferred under section 4928.20 of the 921  
Revised Code. 922

(14) A person acts "knowingly," regardless of the person's 923  
purpose, when the person is aware that the person's conduct will 924  
probably cause a certain result or will probably be of a certain 925  
nature. A person has knowledge of circumstances when the person 926  
is aware that such circumstances probably exist. 927

(15) "Level of funding for low-income customer energy 928  
efficiency programs provided through electric utility rates" 929  
means the level of funds specifically included in an electric 930  
utility's rates on October 5, 1999, pursuant to an order of the 931  
public utilities commission issued under Chapter 4905. or 4909. 932  
of the Revised Code and in effect on October 4, 1999, for the 933  
purpose of improving the energy efficiency of housing for the 934  
utility's low-income customers. The term excludes the level of 935  
any such funds committed to a specific nonprofit organization or 936  
organizations pursuant to a stipulation or contract. 937

(16) "Low-income customer assistance programs" means the 938  
percentage of income payment plan program, the home energy 939  
assistance program, the home weatherization assistance program, 940  
and the targeted energy efficiency and weatherization program. 941

(17) "Market development period" for an electric utility 942  
means the period of time beginning on the starting date of 943  
competitive retail electric service and ending on the applicable 944  
date for that utility as specified in section 4928.40 of the 945  
Revised Code, irrespective of whether the utility applies to 946  
receive transition revenues under this chapter. 947

(18) "Market power" means the ability to impose on 948  
customers a sustained price for a product or service above the 949  
price that would prevail in a competitive market. 950

(19) "Mercantile customer" means a commercial or 951  
industrial customer if the electricity consumed is for 952  
nonresidential use and the customer consumes more than seven 953  
hundred thousand kilowatt hours per year or is part of a 954  
national account involving multiple facilities in one or more 955  
states. 956

(20) "Municipal electric utility" means a municipal 957  
corporation that owns or operates facilities to generate, 958  
transmit, or distribute electricity. 959

(21) "Noncompetitive retail electric service" means a 960  
component of retail electric service that is noncompetitive as 961  
provided under division (B) of this section. 962

(22) "Nonfirm electric service" means electric service 963  
provided pursuant to a schedule filed under section 4905.30 of 964  
the Revised Code or pursuant to an arrangement under section 965  
4905.31 of the Revised Code, which schedule or arrangement 966  
includes conditions that may require the customer to curtail or 967  
interrupt electric usage during nonemergency circumstances upon 968  
notification by an electric utility. 969

(23) "Percentage of income payment plan arrears" means 970  
funds eligible for collection through the percentage of income 971  
payment plan rider, but uncollected as of July 1, 2000. 972

(24) "Person" has the same meaning as in section 1.59 of 973  
the Revised Code. 974

(25) "Advanced energy project" means any technologies, 975  
products, activities, or management practices or strategies that 976

facilitate the generation or use of electricity or energy and 977  
that reduce or support the reduction of energy consumption or 978  
support the production of clean, renewable energy for 979  
industrial, distribution, commercial, institutional, 980  
governmental, research, not-for-profit, or residential energy 981  
users, including, but not limited to, advanced energy resources 982  
and renewable energy resources. "Advanced energy project" also 983  
includes any project described in division (A), (B), or (C) of 984  
section 4928.621 of the Revised Code. 985

(26) "Regulatory assets" means the unamortized net 986  
regulatory assets that are capitalized or deferred on the 987  
regulatory books of the electric utility, pursuant to an order 988  
or practice of the public utilities commission or pursuant to 989  
generally accepted accounting principles as a result of a prior 990  
commission rate-making decision, and that would otherwise have 991  
been charged to expense as incurred or would not have been 992  
capitalized or otherwise deferred for future regulatory 993  
consideration absent commission action. "Regulatory assets" 994  
includes, but is not limited to, all deferred demand-side 995  
management costs; all deferred percentage of income payment plan 996  
arrears; post-in-service capitalized charges and assets 997  
recognized in connection with statement of financial accounting 998  
standards no. 109 (receivables from customers for income taxes); 999  
future nuclear decommissioning costs and fuel disposal costs as 1000  
those costs have been determined by the commission in the 1001  
electric utility's most recent rate or accounting application 1002  
proceeding addressing such costs; the undepreciated costs of 1003  
safety and radiation control equipment on nuclear generating 1004  
plants owned or leased by an electric utility; and fuel costs 1005  
currently deferred pursuant to the terms of one or more 1006  
settlement agreements approved by the commission. 1007

(27) "Retail electric service" means any service involved 1008  
in supplying or arranging for the supply of electricity to 1009  
ultimate consumers in this state, from the point of generation 1010  
to the point of consumption. For the purposes of this chapter, 1011  
retail electric service includes one or more of the following 1012  
"service components": generation service, aggregation service, 1013  
power marketing service, power brokerage service, transmission 1014  
service, distribution service, ancillary service, metering 1015  
service, and billing and collection service. 1016

(28) "Starting date of competitive retail electric 1017  
service" means January 1, 2001. 1018

(29) "Customer-generator" means a user of a net metering 1019  
system. 1020

(30) "Net metering" means measuring the difference in an 1021  
applicable billing period between the electricity supplied by an 1022  
electric service provider and the electricity generated by a 1023  
customer-generator that is fed back to the electric service 1024  
provider. 1025

(31) "Net metering system" means a facility for the 1026  
production of electrical energy that does all of the following: 1027

(a) Uses as its fuel either solar, wind, biomass, landfill 1028  
gas, or hydropower, or uses a microturbine or a fuel cell; 1029

(b) Is located on a customer-generator's premises; 1030

(c) Operates in parallel with the electric utility's 1031  
transmission and distribution facilities; 1032

(d) Is intended primarily to offset part or all of the 1033  
customer-generator's requirements for electricity. For an 1034  
industrial customer-generator with a net metering system that 1035

has a capacity of less than twenty megawatts and uses wind as 1036  
energy, this means the net metering system was sized so as to 1037  
not exceed one hundred per cent of the customer-generator's 1038  
annual requirements for electric energy at the time of 1039  
interconnection. 1040

(32) "Self-generator" means an entity in this state that 1041  
owns or hosts on its premises an electric generation facility 1042  
that produces electricity primarily for the owner's consumption 1043  
and that may provide any such excess electricity to another 1044  
entity, whether the facility is installed or operated by the 1045  
owner or by an agent under a contract. 1046

(33) "Rate plan" means the standard service offer in 1047  
effect on the effective date of the amendment of this section by 1048  
S.B. 221 of the 127th general assembly, July 31, 2008. 1049

(34) "Advanced energy resource" means any of the 1050  
following: 1051

(a) Any method or any modification or replacement of any 1052  
property, process, device, structure, or equipment that 1053  
increases the generation output of an electric generating 1054  
facility to the extent such efficiency is achieved without 1055  
additional carbon dioxide emissions by that facility; 1056

(b) Any distributed generation system consisting of 1057  
customer cogeneration technology; 1058

(c) Clean coal technology that includes a carbon-based 1059  
product that is chemically altered before combustion to 1060  
demonstrate a reduction, as expressed as ash, in emissions of 1061  
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 1062  
sulfur trioxide in accordance with the American society of 1063  
testing and materials standard D1757A or a reduction of metal 1064

oxide emissions in accordance with standard D5142 of that 1065  
society, or clean coal technology that includes the design 1066  
capability to control or prevent the emission of carbon dioxide, 1067  
which design capability the commission shall adopt by rule and 1068  
shall be based on economically feasible best available 1069  
technology or, in the absence of a determined best available 1070  
technology, shall be of the highest level of economically 1071  
feasible design capability for which there exists generally 1072  
accepted scientific opinion; 1073

(d) Advanced nuclear energy technology consisting of 1074  
generation III technology as defined by the nuclear regulatory 1075  
commission; other, later technology; or significant improvements 1076  
to existing facilities; 1077

(e) Any fuel cell used in the generation of electricity, 1078  
including, but not limited to, a proton exchange membrane fuel 1079  
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 1080  
solid oxide fuel cell; 1081

(f) Advanced solid waste or construction and demolition 1082  
debris conversion technology, including, but not limited to, 1083  
advanced stoker technology, and advanced fluidized bed 1084  
gasification technology, that results in measurable greenhouse 1085  
gas emissions reductions as calculated pursuant to the United 1086  
States environmental protection agency's waste reduction model 1087  
(WARM); 1088

(g) Demand-side management and any energy efficiency 1089  
improvement; 1090

(h) Any new, retrofitted, refueled, or repowered 1091  
generating facility located in Ohio, including a simple or 1092  
combined-cycle natural gas generating facility or a generating 1093

facility that uses biomass, coal, modular nuclear, or any other 1094  
fuel as its input; 1095

(i) Any uprated capacity of an existing electric 1096  
generating facility if the uprated capacity results from the 1097  
deployment of advanced technology. 1098

~~"Advanced energy resource" does not include a waste energy-~~ 1099  
~~recovery system that is, or has been, included in an energy-~~ 1100  
~~efficiency program of an electric distribution utility pursuant-~~ 1101  
~~to requirements under section 4928.66 of the Revised Code.~~ 1102

(35) "Air contaminant source" has the same meaning as in 1103  
section 3704.01 of the Revised Code. 1104

(36) "Cogeneration technology" means technology that 1105  
produces electricity and useful thermal output simultaneously. 1106

(37) (a) "Renewable energy resource" means any of the 1107  
following: 1108

(i) Solar photovoltaic or solar thermal energy; 1109

(ii) Wind energy; 1110

(iii) Power produced by a hydroelectric facility; 1111

(iv) Power produced by a small hydroelectric facility, 1112  
which is a facility that operates, or is rated to operate, at an 1113  
aggregate capacity of less than six megawatts; 1114

(v) Power produced by a run-of-the-river hydroelectric 1115  
facility placed in service on or after January 1, 1980, that is 1116  
located within this state, relies upon the Ohio river, and 1117  
operates, or is rated to operate, at an aggregate capacity of 1118  
forty or more megawatts; 1119

(vi) Geothermal energy; 1120

- (vii) Fuel derived from solid wastes, as defined in 1121  
section 3734.01 of the Revised Code, through fractionation, 1122  
biological decomposition, or other process that does not 1123  
principally involve combustion; 1124
- (viii) Biomass energy; 1125
- (ix) Energy produced by cogeneration technology that is 1126  
placed into service on or before December 31, 2015, and for 1127  
which more than ninety per cent of the total annual energy input 1128  
is from combustion of a waste or byproduct gas from an air 1129  
contaminant source in this state, which source has been in 1130  
operation since on or before January 1, 1985, provided that the 1131  
cogeneration technology is a part of a facility located in a 1132  
county having a population of more than three hundred sixty-five 1133  
thousand but less than three hundred seventy thousand according 1134  
to the most recent federal decennial census; 1135
- (x) Biologically derived methane gas; 1136
- (xi) Heat captured from a generator of electricity, 1137  
boiler, or heat exchanger fueled by biologically derived methane 1138  
gas; 1139
- (xii) Energy derived from nontreated by-products of the 1140  
pulping process or wood manufacturing process, including bark, 1141  
wood chips, sawdust, and lignin in spent pulping liquors. 1142
- "Renewable energy resource" includes, but is not limited 1143  
to, any fuel cell used in the generation of electricity, 1144  
including, but not limited to, a proton exchange membrane fuel 1145  
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 1146  
solid oxide fuel cell; wind turbine located in the state's 1147  
territorial waters of Lake Erie; methane gas emitted from an 1148  
abandoned coal mine; waste energy recovery system placed into 1149



service or retrofitted on or after the effective date of the 1150  
amendment of this section by S.B. 315 of the 129th general 1151  
assembly, September 10, 2012, except that a waste energy 1152  
recovery system described in division (A) (38) (b) of this section 1153  
may be included only if it was placed into service between 1154  
January 1, 2002, and December 31, 2004; storage facility that 1155  
will promote the better utilization of a renewable energy 1156  
resource; or distributed generation system used by a customer to 1157  
generate electricity from any such energy. 1158

~~"Renewable energy resource" does not include a waste 1159  
energy recovery system that is, or was, on or after January 1, 1160  
2012, included in an energy efficiency program of an electric 1161  
distribution utility pursuant to requirements under section 1162  
4928.66 of the Revised Code. 1163~~

(b) As used in division (A) (37) of this section, 1164  
"hydroelectric facility" means a hydroelectric generating 1165  
facility that is located at a dam on a river, or on any water 1166  
discharged to a river, that is within or bordering this state or 1167  
within or bordering an adjoining state and meets all of the 1168  
following standards: 1169

(i) The facility provides for river flows that are not 1170  
detrimental for fish, wildlife, and water quality, including 1171  
seasonal flow fluctuations as defined by the applicable 1172  
licensing agency for the facility. 1173

(ii) The facility demonstrates that it complies with the 1174  
water quality standards of this state, which compliance may 1175  
consist of certification under Section 401 of the "Clean Water 1176  
Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and 1177  
demonstrates that it has not contributed to a finding by this 1178  
state that the river has impaired water quality under Section 1179

303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 1180  
U.S.C. 1313. 1181

(iii) The facility complies with mandatory prescriptions 1182  
regarding fish passage as required by the federal energy 1183  
regulatory commission license issued for the project, regarding 1184  
fish protection for riverine, anadromous, and catadromous fish. 1185

(iv) The facility complies with the recommendations of the 1186  
Ohio environmental protection agency and with the terms of its 1187  
federal energy regulatory commission license regarding watershed 1188  
protection, mitigation, or enhancement, to the extent of each 1189  
agency's respective jurisdiction over the facility. 1190

(v) The facility complies with provisions of the 1191  
"Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 1192  
to 1544, as amended. 1193

(vi) The facility does not harm cultural resources of the 1194  
area. This can be shown through compliance with the terms of its 1195  
federal energy regulatory commission license or, if the facility 1196  
is not regulated by that commission, through development of a 1197  
plan approved by the Ohio historic preservation office, to the 1198  
extent it has jurisdiction over the facility. 1199

(vii) The facility complies with the terms of its federal 1200  
energy regulatory commission license or exemption that are 1201  
related to recreational access, accommodation, and facilities 1202  
or, if the facility is not regulated by that commission, the 1203  
facility complies with similar requirements as are recommended 1204  
by resource agencies, to the extent they have jurisdiction over 1205  
the facility; and the facility provides access to water to the 1206  
public without fee or charge. 1207

(viii) The facility is not recommended for removal by any 1208

federal agency or agency of any state, to the extent the 1209  
particular agency has jurisdiction over the facility. 1210

(c) The standards in divisions (A) (37) (b) (i) to (viii) of 1211  
this section do not apply to a small hydroelectric facility 1212  
under division (A) (37) (a) (iv) of this section. 1213

(38) "Waste energy recovery system" means either of the 1214  
following: 1215

(a) A facility that generates electricity through the 1216  
conversion of energy from either of the following: 1217

(i) Exhaust heat from engines or manufacturing, 1218  
industrial, commercial, or institutional sites, except for 1219  
exhaust heat from a facility whose primary purpose is the 1220  
generation of electricity; 1221

(ii) Reduction of pressure in gas pipelines before gas is 1222  
distributed through the pipeline, provided that the conversion 1223  
of energy to electricity is achieved without using additional 1224  
fossil fuels. 1225

(b) A facility at a state institution of higher education 1226  
as defined in section 3345.011 of the Revised Code that recovers 1227  
waste heat from electricity-producing engines or combustion 1228  
turbines and that simultaneously uses the recovered heat to 1229  
produce steam, provided that the facility was placed into 1230  
service between January 1, 2002, and December 31, 2004. 1231

(39) "Smart grid" means capital improvements to an 1232  
electric distribution utility's distribution infrastructure that 1233  
improve reliability, efficiency, resiliency, or reduce energy 1234  
demand or use, including, but not limited to, advanced metering 1235  
and automation of system functions. 1236

(40) "Combined heat and power system" means the 1237  
coproduction of electricity and useful thermal energy from the 1238  
same fuel source designed to achieve thermal-efficiency levels 1239  
of at least sixty per cent, with at least twenty per cent of the 1240  
system's total useful energy in the form of thermal energy. 1241

(41) "National security generation resource" means all 1242  
generating facilities owned directly or indirectly by a 1243  
corporation that was formed prior to 1960 by investor-owned 1244  
utilities for the original purpose of providing capacity and 1245  
electricity to the federal government for use in the nation's 1246  
defense or in furtherance of national interests. The term 1247  
includes the Ohio valley electric corporation. 1248

(42) "Prudently incurred costs related to a national 1249  
security generation resource" means, subject to section 4928.148 1250  
of the Revised Code, costs, including deferred costs, allocated 1251  
pursuant to a power agreement approved by the federal energy 1252  
regulatory commission that relates to a national security 1253  
generation resource. Such costs shall exclude any return on 1254  
investment in common equity and, in the event of a premature 1255  
retirement of a national security generation resource, shall 1256  
exclude any recovery of remaining debt. Such costs shall include 1257  
any incremental costs resulting from the bankruptcy of a current 1258  
or former co-owner of the national security generation resource 1259  
if not otherwise recovered through a utility rate cost recovery 1260  
mechanism. 1261

(43) "National security generation resource net impact" 1262  
means retail recovery of prudently incurred costs related to a 1263  
national security generation resource, less any revenues 1264  
realized from offering the contractual commitment related to a 1265  
national security generation resource into the wholesale 1266

markets, provided that where the net revenues exceed net costs, 1267  
those excess revenues shall be credited to customers. 1268

(B) For the purposes of this chapter, a retail electric 1269  
service component shall be deemed a competitive retail electric 1270  
service if the service component is competitive pursuant to a 1271  
declaration by a provision of the Revised Code or pursuant to an 1272  
order of the public utilities commission authorized under 1273  
division (A) of section 4928.04 of the Revised Code. Otherwise, 1274  
the service component shall be deemed a noncompetitive retail 1275  
electric service. 1276

**Sec. 4928.02.** It is the policy of this state to do the 1277  
following throughout this state: 1278

(A) Ensure the availability to consumers of adequate, 1279  
reliable, safe, efficient, nondiscriminatory, and reasonably 1280  
priced retail electric service; 1281

(B) Ensure the availability of unbundled and comparable 1282  
retail electric service that provides consumers with the 1283  
supplier, price, terms, conditions, and quality options they 1284  
elect to meet their respective needs; 1285

(C) Ensure diversity of electricity supplies and 1286  
suppliers, by giving consumers effective choices over the 1287  
selection of those supplies and suppliers and by encouraging the 1288  
development of distributed and small generation facilities; 1289

(D) Encourage innovation and market access for cost- 1290  
effective supply- and demand-side retail electric service 1291  
including, but not limited to, demand-side management, time- 1292  
differentiated pricing, waste energy recovery systems, smart 1293  
grid programs, and implementation of advanced metering 1294  
infrastructure; 1295

(E) Encourage cost-effective and efficient access to	1296
information regarding the operation of the transmission and	1297
distribution systems of electric utilities in order to promote	1298
both effective customer choice of retail electric service and	1299
the development of performance standards and targets for service	1300
quality for all consumers, including annual achievement reports	1301
written in plain language;	1302
(F) Ensure that an electric utility's transmission and	1303
distribution systems are available to a customer-generator or	1304
owner of distributed generation, so that the customer-generator	1305
or owner can market and deliver the electricity it produces;	1306
(G) Recognize the continuing emergence of competitive	1307
electricity markets through the development and implementation	1308
of flexible regulatory treatment;	1309
(H) Ensure effective competition in the provision of	1310
retail electric service by avoiding anticompetitive subsidies	1311
flowing from a noncompetitive retail electric service to a	1312
competitive retail electric service or to a product or service	1313
other than retail electric service, and vice versa, including by	1314
prohibiting the recovery of any generation-related costs through	1315
distribution or transmission rates;	1316
(I) Ensure retail electric service consumers protection	1317
against unreasonable sales practices, market deficiencies, and	1318
market power;	1319
(J) Provide coherent, transparent means of giving	1320
appropriate incentives to technologies that can adapt	1321
successfully to potential environmental mandates;	1322
(K) Encourage implementation of distributed generation	1323
across customer classes through regular review and updating of	1324

administrative rules governing critical issues such as, but not 1325  
limited to, interconnection standards, standby charges, and net 1326  
metering; 1327

(L) Protect at-risk populations, including, but not 1328  
limited to, when considering the implementation of any new 1329  
advanced energy or renewable energy resource; 1330

(M) Encourage the education of small business owners in 1331  
this state regarding the use of, and encourage the use of, 1332  
energy efficiency programs and alternative energy resources in 1333  
their businesses; 1334

(N) Facilitate the state's effectiveness in the global 1335  
economy; 1336

(O) Provide clarity in cost recovery for Ohio-based 1337  
electric distribution utilities in conjunction with national 1338  
security generation resources and support electric distribution 1339  
utility and affiliate divestiture of ownership interests in any 1340  
national security generation resource if divestiture efforts 1341  
result in no adverse consequences to the utility. 1342

In carrying out this policy, the commission shall consider 1343  
rules as they apply to the costs of electric distribution 1344  
infrastructure, including, but not limited to, line extensions, 1345  
for the purpose of development in this state. 1346

**Sec. 4928.147.** (A) Upon the expiration of any mechanism 1347  
authorized by the public utilities commission to recover an 1348  
electric distribution utility's national security generation 1349  
resource net impact, an electric distribution utility may 1350  
recover, subject to an audit, reconciliation, and prudence 1351  
review under section 4928.148 of the Revised Code, the national 1352  
security generation resource net impact that remains unrecovered 1353

at the time of expiration. 1354

(B) An electric distribution utility, including all 1355  
electric distribution utilities in the same holding company, 1356  
shall bid all output from the national security generation 1357  
resource into the wholesale market and shall not use the output 1358  
in supplying its standard service offer provided under section 1359  
4928.142 or 4928.143 of the Revised Code. 1360

**Sec. 4928.148.** (A) In establishing a nonbypassable rate 1361  
mechanism for recovery of a national security generation 1362  
resource net impact under section 4928.147 of the Revised Code, 1363  
the public utilities commission shall do all of the following: 1364

(1) Determine, every three years, the prudence and 1365  
reasonableness of the electric distribution utility's actions 1366  
related to the national security generation resource, including 1367  
its decisions related to offering the contractual commitment 1368  
into the wholesale markets, and exclude from recovery those 1369  
costs that it determines imprudent and unreasonable. 1370

(2) Determine the proper rate design for recovering or 1371  
remitting the national security generation resource net impact, 1372  
provided, however, that the monthly charge or credit recovering 1373  
that impact, including any deferrals or credits, shall not 1374  
exceed two dollars and fifty cents per customer per month for 1375  
residential customers. For all other customer classes, the 1376  
commission shall establish comparable monthly caps for each at 1377  
or below two thousand five hundred dollars per customer per 1378  
month. Insofar as the national security generation resource net 1379  
impact exceeds these monthly limits, the electric distribution 1380  
utility shall defer the remaining net impact as a regulatory 1381  
asset or liability that shall be recovered as determined by the 1382  
commission subject to the monthly rate caps set forth in this 1383



division. 1384

(3) Provide for discontinuation, subject to final 1385  
reconciliation, of the nonbypassable rate mechanism on December 1386  
31, 2030, unless the mechanism is extended by the general 1387  
assembly under division (B) of this section. 1388

(B) The commission shall conduct an inquiry in 2029 to 1389  
determine whether it is in the public interest to continue 1390  
recovery of a national security generation resource net impact 1391  
after 2030, and report its findings to the general assembly. 1392

**Sec. 4928.46.** (A) In the event that the federal energy 1393  
regulatory commission authorizes a program by which this state 1394  
may take action to satisfy any portion of the capacity resource 1395  
obligation associated with the organized wholesale market that 1396  
functions to meet the capacity, energy services, and ancillary 1397  
services needs of consumers in this state, the public utilities 1398  
commission shall promptly review the program and submit a report 1399  
of its findings to the general assembly. 1400

(B) The report shall include any recommendations for both 1401  
of the following: 1402

(1) Legislation that may be necessary to permit this state 1403  
to beneficially participate in any such program; 1404

(2) How to maintain participation by end-use customers in 1405  
this state in the demand response program offered by PJM 1406  
Interconnection, L.L.C., or its successor organization, 1407  
including how the state may consider structuring procurement for 1408  
demand response that would allow demand response to satisfy a 1409  
portion of the state's capacity resource obligation. 1410

(C) The report shall incorporate the policy of 1411  
facilitating the state's effectiveness in the global economy by 1412

minimizing any adverse impact on trade-exposed industrial 1413  
manufacturers. 1414

Sec. 4928.47. (A) As used in this section, "clean air 1415  
resource" means any of the following: 1416

(1) A clean air resource as defined in section 3706.40 of 1417  
the Revised Code; 1418

(2) A customer-sited renewable energy resource; 1419

(3) A renewable energy resource that is a self-generator. 1420

(B)(1) Through its general supervision, ratemaking, cost 1421  
assignment, allocation, rate schedule approval, and rulemaking 1422  
authority, as well as its authority under section 4905.31 of the 1423  
Revised Code, the public utilities commission shall facilitate 1424  
and encourage the establishment of retail purchased power 1425  
agreements having a term of three years or more through which 1426  
mercantile customers of an electric distribution utility commit 1427  
to satisfy a material portion of their electricity requirements 1428  
from the output of a clean air resource. 1429

(2) The commission's application and administration of 1430  
this section shall be the same for all clean air resources 1431  
regardless of whether the resource is certified or eligible for 1432  
certification under the Ohio clean air program created under 1433  
section 3706.42 of the Revised Code. 1434

(3) In addition to any other benefits that may be 1435  
available as a result of the commission's application of its 1436  
authority under this section, on the effective date of a retail 1437  
purchased power agreement, the commission may exempt such 1438  
purchasing mercantile customer from the Ohio clean air program 1439  
per-account monthly charge established in section 3706.47 of the 1440  
Revised Code. 1441

(C) (1) Not later than ninety days after the effective date 1442  
of this section, the commission shall promulgate rules as 1443  
necessary to begin the implementation of this section. 1444

(2) Not later than two hundred seventy-five days after the 1445  
effective date of this section, the commission shall promulgate 1446  
rules for further implementation and administration of this 1447  
section. 1448

**Sec. 4928.471.** (A) Except as provided in division (E) of 1449  
this section, not earlier than thirty days after the effective 1450  
date of this section, an electric distribution utility may file 1451  
an application to implement a decoupling mechanism for the 2019 1452  
calendar year and each calendar year thereafter. For an electric 1453  
distribution utility that applies for a decoupling mechanism 1454  
under this section, the base distribution rates for residential 1455  
and commercial customers shall be decoupled to the base 1456  
distribution revenue and revenue resulting from implementation 1457  
of section 4928.66 of the Revised Code, excluding program costs 1458  
and shared savings, and recovered pursuant to an approved 1459  
electric security plan under section 4928.143 of the Revised 1460  
Code, as of the twelve-month period ending on December 31, 2018. 1461  
An application under this division shall not be considered an 1462  
application under section 4909.18 of the Revised Code. 1463

(B) The commission shall issue an order approving an 1464  
application for a decoupling mechanism filed under division (A) 1465  
of this section not later than sixty days after the application 1466  
is filed. In determining that an application is not unjust and 1467  
unreasonable, the commission shall verify that the rate schedule 1468  
or schedules are designed to recover the electric distribution 1469  
utility's 2018 annual revenues as described in division (A) of 1470  
this section and that the decoupling rate design is aligned with 1471

the rate design of the electric distribution utility's existing 1472  
base distribution rates. The decoupling mechanism shall recover 1473  
an amount equal to the base distribution revenue and revenue 1474  
resulting from implementation of section 4928.66 of the Revised 1475  
Code, excluding program costs and shared savings, and recovered 1476  
pursuant to an approved electric security plan under section 1477  
4928.143 of the Revised Code, as of the twelve-month period 1478  
ending on December 31, 2018. The decoupling mechanism shall be 1479  
adjusted annually thereafter to reconcile any over recovery or 1480  
under recovery from the prior year and to enable an electric 1481  
distribution utility to recover the same level of revenues 1482  
described in division (A) of this section in each year. 1483

(C) The commission's approval of a decoupling mechanism 1484  
under this section shall not affect any other rates, riders, 1485  
charges, schedules, classifications, or services previously 1486  
approved by the commission. The decoupling mechanism shall 1487  
remain in effect until the next time that the electric 1488  
distribution utility applies for and the commission approves 1489  
base distribution rates for the utility under section 4909.18 of 1490  
the Revised Code. 1491

(D) If the commission determines that approving a 1492  
decoupling mechanism will result in a double recovery by the 1493  
electric distribution utility, the commission shall not approve 1494  
the application unless the utility cures the double recovery. 1495

(E) Divisions (A), (B), and (C) of this section shall not 1496  
apply to an electric distribution utility that has base 1497  
distribution rates that became effective between December 31, 1498  
2018, and the effective date of this section pursuant to an 1499  
application for an increase in base distribution rates filed 1500  
under section 4909.18 of the Revised Code. 1501

Sec. 4928.647. Subject to approval by the public utilities 1502  
commission and regardless of any limitations set forth in any 1503  
other section of Chapter 4928. of the Revised Code, an electric 1504  
distribution utility may offer a customer the opportunity to 1505  
purchase renewable energy services on a nondiscriminatory basis, 1506  
by doing either of the following: 1507

(A) (1) An electric distribution utility may seek approval 1508  
from the commission to establish a schedule or schedules 1509  
applicable to residential, commercial, industrial, or other 1510  
customers and provide a customer the opportunity to purchase 1511  
renewable energy credits for any purpose the customer elects. 1512

(2) The commission shall not approve any schedule unless 1513  
it determines both of the following: 1514

(a) The proposed schedule or schedules do not create an 1515  
undue burden or unreasonable preference or disadvantage to 1516  
nonparticipating customers. 1517

(b) The electric distribution utility seeking approval 1518  
commits to comply with any conditions the commission may impose 1519  
to ensure that the electric distribution utility and any 1520  
participating customers are solely responsible for the risks, 1521  
costs, and benefits of any schedule or schedules. 1522

(B) (1) Consistent with section 4905.31 of the Revised 1523  
Code, an electric distribution utility, a customer, or a group 1524  
of customers may seek approval of a nondiscriminatory schedule 1525  
or reasonable arrangement involving the production and supply of 1526  
renewable energy, including long-term renewable energy purchase 1527  
agreements through which an electric distribution utility may 1528  
construct, lease, finance, or operate renewable energy resources 1529  
dedicated to that customer or customers. 1530

(2) The commission shall not approve any schedule or arrangement unless it determines both of the following: 1531  
1532

(a) The proposed schedule or arrangement does not create an undue burden or unreasonable preference or disadvantage to nonparticipating customers. 1533  
1534  
1535

(b) The electric distribution utility seeking approval commits to comply with any conditions the commission may impose to ensure that the electric distribution utility and any participating customers are solely responsible for the risks, costs, and benefits of any schedule or reasonable arrangement. 1536  
1537  
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**Sec. 4928.66.** (A) (1) (a) Beginning in 2009, an electric distribution utility shall implement energy efficiency programs that achieve energy savings equivalent to at least three-tenths of one per cent of the total, annual average, and normalized kilowatt-hour sales of the electric distribution utility during the preceding three calendar years to customers in this state. An energy efficiency program may include a combined heat and power system placed into service or retrofitted on or after the effective date of the amendment of this section by S.B. 315 of the 129th general assembly, September 10, 2012, or a waste energy recovery system placed into service or retrofitted on or after September 10, 2012, except that a waste energy recovery system described in division (A) (38) (b) of section 4928.01 of the Revised Code may be included only if it was placed into service between January 1, 2002, and December 31, 2004. For a waste energy recovery or combined heat and power system, the savings shall be as estimated by the public utilities commission. The savings requirement, using such a three-year average, shall increase to an additional five-tenths of one per cent in 2010, seven-tenths of one per cent in 2011, eight-tenths 1541  
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of one per cent in 2012, nine-tenths of one per cent in 2013, 1561  
and one per cent in 2014. In 2015 and 2016, an electric 1562  
distribution utility shall achieve energy savings equal to the 1563  
result of subtracting the cumulative energy savings achieved 1564  
since 2009 from the product of multiplying the baseline for 1565  
energy savings, described in division (A) (2) (a) of this section, 1566  
by four and two-tenths of one per cent. If the result is zero or 1567  
less for the year for which the calculation is being made, the 1568  
utility shall not be required to achieve additional energy 1569  
savings for that year, but may achieve additional energy savings 1570  
for that year. ~~Thereafter, the~~ The annual savings requirements 1571  
shall be, for years 2017, 2018, 2019, and 2020, an additional 1572  
~~one per cent of the baseline, and two per cent each year~~ 1573  
~~thereafter, achieving cumulative energy savings in excess of~~ 1574  
~~twenty two per cent by the end of 2027.~~ For purposes of a waste 1575  
energy recovery or combined heat and power system, an electric 1576  
distribution utility shall not apply more than the total annual 1577  
percentage of the electric distribution utility's industrial- 1578  
customer load, relative to the electric distribution utility's 1579  
total load, to the annual energy savings requirement. 1580

(b) Beginning in 2009, an electric distribution utility 1581  
shall implement peak demand reduction programs designed to 1582  
achieve a one per cent reduction in peak demand in 2009 and an 1583  
additional seventy-five hundredths of one per cent reduction 1584  
each year through 2014. In 2015 and 2016, an electric 1585  
distribution utility shall achieve a reduction in peak demand 1586  
equal to the result of subtracting the cumulative peak demand 1587  
reductions achieved since 2009 from the product of multiplying 1588  
the baseline for peak demand reduction, described in division 1589  
(A) (2) (a) of this section, by four and seventy-five hundredths 1590  
of one per cent. If the result is zero or less for the year for 1591

which the calculation is being made, the utility shall not be 1592  
required to achieve an additional reduction in peak demand for 1593  
that year, but may achieve an additional reduction in peak 1594  
demand for that year. In 2017 and each year thereafter through 1595  
2020, the utility shall achieve an additional seventy-five 1596  
hundredths of one per cent reduction in peak demand. 1597

(2) For the purposes of divisions (A) (1) (a) and (b) of 1598  
this section: 1599

(a) The baseline for energy savings under division (A) (1) 1600  
(a) of this section shall be the average of the total kilowatt 1601  
hours the electric distribution utility sold in the preceding 1602  
three calendar years. The baseline for a peak demand reduction 1603  
under division (A) (1) (b) of this section shall be the average 1604  
peak demand on the utility in the preceding three calendar 1605  
years, except that the commission may reduce either baseline to 1606  
adjust for new economic growth in the utility's certified 1607  
territory. Neither baseline shall include the load and usage of 1608  
any of the following customers: 1609

(i) Beginning January 1, 2017, a customer for which a 1610  
reasonable arrangement has been approved under section 4905.31 1611  
of the Revised Code; 1612

(ii) A customer that has opted out of the utility's 1613  
portfolio plan under section 4928.6611 of the Revised Code; 1614

(iii) A customer that has opted out of the utility's 1615  
portfolio plan under Section 8 of S.B. 310 of the 130th general 1616  
assembly. 1617

(b) The commission may amend the benchmarks set forth in 1618  
division (A) (1) (a) or (b) of this section if, after application 1619  
by the electric distribution utility, the commission determines 1620



that the amendment is necessary because the utility cannot 1621  
reasonably achieve the benchmarks due to regulatory, economic, 1622  
or technological reasons beyond its reasonable control. 1623

(c) Compliance with divisions (A)(1)(a) and (b) of this 1624  
section shall be measured by including the effects of all 1625  
demand-response programs for mercantile customers of the subject 1626  
electric distribution utility, all waste energy recovery systems 1627  
and all combined heat and power systems, and all such mercantile 1628  
customer-sited energy efficiency, including waste energy 1629  
recovery and combined heat and power, and peak demand reduction 1630  
programs, adjusted upward by the appropriate loss factors. Any 1631  
mechanism designed to recover the cost of energy efficiency, 1632  
including waste energy recovery and combined heat and power, and 1633  
peak demand reduction programs under divisions (A)(1)(a) and (b) 1634  
of this section may exempt mercantile customers that commit 1635  
their demand-response or other customer-sited capabilities, 1636  
whether existing or new, for integration into the electric 1637  
distribution utility's demand-response, energy efficiency, 1638  
including waste energy recovery and combined heat and power, or 1639  
peak demand reduction programs, if the commission determines 1640  
that that exemption reasonably encourages such customers to 1641  
commit those capabilities to those programs. If a mercantile 1642  
customer makes such existing or new demand-response, energy 1643  
efficiency, including waste energy recovery and combined heat 1644  
and power, or peak demand reduction capability available to an 1645  
electric distribution utility pursuant to division (A)(2)(c) of 1646  
this section, the electric utility's baseline under division (A) 1647  
(2)(a) of this section shall be adjusted to exclude the effects 1648  
of all such demand-response, energy efficiency, including waste 1649  
energy recovery and combined heat and power, or peak demand 1650  
reduction programs that may have existed during the period used 1651

to establish the baseline. The baseline also shall be normalized 1652  
for changes in numbers of customers, sales, weather, peak 1653  
demand, and other appropriate factors so that the compliance 1654  
measurement is not unduly influenced by factors outside the 1655  
control of the electric distribution utility. 1656

(d) (i) Programs implemented by a utility may include the 1657  
following: 1658

(I) Demand-response programs; 1659

(II) Smart grid investment programs, provided that such 1660  
programs are demonstrated to be cost-beneficial; 1661

(III) Customer-sited programs, including waste energy 1662  
recovery and combined heat and power systems; 1663

(IV) Transmission and distribution infrastructure 1664  
improvements that reduce line losses; 1665

(V) Energy efficiency savings and peak demand reduction 1666  
that are achieved, in whole or in part, as a result of funding 1667  
provided from the universal service fund established by section 1668  
4928.51 of the Revised Code to benefit low-income customers 1669  
through programs that include, but are not limited to, energy 1670  
audits, the installation of energy efficiency insulation, 1671  
appliances, and windows, and other weatherization measures. 1672

(ii) No energy efficiency or peak demand reduction 1673  
achieved under divisions (A) (2) (d) (i) (IV) and (V) of this 1674  
section shall qualify for shared savings. 1675

(iii) Division (A) (2) (c) of this section shall be applied 1676  
to include facilitating efforts by a mercantile customer or 1677  
group of those customers to offer customer-sited demand- 1678  
response, energy efficiency, including waste energy recovery and 1679

combined heat and power, or peak demand reduction capabilities 1680  
to the electric distribution utility as part of a reasonable 1681  
arrangement submitted to the commission pursuant to section 1682  
4905.31 of the Revised Code. 1683

(e) No programs or improvements described in division (A) 1684  
(2) (d) of this section shall conflict with any statewide 1685  
building code adopted by the board of building standards. 1686

(B) In accordance with rules it shall adopt, the public 1687  
utilities commission shall produce and docket at the commission 1688  
an annual report containing the results of its verification of 1689  
the annual levels of energy efficiency and of peak demand 1690  
reductions achieved by each electric distribution utility 1691  
pursuant to division (A) of this section. A copy of the report 1692  
shall be provided to the consumers' counsel. 1693

(C) If the commission determines, after notice and 1694  
opportunity for hearing and based upon its report under division 1695  
(B) of this section, that an electric distribution utility has 1696  
failed to comply with an energy efficiency or peak demand 1697  
reduction requirement of division (A) of this section, the 1698  
commission shall assess a forfeiture on the utility as provided 1699  
under sections 4905.55 to 4905.60 and 4905.64 of the Revised 1700  
Code, ~~either~~ in the amount, per day per undercompliance or 1701  
noncompliance, relative to the period of the report, equal to 1702  
that prescribed for noncompliances under section 4905.54 of the 1703  
Revised Code, ~~or in an amount equal to the then existing market-~~ 1704  
~~value of one renewable energy credit per megawatt hour of~~ 1705  
~~undercompliance or noncompliance.~~ Revenue from any forfeiture 1706  
assessed under this division shall be deposited to the credit of 1707  
the advanced energy fund created under section 4928.61 of the 1708  
Revised Code. 1709

(D) The commission may establish rules regarding the 1710  
content of an application by an electric distribution utility 1711  
for commission approval of a revenue decoupling mechanism under 1712  
this division. Such an application shall not be considered an 1713  
application to increase rates and may be included as part of a 1714  
proposal to establish, continue, or expand energy efficiency or 1715  
conservation programs. The commission by order may approve an 1716  
application under this division if it determines both that the 1717  
revenue decoupling mechanism provides for the recovery of 1718  
revenue that otherwise may be forgone by the utility as a result 1719  
of or in connection with the implementation by the electric 1720  
distribution utility of any energy efficiency or energy 1721  
conservation programs and reasonably aligns the interests of the 1722  
utility and of its customers in favor of those programs. 1723

(E) The commission additionally shall adopt rules that 1724  
require an electric distribution utility to provide a customer 1725  
upon request with two years' consumption data in an accessible 1726  
form. 1727

(F) (1) All the terms and conditions of an electric 1728  
distribution utility's portfolio plan in effect as of the 1729  
effective date of the amendments to this section by H.B. 6 of 1730  
the 133rd general assembly shall remain in place through 1731  
December 31, 2020, and terminate on that date. 1732

(2) If a portfolio plan is extended beyond its commission- 1733  
approved term by division (F) (1) of this section, the existing 1734  
plan's budget shall be increased for the extended term to 1735  
include an amount equal to the annual average of the approved 1736  
budget for all years of the portfolio plan in effect as of the 1737  
effective date of the amendments to this section by H.B. 6 of 1738  
the 133rd general assembly. 1739

(3) All other terms and conditions of a portfolio plan 1740  
extended beyond its commission-approved term by division (F) (1) 1741  
of this section shall remain the same unless changes are 1742  
authorized by the commission upon the electric distribution 1743  
utility's request. 1744

(G) All requirements imposed and all programs implemented 1745  
under this section shall terminate on December 31, 2020, 1746  
provided an electric distribution utility recovers in the 1747  
following year all remaining program costs incurred or to be 1748  
incurred, including costs incurred for contractual obligations 1749  
and any costs to discontinue the portfolio plan programs, 1750  
through applicable tariff schedules or riders in effect on the 1751  
effective date of the amendments to this section by H.B. 6 of 1752  
the 133rd general assembly. 1753

**Sec. 4928.661.** (A) Not earlier than January 1, 2020, an 1754  
electric distribution utility may submit an application to the 1755  
public utilities commission for approval of programs to 1756  
encourage energy efficiency or peak demand reduction. The 1757  
application may include descriptions of the proposed programs 1758  
including all of the following: 1759

(1) The size and scope of the programs; 1760

(2) Applicability of the programs to specific customer 1761  
classes; 1762

(3) Recovery of costs and incentives; 1763

(4) Any other information determined by the electric 1764  
distribution utility to be appropriate for the commission's 1765  
review. 1766

(B) The commission shall issue an order approving or 1767  
modifying and approving an application if it finds that the 1768

proposed programs will be cost-effective, in the public 1769  
interest, and consistent with state policy as specified in 1770  
section 4928.02 of the Revised Code. 1771

(C) Applications submitted and approved under this section 1772  
shall not take effect earlier than January 1, 2021. 1773

**Sec. 4928.6610.** As used in sections 4928.6611 to ~~4928.6616~~ 1774  
4928.6615 of the Revised Code: 1775

(A) "Customer" means ~~any~~ either of the following: 1776

(1) Effective January 1, 2020, a mercantile customer as 1777  
defined in section 4928.01 of the Revised Code; 1778

(2) Any customer of an electric distribution utility to 1779  
which either of the following applies: 1780

~~(1)~~ (a) The customer receives service above the primary 1781  
voltage level as determined by the utility's tariff 1782  
classification. 1783

~~(2)~~ (b) The customer is a commercial or industrial 1784  
customer to which both of the following apply: 1785

~~(a)~~ (i) The customer receives electricity through a meter 1786  
of an end user or through more than one meter at a single 1787  
location in a quantity that exceeds forty-five million kilowatt 1788  
hours of electricity for the preceding calendar year. 1789

~~(b)~~ (ii) The customer has made a written request for 1790  
registration as a self-assessing purchaser pursuant to section 1791  
5727.81 of the Revised Code. 1792

(B) "Energy intensity" means the amount of energy, from 1793  
electricity, used or consumed per unit of production. 1794

(C) "Portfolio plan" means either of the following: 1795

(1) The comprehensive energy efficiency and peak-demand reduction program portfolio plan required under rules adopted by the public utilities commission and codified in Chapter 4901:1-39 of the Administrative Code or hereafter recodified or amended; 1796  
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(2) A plan approved under section 4928.661 of the Revised Code or under rules adopted under that section. 1801  
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Sec. 4928.75. Beginning in fiscal year 2021 and each fiscal year thereafter, the director of development services shall, in each fiscal year, submit a completed waiver request in accordance with section 96.83 of Title 45 of the Code of Federal Regulations to the United States department of health and human services and any other applicable federal agencies for the state to expend twenty-five per cent of federal low-income home energy assistance programs funds from the home energy assistance block grants for weatherization services allowed by section 96.83(a) of Title 45 of the Code of Federal Regulations to the United States department of health and human services. 1803  
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Sec. 4928.80. (A) Each electric distribution utility shall file with the public utilities commission a tariff applicable to county fairs and agricultural societies that includes either of the following: 1814  
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(1) A fixed monthly service fee; 1818

(2) An energy charge on a kilowatt-hour basis. 1819

(B) The minimum monthly charge shall not exceed the fixed monthly service fee and the customer shall not be subject to any demand-based riders. 1820  
1821  
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(C) The electric distribution utility shall be eligible to recover any revenue loss associated with customer migration to 1823  
1824

this new tariff. 1825

**Sec. 5727.47.** (A) Notice of each assessment certified or 1826  
issued pursuant to section 5727.23 or 5727.38 of the Revised 1827  
Code shall be mailed to the public utility, and its mailing 1828  
shall be prima-facie evidence of its receipt by the public 1829  
utility to which it is addressed. With the notice, the tax 1830  
commissioner shall provide instructions on how to petition for 1831  
reassessment and request a hearing on the petition. ~~If~~ Except as 1832  
otherwise provided in division (G) of this section, if a public 1833  
utility objects to such an assessment, it may file with the 1834  
commissioner, either personally or by certified mail, within 1835  
sixty days after the mailing of the notice of assessment a 1836  
written petition for reassessment signed by the utility's 1837  
authorized agent having knowledge of the facts. The date the 1838  
commissioner receives the petition shall be considered the date 1839  
of filing. The petition shall indicate the utility's objections, 1840  
but additional objections may be raised in writing if received 1841  
by the commissioner prior to the date shown on the final 1842  
determination. 1843

In the case of a petition seeking a reduction in taxable 1844  
value filed with respect to an assessment certified under 1845  
section 5727.23 of the Revised Code, the petitioner shall state 1846  
in the petition the total amount of reduction in taxable value 1847  
sought by the petitioner. If the petitioner objects to the 1848  
percentage of true value at which taxable property is assessed 1849  
by the commissioner, the petitioner shall state in the petition 1850  
the total amount of reduction in taxable value sought both with 1851  
and without regard to the objection pertaining to the percentage 1852  
of true value at which its taxable property is assessed. If a 1853  
petitioner objects to the commissioner's apportionment of the 1854  
taxable value of the petitioner's taxable property, the 1855



petitioner shall distinctly state in the petition that the 1856  
petitioner objects to the commissioner's apportionment, and, 1857  
within forty-five days after filing the petition for 1858  
reassessment, shall submit the petitioner's proposed 1859  
apportionment of the taxable value of its taxable property among 1860  
taxing districts. If a petitioner that objects to the 1861  
commissioner's apportionment fails to state its objections to 1862  
that apportionment in its petition for reassessment or fails to 1863  
submit its proposed apportionment within forty-five days after 1864  
filing the petition for reassessment, the commissioner shall 1865  
dismiss the petitioner's objection to the commissioner's 1866  
apportionment, and the taxable value of the petitioner's taxable 1867  
property, subject to any adjustment to taxable value pursuant to 1868  
the petition or appeal, shall be apportioned in the manner used 1869  
by the commissioner in the preliminary or amended preliminary 1870  
assessment certified under section 5727.23 of the Revised Code. 1871

If an additional objection seeking a reduction in taxable 1872  
value in excess of the reduction stated in the original petition 1873  
is properly and timely raised with respect to an assessment 1874  
issued under section 5727.23 of the Revised Code, the petitioner 1875  
shall state the total amount of the reduction in taxable value 1876  
sought in the additional objection both with and without regard 1877  
to any reduction in taxable value pertaining to the percentage 1878  
of true value at which taxable property is assessed. If a 1879  
petitioner fails to state the reduction in taxable value sought 1880  
in the original petition or in additional objections properly 1881  
raised after the petition is filed, the commissioner shall 1882  
notify the petitioner of the failure by certified mail. If the 1883  
petitioner fails to notify the commissioner in writing of the 1884  
reduction in taxable value sought in the petition or in an 1885  
additional objection within thirty days after receiving the 1886

commissioner's notice, the commissioner shall dismiss the 1887  
petition or the additional objection in which that reduction is 1888  
sought. 1889

(B) (1) Subject to divisions (B) (2) and (3) of this 1890  
section, a public utility filing a petition for reassessment 1891  
regarding an assessment certified or issued under section 1892  
5727.23 or 5727.38 of the Revised Code shall pay the tax with 1893  
respect to the assessment objected to as required by law. The 1894  
acceptance of any tax payment by the treasurer of state, tax 1895  
commissioner, or any county treasurer shall not prejudice any 1896  
claim for taxes on final determination by the commissioner or 1897  
final decision by the board of tax appeals or any court. 1898

(2) If a public utility properly and timely files a 1899  
petition for reassessment regarding an assessment certified 1900  
under section 5727.23 of the Revised Code, the petitioner shall 1901  
pay the tax as prescribed by divisions (B) (2) (a), (b), and (c) 1902  
of this section: 1903

(a) If the petitioner does not object to the 1904  
commissioner's apportionment of the taxable value of the 1905  
petitioner's taxable property, the petitioner is not required to 1906  
pay the part of the tax otherwise due on the taxable value that 1907  
the petitioner seeks to have reduced, subject to division (B) (2) 1908  
(c) of this section. 1909

(b) If the petitioner objects to the commissioner's 1910  
apportionment of the taxable value of the petitioner's taxable 1911  
property, the petitioner is not required to pay the tax 1912  
otherwise due on the part of the taxable value apportioned to 1913  
any taxing district that the petitioner objects to, subject to 1914  
division (B) (2) (c) of this section. If, pursuant to division (A) 1915  
of this section, the petitioner has, in a proper and timely 1916

manner, apportioned taxable value to a taxing district to which 1917  
the commissioner did not apportion the petitioner's taxable 1918  
value, the petitioner shall pay the tax due on the taxable value 1919  
that the petitioner has apportioned to the taxing district, 1920  
subject to division (B) (2) (c) of this section. 1921

(c) If a petitioner objects to the percentage of true 1922  
value at which taxable property is assessed by the commissioner, 1923  
the petitioner shall pay the tax due on the basis of the 1924  
percentage of true value at which the public utility's taxable 1925  
property is assessed by the commissioner. In any case, the 1926  
petitioner's payment of tax shall not be less than the amount of 1927  
tax due based on the taxable value reflected on the last appeal 1928  
notice issued by the commissioner under division (C) of this 1929  
section. Until the county auditor receives notification under 1930  
division (E) of this section and proceeds under section 5727.471 1931  
of the Revised Code to issue any refund that is found to be due, 1932  
the county auditor shall not issue a refund for any increase in 1933  
the reduction in taxable value that is sought by a petitioner 1934  
later than forty-five days after the petitioner files the 1935  
original petition as required under division (A) of this 1936  
section. 1937

(3) Any part of the tax that, under division (B) (2) (a) or 1938  
(b) of this section, is not paid shall be collected upon receipt 1939  
of the notification as provided in section 5727.471 of the 1940  
Revised Code with interest thereon computed in the same manner 1941  
as interest is computed under division (E) of section 5715.19 of 1942  
the Revised Code, subject to any correction of the assessment by 1943  
the commissioner under division (E) of this section or the final 1944  
judgment of the board of tax appeals or a court to which the 1945  
board's final judgment is appealed. The penalty imposed under 1946  
section 323.121 of the Revised Code shall apply only to the 1947

unpaid portion of the tax if the petitioner's tax payment is 1948  
less than the amount of tax due based on the taxable value 1949  
reflected on the last appeal notice issued by the commissioner 1950  
under division (C) of this section. 1951

(C) Upon receipt of a properly filed petition for 1952  
reassessment with respect to an assessment certified under 1953  
section 5727.23 of the Revised Code, the tax commissioner shall 1954  
notify the treasurer of state or the auditor of each county to 1955  
which the assessment objected to has been certified. In the case 1956  
of a petition with respect to an assessment certified under 1957  
section 5727.23 of the Revised Code, the commissioner shall 1958  
issue an appeal notice within thirty days after receiving the 1959  
amount of the taxable value reduction and apportionment changes 1960  
sought by the petitioner in the original petition or in any 1961  
additional objections properly and timely raised by the 1962  
petitioner. The appeal notice shall indicate the amount of the 1963  
reduction in taxable value sought in the petition or in the 1964  
additional objections and the extent to which the reduction in 1965  
taxable value and any change in apportionment requested by the 1966  
petitioner would affect the commissioner's apportionment of the 1967  
taxable value among taxing districts in the county as shown in 1968  
the assessment. If a petitioner is seeking a reduction in 1969  
taxable value on the basis of a lower percentage of true value 1970  
than the percentage at which the commissioner assessed the 1971  
petitioner's taxable property, the appeal notice shall indicate 1972  
the reduction in taxable value sought by the petitioner without 1973  
regard to the reduction sought on the basis of the lower 1974  
percentage and shall indicate that the petitioner is required to 1975  
pay tax on the reduced taxable value determined without regard 1976  
to the reduction sought on the basis of a lower percentage of 1977  
true value, as provided under division (B) (2) (c) of this 1978

section. The appeal notice shall include a statement that the  
reduced taxable value and the apportionment indicated in the  
notice are not final and are subject to adjustment by the  
commissioner or by the board of tax appeals or a court on  
appeal. If the commissioner finds an error in the appeal notice,  
the commissioner may amend the notice, but the notice is only  
for informational and tax payment purposes; the notice is not  
subject to appeal by any person. The commissioner also shall  
mail a copy of the appeal notice to the petitioner. Upon the  
request of a taxing authority, the county auditor may disclose  
to the taxing authority the extent to which a reduction in  
taxable value sought by a petitioner would affect the  
apportionment of taxable value to the taxing district or  
districts under the taxing authority's jurisdiction, but such a  
disclosure does not constitute a notice required by law to be  
given for the purpose of section 5717.02 of the Revised Code.

(D) If the petitioner requests a hearing on the petition,  
the tax commissioner shall assign a time and place for the  
hearing on the petition and notify the petitioner of such time  
and place, but the commissioner may continue the hearing from  
time to time as necessary.

(E) The tax commissioner may make corrections to the  
assessment as the commissioner finds proper. The commissioner  
shall serve a copy of the commissioner's final determination on  
the petitioner in the manner provided in section 5703.37 of the  
Revised Code. The commissioner's decision in the matter shall be  
final, subject to appeal under section 5717.02 of the Revised  
Code. With respect to a final determination issued for an  
assessment certified under section 5727.23 of the Revised Code,  
the commissioner also shall transmit a copy of the final  
determination to the applicable county auditor. In the absence

of any further appeal, or when a decision of the board of tax 2010  
appeals or of any court to which the decision has been appealed 2011  
becomes final, the commissioner shall notify the public utility 2012  
and, as appropriate, shall proceed under section 5727.42 of the 2013  
Revised Code, or notify the applicable county auditor, who shall 2014  
proceed under section 5727.471 of the Revised Code. 2015

The notification made under this division is not subject 2016  
to further appeal. 2017

(F) On appeal, no adjustment shall be made in the tax 2018  
commissioner's assessment certified under section 5727.23 of the 2019  
Revised Code that reduces the taxable value of a petitioner's 2020  
taxable property by an amount that exceeds the reduction sought 2021  
by the petitioner in its petition for reassessment or in any 2022  
additional objections properly and timely raised after the 2023  
petition is filed with the commissioner. 2024

(G) An electric company with taxable property that is, or 2025  
is part of, a clean air resource fueled by nuclear power and 2026  
certified under section 3706.44 of the Revised Code may file a 2027  
petition for reassessment seeking a reduction in taxable value 2028  
of that property, provided that any such petition shall not 2029  
request, and the tax commissioner shall have no authority to 2030  
grant, a reduction in taxable value below the taxable values for 2031  
such property as of the effective date of the amendments to this 2032  
section by H.B. 6 of the 133rd general assembly. As used in this 2033  
division, "clean air resource" has the same meaning as defined 2034  
by section 3706.40 of the Revised Code. 2035

**Sec. 5727.75.** (A) For purposes of this section: 2036

(1) "Qualified energy project" means an energy project 2037  
certified by the director of development services pursuant to 2038

this section. 2039

(2) "Energy project" means a project to provide electric 2040  
power through the construction, installation, and use of an 2041  
energy facility. 2042

(3) "Alternative energy zone" means a county declared as 2043  
such by the board of county commissioners under division (E) (1) 2044  
(b) or (c) of this section. 2045

(4) "Full-time equivalent employee" means the total number 2046  
of employee-hours for which compensation was paid to individuals 2047  
employed at a qualified energy project for services performed at 2048  
the project during the calendar year divided by two thousand 2049  
eighty hours. 2050

(5) "Solar energy project" means an energy project 2051  
composed of an energy facility using solar panels to generate 2052  
electricity. 2053

(6) "Internet identifier of record" has the same meaning 2054  
as in section 9.312 of the Revised Code. 2055

(B) (1) Tangible personal property of a qualified energy 2056  
project using renewable energy resources is exempt from taxation 2057  
for tax years 2011 through 2021 if all of the following 2058  
conditions are satisfied: 2059

(a) On or before December 31, 2020, the owner or a lessee 2060  
pursuant to a sale and leaseback transaction of the project 2061  
submits an application to the power siting board for a 2062  
certificate under section 4906.20 of the Revised Code, or if 2063  
that section does not apply, submits an application for any 2064  
approval, consent, permit, or certificate or satisfies any 2065  
condition required by a public agency or political subdivision 2066  
of this state for the construction or initial operation of an 2067

energy project. 2068

(b) Construction or installation of the energy facility 2069  
begins on or after January 1, 2009, and before January 1, 2021. 2070  
For the purposes of this division, construction begins on the 2071  
earlier of the date of application for a certificate or other 2072  
approval or permit described in division (B)(1)(a) of this 2073  
section, or the date the contract for the construction or 2074  
installation of the energy facility is entered into. 2075

(c) For a qualified energy project with a nameplate 2076  
capacity of ~~five~~twenty megawatts or greater, a board of county 2077  
commissioners of a county in which property of the project is 2078  
located has adopted a resolution under division (E)(1)(b) or (c) 2079  
of this section to approve the application submitted under 2080  
division (E) of this section to exempt the property located in 2081  
that county from taxation. A board's adoption of a resolution 2082  
rejecting an application or its failure to adopt a resolution 2083  
approving the application does not affect the tax-exempt status 2084  
of the qualified energy project's property that is located in 2085  
another county. 2086

(2) If tangible personal property of a qualified energy 2087  
project using renewable energy resources was exempt from 2088  
taxation under this section beginning in any of tax years 2011 2089  
through 2021, and the certification under division (E)(2) of 2090  
this section has not been revoked, the tangible personal 2091  
property of the qualified energy project is exempt from taxation 2092  
for tax year 2022 and all ensuing tax years if the property was 2093  
placed into service before January 1, 2022, as certified in the 2094  
construction progress report required under division (F)(2) of 2095  
this section. Tangible personal property that has not been 2096  
placed into service before that date is taxable property subject 2097



to taxation. An energy project for which certification has been 2098  
revoked is ineligible for further exemption under this section. 2099  
Revocation does not affect the tax-exempt status of the 2100  
project's tangible personal property for the tax year in which 2101  
revocation occurs or any prior tax year. 2102

(C) Tangible personal property of a qualified energy 2103  
project using clean coal technology, advanced nuclear 2104  
technology, or cogeneration technology is exempt from taxation 2105  
for the first tax year that the property would be listed for 2106  
taxation and all subsequent years if all of the following 2107  
circumstances are met: 2108

(1) The property was placed into service before January 1, 2109  
2021. Tangible personal property that has not been placed into 2110  
service before that date is taxable property subject to 2111  
taxation. 2112

(2) For such a qualified energy project with a nameplate 2113  
capacity of ~~five~~twenty megawatts or greater, a board of county 2114  
commissioners of a county in which property of the qualified 2115  
energy project is located has adopted a resolution under 2116  
division (E) (1) (b) or (c) of this section to approve the 2117  
application submitted under division (E) of this section to 2118  
exempt the property located in that county from taxation. A 2119  
board's adoption of a resolution rejecting the application or 2120  
its failure to adopt a resolution approving the application does 2121  
not affect the tax-exempt status of the qualified energy 2122  
project's property that is located in another county. 2123

(3) The certification for the qualified energy project 2124  
issued under division (E) (2) of this section has not been 2125  
revoked. An energy project for which certification has been 2126  
revoked is ineligible for exemption under this section. 2127

Revocation does not affect the tax-exempt status of the 2128  
project's tangible personal property for the tax year in which 2129  
revocation occurs or any prior tax year. 2130

(D) Except as otherwise provided in this section, real 2131  
property of a qualified energy project is exempt from taxation 2132  
for any tax year for which the tangible personal property of the 2133  
qualified energy project is exempted under this section. 2134

(E) (1) (a) A person may apply to the director of 2135  
development services for certification of an energy project as a 2136  
qualified energy project on or before the following dates: 2137

(i) December 31, 2020, for an energy project using 2138  
renewable energy resources; 2139

(ii) December 31, 2017, for an energy project using clean 2140  
coal technology, advanced nuclear technology, or cogeneration 2141  
technology. 2142

(b) The director shall forward a copy of each application 2143  
for certification of an energy project with a nameplate capacity 2144  
of ~~five~~ twenty megawatts or greater to the board of county 2145  
commissioners of each county in which the project is located and 2146  
to each taxing unit with territory located in each of the 2147  
affected counties. Any board that receives from the director a 2148  
copy of an application submitted under this division shall adopt 2149  
a resolution approving or rejecting the application unless it 2150  
has adopted a resolution under division (E) (1) (c) of this 2151  
section. A resolution adopted under division (E) (1) (b) or (c) of 2152  
this section may require an annual service payment to be made in 2153  
addition to the service payment required under division (G) of 2154  
this section. The sum of the service payment required in the 2155  
resolution and the service payment required under division (G) 2156

of this section shall not exceed nine thousand dollars per 2157  
megawatt of nameplate capacity located in the county. The 2158  
resolution shall specify the time and manner in which the 2159  
payments required by the resolution shall be paid to the county 2160  
treasurer. The county treasurer shall deposit the payment to the 2161  
credit of the county's general fund to be used for any purpose 2162  
for which money credited to that fund may be used. 2163

The board shall send copies of the resolution to the owner 2164  
of the facility and the director by certified mail or, if the 2165  
board has record of an internet identifier of record associated 2166  
with the owner or director, by ordinary mail and by that 2167  
internet identifier of record. The board shall send such notice 2168  
within thirty days after receipt of the application, or a longer 2169  
period of time if authorized by the director. 2170

(c) A board of county commissioners may adopt a resolution 2171  
declaring the county to be an alternative energy zone and 2172  
declaring all applications submitted to the director of 2173  
development services under this division after the adoption of 2174  
the resolution, and prior to its repeal, to be approved by the 2175  
board. 2176

All tangible personal property and real property of an 2177  
energy project with a nameplate capacity of ~~five~~twenty 2178  
megawatts or greater is taxable if it is located in a county in 2179  
which the board of county commissioners adopted a resolution 2180  
rejecting the application submitted under this division or 2181  
failed to adopt a resolution approving the application under 2182  
division (E) (1) (b) or (c) of this section. 2183

(2) The director shall certify an energy project if all of 2184  
the following circumstances exist: 2185

(a) The application was timely submitted.	2186
(b) For an energy project with a nameplate capacity of	2187
<del>five</del> <u>twenty</u> megawatts or greater, a board of county	2188
commissioners of at least one county in which the project is	2189
located has adopted a resolution approving the application under	2190
division (E) (1) (b) or (c) of this section.	2191
(c) No portion of the project's facility was used to	2192
supply electricity before December 31, 2009.	2193
(3) The director shall deny a certification application if	2194
the director determines the person has failed to comply with any	2195
requirement under this section. The director may revoke a	2196
certification if the director determines the person, or	2197
subsequent owner or lessee pursuant to a sale and leaseback	2198
transaction of the qualified energy project, has failed to	2199
comply with any requirement under this section. Upon	2200
certification or revocation, the director shall notify the	2201
person, owner, or lessee, the tax commissioner, and the county	2202
auditor of a county in which the project is located of the	2203
certification or revocation. Notice shall be provided in a	2204
manner convenient to the director.	2205
(F) The owner or a lessee pursuant to a sale and leaseback	2206
transaction of a qualified energy project shall do each of the	2207
following:	2208
(1) Comply with all applicable regulations;	2209
(2) File with the director of development services a	2210
certified construction progress report before the first day of	2211
March of each year during the energy facility's construction or	2212
installation indicating the percentage of the project completed,	2213
and the project's nameplate capacity, as of the preceding	2214

thirty-first day of December. Unless otherwise instructed by the 2215  
director of development services, the owner or lessee of an 2216  
energy project shall file a report with the director on or 2217  
before the first day of March each year after completion of the 2218  
energy facility's construction or installation indicating the 2219  
project's nameplate capacity as of the preceding thirty-first 2220  
day of December. Not later than sixty days after June 17, 2010, 2221  
the owner or lessee of an energy project, the construction of 2222  
which was completed before June 17, 2010, shall file a 2223  
certificate indicating the project's nameplate capacity. 2224

(3) File with the director of development services, in a 2225  
manner prescribed by the director, a report of the total number 2226  
of full-time equivalent employees, and the total number of full- 2227  
time equivalent employees domiciled in Ohio, who are employed in 2228  
the construction or installation of the energy facility; 2229

(4) For energy projects with a nameplate capacity of ~~five-~~ 2230  
twenty megawatts or greater, repair all roads, bridges, and 2231  
culverts affected by construction as reasonably required to 2232  
restore them to their preconstruction condition, as determined 2233  
by the county engineer in consultation with the local 2234  
jurisdiction responsible for the roads, bridges, and culverts. 2235  
In the event that the county engineer deems any road, bridge, or 2236  
culvert to be inadequate to support the construction or 2237  
decommissioning of the energy facility, the road, bridge, or 2238  
culvert shall be rebuilt or reinforced to the specifications 2239  
established by the county engineer prior to the construction or 2240  
decommissioning of the facility. The owner or lessee of the 2241  
facility shall post a bond in an amount established by the 2242  
county engineer and to be held by the board of county 2243  
commissioners to ensure funding for repairs of roads, bridges, 2244  
and culverts affected during the construction. The bond shall be 2245

released by the board not later than one year after the date the 2246  
repairs are completed. The energy facility owner or lessee 2247  
pursuant to a sale and leaseback transaction shall post a bond, 2248  
as may be required by the Ohio power siting board in the 2249  
certificate authorizing commencement of construction issued 2250  
pursuant to section 4906.10 of the Revised Code, to ensure 2251  
funding for repairs to roads, bridges, and culverts resulting 2252  
from decommissioning of the facility. The energy facility owner 2253  
or lessee and the county engineer may enter into an agreement 2254  
regarding specific transportation plans, reinforcements, 2255  
modifications, use and repair of roads, financial security to be 2256  
provided, and any other relevant issue. 2257

(5) Provide or facilitate training for fire and emergency 2258  
responders for response to emergency situations related to the 2259  
energy project and, for energy projects with a nameplate 2260  
capacity of ~~five~~twenty megawatts or greater, at the person's 2261  
expense, equip the fire and emergency responders with proper 2262  
equipment as reasonably required to enable them to respond to 2263  
such emergency situations; 2264

(6) Maintain a ratio of Ohio-domiciled full-time 2265  
equivalent employees employed in the construction or 2266  
installation of the energy project to total full-time equivalent 2267  
employees employed in the construction or installation of the 2268  
energy project of not less than eighty per cent in the case of a 2269  
solar energy project, and not less than fifty per cent in the 2270  
case of any other energy project. In the case of an energy 2271  
project for which certification from the power siting board is 2272  
required under section 4906.20 of the Revised Code, the number 2273  
of full-time equivalent employees employed in the construction 2274  
or installation of the energy project equals the number actually 2275  
employed or the number projected to be employed in the 2276

certificate application, if such projection is required under 2277  
regulations adopted pursuant to section 4906.03 of the Revised 2278  
Code, whichever is greater. For all other energy projects, the 2279  
number of full-time equivalent employees employed in the 2280  
construction or installation of the energy project equals the 2281  
number actually employed or the number projected to be employed 2282  
by the director of development services, whichever is greater. 2283  
To estimate the number of employees to be employed in the 2284  
construction or installation of an energy project, the director 2285  
shall use a generally accepted job-estimating model in use for 2286  
renewable energy projects, including but not limited to the job 2287  
and economic development impact model. The director may adjust 2288  
an estimate produced by a model to account for variables not 2289  
accounted for by the model. 2290

(7) For energy projects with a nameplate capacity in 2291  
excess of ~~two~~ twenty megawatts, establish a relationship with a 2292  
member of the university system of Ohio as defined in section 2293  
3345.011 of the Revised Code or with a person offering an 2294  
apprenticeship program registered with the employment and 2295  
training administration within the United States department of 2296  
labor or with the apprenticeship council created by section 2297  
4139.02 of the Revised Code, to educate and train individuals 2298  
for careers in the wind or solar energy industry. The 2299  
relationship may include endowments, cooperative programs, 2300  
internships, apprenticeships, research and development projects, 2301  
and curriculum development. 2302

~~(8) Offer to sell power or renewable energy credits from~~ 2303  
~~the energy project to electric distribution utilities or~~ 2304  
~~electric service companies subject to renewable energy resource~~ 2305  
~~requirements under section 4928.64 of the Revised Code that have~~ 2306  
~~issued requests for proposal for such power or renewable energy~~ 2307

~~credits. If no electric distribution utility or electric service-~~ 2308  
~~company issues a request for proposal on or before December 31,~~ 2309  
~~2010, or accepts an offer for power or renewable energy credits-~~ 2310  
~~within forty five days after the offer is submitted, power or-~~ 2311  
~~renewable energy credits from the energy project may be sold to-~~ 2312  
~~other persons. Division (F) (8) of this section does not apply-~~ 2313  
~~if:--~~ 2314

~~(a) The owner or lessee is a rural electric company or a~~ 2315  
~~municipal power agency as defined in section 3734.058 of the~~ 2316  
~~Revised Code.--~~ 2317

~~(b) The owner or lessee is a person that, before-~~ 2318  
~~completion of the energy project, contracted for the sale of-~~ 2319  
~~power or renewable energy credits with a rural electric company-~~ 2320  
~~or a municipal power agency.--~~ 2321

~~(c) The owner or lessee contracts for the sale of power or-~~ 2322  
~~renewable energy credits from the energy project before June 17,~~ 2323  
~~2010.--~~ 2324

~~(9) Make annual service payments as required by division~~ 2325  
~~(G) of this section and as may be required in a resolution~~ 2326  
~~adopted by a board of county commissioners under division (E) of~~ 2327  
~~this section.~~ 2328

(G) The owner or a lessee pursuant to a sale and leaseback 2329  
transaction of a qualified energy project shall make annual 2330  
service payments in lieu of taxes to the county treasurer on or 2331  
before the final dates for payments of taxes on public utility 2332  
personal property on the real and public utility personal 2333  
property tax list for each tax year for which property of the 2334  
energy project is exempt from taxation under this section. The 2335  
county treasurer shall allocate the payment on the basis of the 2336



project's physical location. Upon receipt of a payment, or if 2337  
timely payment has not been received, the county treasurer shall 2338  
certify such receipt or non-receipt to the director of 2339  
development services and tax commissioner in a form determined 2340  
by the director and commissioner, respectively. Each payment 2341  
shall be in the following amount: 2342

(1) In the case of a solar energy project, seven thousand 2343  
dollars per megawatt of nameplate capacity located in the county 2344  
as of December 31, 2010, for tax year 2011, as of December 31, 2345  
2011, for tax year 2012, as of December 31, 2012, for tax year 2346  
2013, as of December 31, 2013, for tax year 2014, as of December 2347  
31, 2014, for tax year 2015, as of December 31, 2015, for tax 2348  
year 2016, and as of December 31, 2016, for tax year 2017 and 2349  
each tax year thereafter; 2350

(2) In the case of any other energy project using 2351  
renewable energy resources, the following: 2352

(a) If the project maintains during the construction or 2353  
installation of the energy facility a ratio of Ohio-domiciled 2354  
full-time equivalent employees to total full-time equivalent 2355  
employees of not less than seventy-five per cent, six thousand 2356  
dollars per megawatt of nameplate capacity located in the county 2357  
as of the thirty-first day of December of the preceding tax 2358  
year; 2359

(b) If the project maintains during the construction or 2360  
installation of the energy facility a ratio of Ohio-domiciled 2361  
full-time equivalent employees to total full-time equivalent 2362  
employees of less than seventy-five per cent but not less than 2363  
sixty per cent, seven thousand dollars per megawatt of nameplate 2364  
capacity located in the county as of the thirty-first day of 2365  
December of the preceding tax year; 2366

(c) If the project maintains during the construction or 2367  
installation of the energy facility a ratio of Ohio-domiciled 2368  
full-time equivalent employees to total full-time equivalent 2369  
employees of less than sixty per cent but not less than fifty 2370  
per cent, eight thousand dollars per megawatt of nameplate 2371  
capacity located in the county as of the thirty-first day of 2372  
December of the preceding tax year. 2373

(3) In the case of an energy project using clean coal 2374  
technology, advanced nuclear technology, or cogeneration 2375  
technology, the following: 2376

(a) If the project maintains during the construction or 2377  
installation of the energy facility a ratio of Ohio-domiciled 2378  
full-time equivalent employees to total full-time equivalent 2379  
employees of not less than seventy-five per cent, six thousand 2380  
dollars per megawatt of nameplate capacity located in the county 2381  
as of the thirty-first day of December of the preceding tax 2382  
year; 2383

(b) If the project maintains during the construction or 2384  
installation of the energy facility a ratio of Ohio-domiciled 2385  
full-time equivalent employees to total full-time equivalent 2386  
employees of less than seventy-five per cent but not less than 2387  
sixty per cent, seven thousand dollars per megawatt of nameplate 2388  
capacity located in the county as of the thirty-first day of 2389  
December of the preceding tax year; 2390

(c) If the project maintains during the construction or 2391  
installation of the energy facility a ratio of Ohio-domiciled 2392  
full-time equivalent employees to total full-time equivalent 2393  
employees of less than sixty per cent but not less than fifty 2394  
per cent, eight thousand dollars per megawatt of nameplate 2395  
capacity located in the county as of the thirty-first day of 2396

December of the preceding tax year.	2397
(H) The director of development services in consultation	2398
with the tax commissioner shall adopt rules pursuant to Chapter	2399
119. of the Revised Code to implement and enforce this section.	2400
<b>Section 2.</b> That existing sections 303.213, 519.213,	2401
519.214, 713.081, 3706.02, 3706.03, 4906.10, 4906.13, 4906.20,	2402
4906.201, 4928.01, 4928.02, 4928.66, 4928.6610, 5727.47, and	2403
5727.75 of the Revised Code are hereby repealed.	2404
<b>Section 3.</b> That section 4928.6616 of the Revised Code is	2405
hereby repealed.	2406
<b>Section 4.</b> The amendments by this act to division (A) (34)	2407
of section 4928.01 of the Revised Code, division (C) of section	2408
4928.66 of the Revised Code, and divisions (F) (8) and (9) of	2409
section 5727.75 of the Revised Code take effect January 1, 2020.	2410
<b>Section 5.</b> That sections 1710.06, 4928.142, 4928.143,	2411
4928.20, 4928.61, 4928.62, 4928.641, 4928.645, and 5501.311 of	2412
the Revised Code be amended to read as follows:	2413
<b>Sec. 1710.06.</b> (A) The board of directors of a special	2414
improvement district may develop and adopt one or more written	2415
plans for public improvements or public services that benefit	2416
all or any part of the district. Each plan shall set forth the	2417
specific public improvements or public services that are to be	2418
provided, identify the area in which they will be provided, and	2419
specify the method of assessment to be used. Each plan for	2420
public improvements or public services shall indicate the period	2421
of time the assessments are to be levied for the improvements	2422
and services and, if public services are included in the plan,	2423
the period of time the services are to remain in effect. Plans	2424
for public improvements may include the planning, design,	2425

construction, reconstruction, enlargement, or alteration of any 2426  
public improvements and the acquisition of land for the 2427  
improvements. Plans for public improvements or public services 2428  
may also include, but are not limited to, provisions for the 2429  
following: 2430

(1) Creating and operating the district and the nonprofit 2431  
corporation under this chapter, including hiring employees and 2432  
professional services, contracting for insurance, and purchasing 2433  
or leasing office space and office equipment and other 2434  
requirements of the district; 2435

(2) Planning, designing, and implementing a public 2436  
improvements or public services plan, including hiring 2437  
architectural, engineering, legal, appraisal, insurance, 2438  
consulting, energy auditing, and planning services, and, for 2439  
public services, managing, protecting, and maintaining public 2440  
and private facilities, including public improvements; 2441

(3) Conducting court proceedings to carry out this 2442  
chapter; 2443

(4) Paying damages resulting from the provision of public 2444  
improvements or public services and implementing the plans; 2445

(5) Paying the costs of issuing, paying interest on, and 2446  
redeeming notes and bonds issued for funding public improvements 2447  
and public services plans; and 2448

(6) Sale, lease, lease with an option to purchase, 2449  
conveyance of other interests in, or other contracts for the 2450  
acquisition, construction, maintenance, repair, furnishing, 2451  
equipping, operation, or improvement of any special energy 2452  
improvement project by the special improvement district, between 2453  
a participating political subdivision and the special 2454

improvement district, and between the special improvement 2455  
district and any owner of real property in the special 2456  
improvement district on which a special energy improvement 2457  
project has been acquired, installed, equipped, or improved, and 2458

~~(7) Aggregating the renewable energy credits generated by 2459  
one or more special energy improvement projects within a special 2460  
improvement district, upon the consent of the owners of the 2461  
credits and for the purpose of negotiating and completing the 2462  
sale of such credits. 2463~~

(B) Once the board of directors of the special improvement 2464  
district adopts a plan, it shall submit the plan to the 2465  
legislative authority of each participating political 2466  
subdivision and the municipal executive of each municipal 2467  
corporation in which the district is located, if any. The 2468  
legislative authorities and municipal executives shall review 2469  
the plan and, within sixty days after receiving it, may submit 2470  
their comments and recommendations about it to the district. 2471  
After reviewing these comments and recommendations, the board of 2472  
directors may amend the plan. It may then submit the plan, 2473  
amended or otherwise, in the form of a petition to members of 2474  
the district whose property may be assessed for the plan. Once 2475  
the petition is signed by those members who own at least sixty 2476  
per cent of the front footage of property that is to be assessed 2477  
and that abuts upon a street, alley, public road, place, 2478  
boulevard, parkway, park entrance, easement, or other public 2479  
improvement, or those members who own at least seventy-five per 2480  
cent of the area to be assessed for the improvement or service, 2481  
the petition may be submitted to each legislative authority for 2482  
approval. Except as provided in division (H) of section 1710.02 2483  
of the Revised Code, if the special improvement district was 2484  
created for the purpose of developing and implementing plans for 2485

special energy improvement projects or shoreline improvement 2486  
projects, the petition required under this division shall be 2487  
signed by one hundred per cent of the owners of the area of all 2488  
real property located within the area to be assessed for the 2489  
special energy improvement project or shoreline improvement 2490  
project. 2491

Each legislative authority shall, by resolution, approve 2492  
or reject the petition within sixty days after receiving it. If 2493  
the petition is approved by the legislative authority of each 2494  
participating political subdivision, the plan contained in the 2495  
petition shall be effective at the earliest date on which a 2496  
nonemergency resolution of the legislative authority with the 2497  
latest effective date may become effective. A plan may not be 2498  
resubmitted to the legislative authorities and municipal 2499  
executives more than three times in any twelve-month period. 2500

(C) Each participating political subdivision shall levy, 2501  
by special assessment upon specially benefited property located 2502  
within the district, the costs of any public improvements or 2503  
public services plan contained in a petition approved by the 2504  
participating political subdivisions under this section or 2505  
division (F) of section 1710.02 of the Revised Code. The levy 2506  
shall be made in accordance with the procedures set forth in 2507  
Chapter 727. of the Revised Code, except that: 2508

(1) The assessment for each improvements or services plan 2509  
may be levied by any one or any combination of the methods of 2510  
assessment listed in section 727.01 of the Revised Code, 2511  
provided that the assessment is uniformly applied. 2512

(2) For the purpose of levying an assessment, the board of 2513  
directors may combine one or more improvements or services plans 2514  
or parts of plans and levy a single assessment against specially 2515

benefited property. 2516

(3) For purposes of special assessments levied by a 2517  
township pursuant to this chapter, references in Chapter 727. of 2518  
the Revised Code to the municipal corporation shall be deemed to 2519  
refer to the township, and references to the legislative 2520  
authority of the municipal corporation shall be deemed to refer 2521  
to the board of township trustees. 2522

Church property or property owned by a political 2523  
subdivision, including any participating political subdivision 2524  
in which a special improvement district is located, shall be 2525  
included in and be subject to special assessments made pursuant 2526  
to a plan adopted under this section or division (F) of section 2527  
1710.02 of the Revised Code, if the church or political 2528  
subdivision has specifically requested in writing that its 2529  
property be included within the special improvement district and 2530  
the church or political subdivision is a member of the district 2531  
or, in the case of a district created by an existing qualified 2532  
nonprofit corporation, if the church is a member of the 2533  
corporation. 2534

(D) All rights and privileges of property owners who are 2535  
assessed under Chapter 727. of the Revised Code shall be granted 2536  
to property owners assessed under this chapter, including those 2537  
rights and privileges specified in sections 727.15 to 727.17 and 2538  
727.18 to 727.22 of the Revised Code and the right to notice of 2539  
the resolution of necessity and the filing of the estimated 2540  
assessment under section 727.13 of the Revised Code. Property 2541  
owners assessed for public services under this chapter shall 2542  
have the same rights and privileges as property owners assessed 2543  
for public improvements under this chapter. 2544

**Sec. 4928.142.** (A) For the purpose of complying with 2545

section 4928.141 of the Revised Code and subject to division (D) 2546  
of this section and, as applicable, subject to the rate plan 2547  
requirement of division (A) of section 4928.141 of the Revised 2548  
Code, an electric distribution utility may establish a standard 2549  
service offer price for retail electric generation service that 2550  
is delivered to the utility under a market-rate offer. 2551

(1) The market-rate offer shall be determined through a 2552  
competitive bidding process that provides for all of the 2553  
following: 2554

(a) Open, fair, and transparent competitive solicitation; 2555

(b) Clear product definition; 2556

(c) Standardized bid evaluation criteria; 2557

(d) Oversight by an independent third party that shall 2558  
design the solicitation, administer the bidding, and ensure that 2559  
the criteria specified in ~~division~~ divisions (A) (1) (a) to (c) of 2560  
this section are met; 2561

(e) Evaluation of the submitted bids prior to the 2562  
selection of the least-cost bid winner or winners. 2563

No generation supplier shall be prohibited from 2564  
participating in the bidding process. 2565

(2) The public utilities commission shall modify rules, or 2566  
adopt new rules as necessary, concerning the conduct of the 2567  
competitive bidding process and the qualifications of bidders, 2568  
which rules shall foster supplier participation in the bidding 2569  
process and shall be consistent with the requirements of 2570  
division (A) (1) of this section. 2571

(B) Prior to initiating a competitive bidding process for 2572  
a market-rate offer under division (A) of this section, the 2573



electric distribution utility shall file an application with the 2574  
commission. An electric distribution utility may file its 2575  
application with the commission prior to the effective date of 2576  
the commission rules required under division (A) (2) of this 2577  
section, and, as the commission determines necessary, the 2578  
utility shall immediately conform its filing to the rules upon 2579  
their taking effect. 2580

An application under this division shall detail the 2581  
electric distribution utility's proposed compliance with the 2582  
requirements of division (A) (1) of this section and with 2583  
commission rules under division (A) (2) of this section and 2584  
demonstrate that all of the following requirements are met: 2585

(1) The electric distribution utility or its transmission 2586  
service affiliate belongs to at least one regional transmission 2587  
organization that has been approved by the federal energy 2588  
regulatory commission; or there otherwise is comparable and 2589  
nondiscriminatory access to the electric transmission grid. 2590

(2) Any such regional transmission organization has a 2591  
market-monitor function and the ability to take actions to 2592  
identify and mitigate market power or the electric distribution 2593  
utility's market conduct; or a similar market monitoring 2594  
function exists with commensurate ability to identify and 2595  
monitor market conditions and mitigate conduct associated with 2596  
the exercise of market power. 2597

(3) A published source of information is available 2598  
publicly or through subscription that identifies pricing 2599  
information for traded electricity on- and off-peak energy 2600  
products that are contracts for delivery beginning at least two 2601  
years from the date of the publication and is updated on a 2602  
regular basis. 2603

The commission shall initiate a proceeding and, within 2604  
ninety days after the application's filing date, shall determine 2605  
by order whether the electric distribution utility and its 2606  
market-rate offer meet all of the foregoing requirements. If the 2607  
finding is positive, the electric distribution utility may 2608  
initiate its competitive bidding process. If the finding is 2609  
negative as to one or more requirements, the commission in the 2610  
order shall direct the electric distribution utility regarding 2611  
how any deficiency may be remedied in a timely manner to the 2612  
commission's satisfaction; otherwise, the electric distribution 2613  
utility shall withdraw the application. However, if such remedy 2614  
is made and the subsequent finding is positive and also if the 2615  
electric distribution utility made a simultaneous filing under 2616  
this section and section 4928.143 of the Revised Code, the 2617  
utility shall not initiate its competitive bid until at least 2618  
one hundred fifty days after the filing date of those 2619  
applications. 2620

(C) Upon the completion of the competitive bidding process 2621  
authorized by divisions (A) and (B) of this section, including 2622  
for the purpose of division (D) of this section, the commission 2623  
shall select the least-cost bid winner or winners of that 2624  
process, and such selected bid or bids, as prescribed as retail 2625  
rates by the commission, shall be the electric distribution 2626  
utility's standard service offer unless the commission, by order 2627  
issued before the third calendar day following the conclusion of 2628  
the competitive bidding process for the market rate offer, 2629  
determines that one or more of the following criteria were not 2630  
met: 2631

(1) Each portion of the bidding process was 2632  
oversubscribed, such that the amount of supply bid upon was 2633  
greater than the amount of the load bid out. 2634

(2) There were four or more bidders. 2635

(3) At least twenty-five per cent of the load is bid upon 2636  
by one or more persons other than the electric distribution 2637  
utility. 2638

All costs incurred by the electric distribution utility as 2639  
a result of or related to the competitive bidding process or to 2640  
procuring generation service to provide the standard service 2641  
offer, including the costs of energy and capacity and the costs 2642  
of all other products and services procured as a result of the 2643  
competitive bidding process, shall be timely recovered through 2644  
the standard service offer price, and, for that purpose, the 2645  
commission shall approve a reconciliation mechanism, other 2646  
recovery mechanism, or a combination of such mechanisms for the 2647  
utility. 2648

(D) The first application filed under this section by an 2649  
electric distribution utility that, as of July 31, 2008, 2650  
directly owns, in whole or in part, operating electric 2651  
generating facilities that had been used and useful in this 2652  
state shall require that a portion of that utility's standard 2653  
service offer load for the first five years of the market rate 2654  
offer be competitively bid under division (A) of this section as 2655  
follows: ten per cent of the load in year one, not more than 2656  
twenty per cent in year two, thirty per cent in year three, 2657  
forty per cent in year four, and fifty per cent in year five. 2658  
Consistent with those percentages, the commission shall 2659  
determine the actual percentages for each year of years one 2660  
through five. The standard service offer price for retail 2661  
electric generation service under this first application shall 2662  
be a proportionate blend of the bid price and the generation 2663  
service price for the remaining standard service offer load, 2664

which latter price shall be equal to the electric distribution 2665  
utility's most recent standard service offer price, adjusted 2666  
upward or downward as the commission determines reasonable, 2667  
relative to the jurisdictional portion of any known and 2668  
measurable changes from the level of any one or more of the 2669  
following costs as reflected in that most recent standard 2670  
service offer price: 2671

(1) The electric distribution utility's prudently incurred 2672  
cost of fuel used to produce electricity; 2673

(2) Its prudently incurred purchased power costs; 2674

(3) Its prudently incurred costs of ~~satisfying the supply~~ 2675  
~~and demand portfolio requirements of this state, including, but~~ 2676  
~~not limited to, renewable energy resource and energy efficiency~~ 2677  
~~requirements programs;~~ 2678

(4) Its costs prudently incurred to comply with 2679  
environmental laws and regulations, with consideration of the 2680  
derating of any facility associated with those costs. 2681

In making any adjustment to the most recent standard 2682  
service offer price on the basis of costs described in division 2683  
(D) of this section, the commission shall include the benefits 2684  
that may become available to the electric distribution utility 2685  
as a result of or in connection with the costs included in the 2686  
adjustment, including, but not limited to, the utility's receipt 2687  
of emissions credits or its receipt of tax benefits or of other 2688  
benefits, and, accordingly, the commission may impose such 2689  
conditions on the adjustment to ensure that any such benefits 2690  
are properly aligned with the associated cost responsibility. 2691  
The commission shall also determine how such adjustments will 2692  
affect the electric distribution utility's return on common 2693

equity that may be achieved by those adjustments. The commission 2694  
shall not apply its consideration of the return on common equity 2695  
to reduce any adjustments authorized under this division unless 2696  
the adjustments will cause the electric distribution utility to 2697  
earn a return on common equity that is significantly in excess 2698  
of the return on common equity that is earned by publicly traded 2699  
companies, including utilities, that face comparable business 2700  
and financial risk, with such adjustments for capital structure 2701  
as may be appropriate. The burden of proof for demonstrating 2702  
that significantly excessive earnings will not occur shall be on 2703  
the electric distribution utility. 2704

Additionally, the commission may adjust the electric 2705  
distribution utility's most recent standard service offer price 2706  
by such just and reasonable amount that the commission 2707  
determines necessary to address any emergency that threatens the 2708  
utility's financial integrity or to ensure that the resulting 2709  
revenue available to the utility for providing the standard 2710  
service offer is not so inadequate as to result, directly or 2711  
indirectly, in a taking of property without compensation 2712  
pursuant to Section 19 of Article I, Ohio Constitution. The 2713  
electric distribution utility has the burden of demonstrating 2714  
that any adjustment to its most recent standard service offer 2715  
price is proper in accordance with this division. 2716

(E) Beginning in the second year of a blended price under 2717  
division (D) of this section and notwithstanding any other 2718  
requirement of this section, the commission may alter 2719  
prospectively the proportions specified in that division to 2720  
mitigate any effect of an abrupt or significant change in the 2721  
electric distribution utility's standard service offer price 2722  
that would otherwise result in general or with respect to any 2723  
rate group or rate schedule but for such alteration. Any such 2724

alteration shall be made not more often than annually, and the 2725  
commission shall not, by altering those proportions and in any 2726  
event, including because of the length of time, as authorized 2727  
under division (C) of this section, taken to approve the market 2728  
rate offer, cause the duration of the blending period to exceed 2729  
ten years as counted from the effective date of the approved 2730  
market rate offer. Additionally, any such alteration shall be 2731  
limited to an alteration affecting the prospective proportions 2732  
used during the blending period and shall not affect any 2733  
blending proportion previously approved and applied by the 2734  
commission under this division. 2735

(F) An electric distribution utility that has received 2736  
commission approval of its first application under division (C) 2737  
of this section shall not, nor ever shall be authorized or 2738  
required by the commission to, file an application under section 2739  
4928.143 of the Revised Code. 2740

**Sec. 4928.143.** (A) For the purpose of complying with 2741  
section 4928.141 of the Revised Code, an electric distribution 2742  
utility may file an application for public utilities commission 2743  
approval of an electric security plan as prescribed under 2744  
division (B) of this section. The utility may file that 2745  
application prior to the effective date of any rules the 2746  
commission may adopt for the purpose of this section, and, as 2747  
the commission determines necessary, the utility immediately 2748  
shall conform its filing to those rules upon their taking 2749  
effect. 2750

(B) Notwithstanding any other provision of Title XLIX of 2751  
the Revised Code to the contrary except division (D) of this 2752  
section, divisions (I), (J), and (K) of section 4928.20, 2753  
~~division (E) of section 4928.64,~~ and section 4928.69 of the 2754

Revised Code: 2755

(1) An electric security plan shall include provisions 2756  
relating to the supply and pricing of electric generation 2757  
service. In addition, if the proposed electric security plan has 2758  
a term longer than three years, it may include provisions in the 2759  
plan to permit the commission to test the plan pursuant to 2760  
division (E) of this section and any transitional conditions 2761  
that should be adopted by the commission if the commission 2762  
terminates the plan as authorized under that division. 2763

(2) The plan may provide for or include, without 2764  
limitation, any of the following: 2765

(a) Automatic recovery of any of the following costs of 2766  
the electric distribution utility, provided the cost is 2767  
prudently incurred: the cost of fuel used to generate the 2768  
electricity supplied under the offer; the cost of purchased 2769  
power supplied under the offer, including the cost of energy and 2770  
capacity, and including purchased power acquired from an 2771  
affiliate; the cost of emission allowances; and the cost of 2772  
federally mandated carbon or energy taxes; 2773

(b) A reasonable allowance for construction work in 2774  
progress for any of the electric distribution utility's cost of 2775  
constructing an electric generating facility or for an 2776  
environmental expenditure for any electric generating facility 2777  
of the electric distribution utility, provided the cost is 2778  
incurred or the expenditure occurs on or after January 1, 2009. 2779  
Any such allowance shall be subject to the construction work in 2780  
progress allowance limitations of division (A) of section 2781  
4909.15 of the Revised Code, except that the commission may 2782  
authorize such an allowance upon the incurrence of the cost or 2783  
occurrence of the expenditure. No such allowance for generating 2784

facility construction shall be authorized, however, unless the 2785  
commission first determines in the proceeding that there is need 2786  
for the facility based on resource planning projections 2787  
submitted by the electric distribution utility. Further, no such 2788  
allowance shall be authorized unless the facility's construction 2789  
was sourced through a competitive bid process, regarding which 2790  
process the commission may adopt rules. An allowance approved 2791  
under division (B) (2) (b) of this section shall be established as 2792  
a nonbypassable surcharge for the life of the facility. 2793

(c) The establishment of a nonbypassable surcharge for the 2794  
life of an electric generating facility that is owned or 2795  
operated by the electric distribution utility, was sourced 2796  
through a competitive bid process subject to any such rules as 2797  
the commission adopts under division (B) (2) (b) of this section, 2798  
and is newly used and useful on or after January 1, 2009, which 2799  
surcharge shall cover all costs of the utility specified in the 2800  
application, excluding costs recovered through a surcharge under 2801  
division (B) (2) (b) of this section. However, no surcharge shall 2802  
be authorized unless the commission first determines in the 2803  
proceeding that there is need for the facility based on resource 2804  
planning projections submitted by the electric distribution 2805  
utility. Additionally, if a surcharge is authorized for a 2806  
facility pursuant to plan approval under division (C) of this 2807  
section and as a condition of the continuation of the surcharge, 2808  
the electric distribution utility shall dedicate to Ohio 2809  
consumers the capacity and energy and the rate associated with 2810  
the cost of that facility. Before the commission authorizes any 2811  
surcharge pursuant to this division, it may consider, as 2812  
applicable, the effects of any decommissioning, deratings, and 2813  
retirements. 2814

(d) Terms, conditions, or charges relating to limitations 2815



on customer shopping for retail electric generation service, 2816  
bypassability, standby, back-up, or supplemental power service, 2817  
default service, carrying costs, amortization periods, and 2818  
accounting or deferrals, including future recovery of such 2819  
deferrals, as would have the effect of stabilizing or providing 2820  
certainty regarding retail electric service; 2821

(e) Automatic increases or decreases in any component of 2822  
the standard service offer price; 2823

(f) Consistent with sections 4928.23 to 4928.2318 of the 2824  
Revised Code, both of the following: 2825

(i) Provisions for the electric distribution utility to 2826  
securitize any phase-in, inclusive of carrying charges, of the 2827  
utility's standard service offer price, which phase-in is 2828  
authorized in accordance with section 4928.144 of the Revised 2829  
Code; 2830

(ii) Provisions for the recovery of the utility's cost of 2831  
securitization. 2832

(g) Provisions relating to transmission, ancillary, 2833  
congestion, or any related service required for the standard 2834  
service offer, including provisions for the recovery of any cost 2835  
of such service that the electric distribution utility incurs on 2836  
or after that date pursuant to the standard service offer; 2837

(h) Provisions regarding the utility's distribution 2838  
service, including, without limitation and notwithstanding any 2839  
provision of Title XLIX of the Revised Code to the contrary, 2840  
provisions regarding single issue ratemaking, a revenue 2841  
decoupling mechanism or any other incentive ratemaking, and 2842  
provisions regarding distribution infrastructure and 2843  
modernization incentives for the electric distribution utility. 2844

The latter may include a long-term energy delivery 2845  
infrastructure modernization plan for that utility or any plan 2846  
providing for the utility's recovery of costs, including lost 2847  
revenue, shared savings, and avoided costs, and a just and 2848  
reasonable rate of return on such infrastructure modernization. 2849  
As part of its determination as to whether to allow in an 2850  
electric distribution utility's electric security plan inclusion 2851  
of any provision described in division (B) (2) (h) of this 2852  
section, the commission shall examine the reliability of the 2853  
electric distribution utility's distribution system and ensure 2854  
that customers' and the electric distribution utility's 2855  
expectations are aligned and that the electric distribution 2856  
utility is placing sufficient emphasis on and dedicating 2857  
sufficient resources to the reliability of its distribution 2858  
system. 2859

(i) Provisions under which the electric distribution 2860  
utility may implement economic development, job retention, and 2861  
energy efficiency programs, which provisions may allocate 2862  
program costs across all classes of customers of the utility and 2863  
those of electric distribution utilities in the same holding 2864  
company system. 2865

(C) (1) The burden of proof in the proceeding shall be on 2866  
the electric distribution utility. The commission shall issue an 2867  
order under this division for an initial application under this 2868  
section not later than one hundred fifty days after the 2869  
application's filing date and, for any subsequent application by 2870  
the utility under this section, not later than two hundred 2871  
seventy-five days after the application's filing date. Subject 2872  
to division (D) of this section, the commission by order shall 2873  
approve or modify and approve an application filed under 2874  
division (A) of this section if it finds that the electric 2875

security plan so approved, including its pricing and all other 2876  
terms and conditions, including any deferrals and any future 2877  
recovery of deferrals, is more favorable in the aggregate as 2878  
compared to the expected results that would otherwise apply 2879  
under section 4928.142 of the Revised Code. Additionally, if the 2880  
commission so approves an application that contains a surcharge 2881  
under division (B) (2) (b) or (c) of this section, the commission 2882  
shall ensure that the benefits derived for any purpose for which 2883  
the surcharge is established are reserved and made available to 2884  
those that bear the surcharge. Otherwise, the commission by 2885  
order shall disapprove the application. 2886

(2) (a) If the commission modifies and approves an 2887  
application under division (C) (1) of this section, the electric 2888  
distribution utility may withdraw the application, thereby 2889  
terminating it, and may file a new standard service offer under 2890  
this section or a standard service offer under section 4928.142 2891  
of the Revised Code. 2892

(b) If the utility terminates an application pursuant to 2893  
division (C) (2) (a) of this section or if the commission 2894  
disapproves an application under division (C) (1) of this 2895  
section, the commission shall issue such order as is necessary 2896  
to continue the provisions, terms, and conditions of the 2897  
utility's most recent standard service offer, along with any 2898  
expected increases or decreases in fuel costs from those 2899  
contained in that offer, until a subsequent offer is authorized 2900  
pursuant to this section or section 4928.142 of the Revised 2901  
Code, respectively. 2902

(D) Regarding the rate plan requirement of division (A) of 2903  
section 4928.141 of the Revised Code, if an electric 2904  
distribution utility that has a rate plan that extends beyond 2905

December 31, 2008, files an application under this section for 2906  
the purpose of its compliance with division (A) of section 2907  
4928.141 of the Revised Code, that rate plan and its terms and 2908  
conditions are hereby incorporated into its proposed electric 2909  
security plan and shall continue in effect until the date 2910  
scheduled under the rate plan for its expiration, and that 2911  
portion of the electric security plan shall not be subject to 2912  
commission approval or disapproval under division (C) of this 2913  
section, and the earnings test provided for in division (F) of 2914  
this section shall not apply until after the expiration of the 2915  
rate plan. However, that utility may include in its electric 2916  
security plan under this section, and the commission may 2917  
approve, modify and approve, or disapprove subject to division 2918  
(C) of this section, provisions for the incremental recovery or 2919  
the deferral of any costs that are not being recovered under the 2920  
rate plan and that the utility incurs during that continuation 2921  
period to comply with section 4928.141, ~~division (B) of section~~ 2922  
~~4928.64, the Revised Code~~ or division (A) of section 4928.66 of 2923  
the Revised Code. 2924

(E) If an electric security plan approved under division 2925  
(C) of this section, except one withdrawn by the utility as 2926  
authorized under that division, has a term, exclusive of phase- 2927  
ins or deferrals, that exceeds three years from the effective 2928  
date of the plan, the commission shall test the plan in the 2929  
fourth year, and if applicable, every fourth year thereafter, to 2930  
determine whether the plan, including its then-existing pricing 2931  
and all other terms and conditions, including any deferrals and 2932  
any future recovery of deferrals, continues to be more favorable 2933  
in the aggregate and during the remaining term of the plan as 2934  
compared to the expected results that would otherwise apply 2935  
under section 4928.142 of the Revised Code. The commission shall 2936

also determine the prospective effect of the electric security 2937  
plan to determine if that effect is substantially likely to 2938  
provide the electric distribution utility with a return on 2939  
common equity that is significantly in excess of the return on 2940  
common equity that is likely to be earned by publicly traded 2941  
companies, including utilities, that face comparable business 2942  
and financial risk, with such adjustments for capital structure 2943  
as may be appropriate. The burden of proof for demonstrating 2944  
that significantly excessive earnings will not occur shall be on 2945  
the electric distribution utility. If the test results are in 2946  
the negative or the commission finds that continuation of the 2947  
electric security plan will result in a return on equity that is 2948  
significantly in excess of the return on common equity that is 2949  
likely to be earned by publicly traded companies, including 2950  
utilities, that will face comparable business and financial 2951  
risk, with such adjustments for capital structure as may be 2952  
appropriate, during the balance of the plan, the commission may 2953  
terminate the electric security plan, but not until it shall 2954  
have provided interested parties with notice and an opportunity 2955  
to be heard. The commission may impose such conditions on the 2956  
plan's termination as it considers reasonable and necessary to 2957  
accommodate the transition from an approved plan to the more 2958  
advantageous alternative. In the event of an electric security 2959  
plan's termination pursuant to this division, the commission 2960  
shall permit the continued deferral and phase-in of any amounts 2961  
that occurred prior to that termination and the recovery of 2962  
those amounts as contemplated under that electric security plan. 2963

(F) With regard to the provisions that are included in an 2964  
electric security plan under this section, the commission shall 2965  
consider, following the end of each annual period of the plan, 2966  
if any such adjustments resulted in excessive earnings as 2967

measured by whether the earned return on common equity of the 2968  
electric distribution utility is significantly in excess of the 2969  
return on common equity that was earned during the same period 2970  
by publicly traded companies, including utilities, that face 2971  
comparable business and financial risk, with such adjustments 2972  
for capital structure as may be appropriate. Consideration also 2973  
shall be given to the capital requirements of future committed 2974  
investments in this state. The burden of proof for demonstrating 2975  
that significantly excessive earnings did not occur shall be on 2976  
the electric distribution utility. If the commission finds that 2977  
such adjustments, in the aggregate, did result in significantly 2978  
excessive earnings, it shall require the electric distribution 2979  
utility to return to consumers the amount of the excess by 2980  
prospective adjustments; provided that, upon making such 2981  
prospective adjustments, the electric distribution utility shall 2982  
have the right to terminate the plan and immediately file an 2983  
application pursuant to section 4928.142 of the Revised Code. 2984  
Upon termination of a plan under this division, rates shall be 2985  
set on the same basis as specified in division (C)(2)(b) of this 2986  
section, and the commission shall permit the continued deferral 2987  
and phase-in of any amounts that occurred prior to that 2988  
termination and the recovery of those amounts as contemplated 2989  
under that electric security plan. In making its determination 2990  
of significantly excessive earnings under this division, the 2991  
commission shall not consider, directly or indirectly, the 2992  
revenue, expenses, or earnings of any affiliate or parent 2993  
company. 2994

**Sec. 4928.20.** (A) The legislative authority of a municipal 2995  
corporation may adopt an ordinance, or the board of township 2996  
trustees of a township or the board of county commissioners of a 2997  
county may adopt a resolution, under which, on or after the 2998

starting date of competitive retail electric service, it may 2999  
aggregate in accordance with this section the retail electrical 3000  
loads located, respectively, within the municipal corporation, 3001  
township, or unincorporated area of the county and, for that 3002  
purpose, may enter into service agreements to facilitate for 3003  
those loads the sale and purchase of electricity. The 3004  
legislative authority or board also may exercise such authority 3005  
jointly with any other such legislative authority or board. For 3006  
customers that are not mercantile customers, an ordinance or 3007  
resolution under this division shall specify whether the 3008  
aggregation will occur only with the prior, affirmative consent 3009  
of each person owning, occupying, controlling, or using an 3010  
electric load center proposed to be aggregated or will occur 3011  
automatically for all such persons pursuant to the opt-out 3012  
requirements of division (D) of this section. The aggregation of 3013  
mercantile customers shall occur only with the prior, 3014  
affirmative consent of each such person owning, occupying, 3015  
controlling, or using an electric load center proposed to be 3016  
aggregated. Nothing in this division, however, authorizes the 3017  
aggregation of the retail electric loads of an electric load 3018  
center, as defined in section 4933.81 of the Revised Code, that 3019  
is located in the certified territory of a nonprofit electric 3020  
supplier under sections 4933.81 to 4933.90 of the Revised Code 3021  
or an electric load center served by transmission or 3022  
distribution facilities of a municipal electric utility. 3023

(B) If an ordinance or resolution adopted under division 3024  
(A) of this section specifies that aggregation of customers that 3025  
are not mercantile customers will occur automatically as 3026  
described in that division, the ordinance or resolution shall 3027  
direct the board of elections to submit the question of the 3028  
authority to aggregate to the electors of the respective 3029

municipal corporation, township, or unincorporated area of a 3030  
county at a special election on the day of the next primary or 3031  
general election in the municipal corporation, township, or 3032  
county. The legislative authority or board shall certify a copy 3033  
of the ordinance or resolution to the board of elections not 3034  
less than ninety days before the day of the special election. No 3035  
ordinance or resolution adopted under division (A) of this 3036  
section that provides for an election under this division shall 3037  
take effect unless approved by a majority of the electors voting 3038  
upon the ordinance or resolution at the election held pursuant 3039  
to this division. 3040

(C) Upon the applicable requisite authority under 3041  
divisions (A) and (B) of this section, the legislative authority 3042  
or board shall develop a plan of operation and governance for 3043  
the aggregation program so authorized. Before adopting a plan 3044  
under this division, the legislative authority or board shall 3045  
hold at least two public hearings on the plan. Before the first 3046  
hearing, the legislative authority or board shall publish notice 3047  
of the hearings once a week for two consecutive weeks in a 3048  
newspaper of general circulation in the jurisdiction or as 3049  
provided in section 7.16 of the Revised Code. The notice shall 3050  
summarize the plan and state the date, time, and location of 3051  
each hearing. 3052

(D) No legislative authority or board, pursuant to an 3053  
ordinance or resolution under divisions (A) and (B) of this 3054  
section that provides for automatic aggregation of customers 3055  
that are not mercantile customers as described in division (A) 3056  
of this section, shall aggregate the electrical load of any 3057  
electric load center located within its jurisdiction unless it 3058  
in advance clearly discloses to the person owning, occupying, 3059  
controlling, or using the load center that the person will be 3060



enrolled automatically in the aggregation program and will 3061  
remain so enrolled unless the person affirmatively elects by a 3062  
stated procedure not to be so enrolled. The disclosure shall 3063  
state prominently the rates, charges, and other terms and 3064  
conditions of enrollment. The stated procedure shall allow any 3065  
person enrolled in the aggregation program the opportunity to 3066  
opt out of the program every three years, without paying a 3067  
switching fee. Any such person that opts out before the 3068  
commencement of the aggregation program pursuant to the stated 3069  
procedure shall default to the standard service offer provided 3070  
under section 4928.14 or division (D) of section 4928.35 of the 3071  
Revised Code until the person chooses an alternative supplier. 3072

(E) (1) With respect to a governmental aggregation for a 3073  
municipal corporation that is authorized pursuant to divisions 3074  
(A) to (D) of this section, resolutions may be proposed by 3075  
initiative or referendum petitions in accordance with sections 3076  
731.28 to 731.41 of the Revised Code. 3077

(2) With respect to a governmental aggregation for a 3078  
township or the unincorporated area of a county, which 3079  
aggregation is authorized pursuant to divisions (A) to (D) of 3080  
this section, resolutions may be proposed by initiative or 3081  
referendum petitions in accordance with sections 731.28 to 3082  
731.40 of the Revised Code, except that: 3083

(a) The petitions shall be filed, respectively, with the 3084  
township fiscal officer or the board of county commissioners, 3085  
who shall perform those duties imposed under those sections upon 3086  
the city auditor or village clerk. 3087

(b) The petitions shall contain the signatures of not less 3088  
than ten per cent of the total number of electors in, 3089  
respectively, the township or the unincorporated area of the 3090

county who voted for the office of governor at the preceding 3091  
general election for that office in that area. 3092

(F) A governmental aggregator under division (A) of this 3093  
section is not a public utility engaging in the wholesale 3094  
purchase and resale of electricity, and provision of the 3095  
aggregated service is not a wholesale utility transaction. A 3096  
governmental aggregator shall be subject to supervision and 3097  
regulation by the public utilities commission only to the extent 3098  
of any competitive retail electric service it provides and 3099  
commission authority under this chapter. 3100

(G) This section does not apply in the case of a municipal 3101  
corporation that supplies such aggregated service to electric 3102  
load centers to which its municipal electric utility also 3103  
supplies a noncompetitive retail electric service through 3104  
transmission or distribution facilities the utility singly or 3105  
jointly owns or operates. 3106

(H) A governmental aggregator shall not include in its 3107  
aggregation the accounts of any of the following: 3108

(1) A customer that has opted out of the aggregation; 3109

(2) A customer in contract with a certified electric 3110  
services company; 3111

(3) A customer that has a special contract with an 3112  
electric distribution utility; 3113

(4) A customer that is not located within the governmental 3114  
aggregator's governmental boundaries; 3115

(5) Subject to division (C) of section 4928.21 of the 3116  
Revised Code, a customer who appears on the "do not aggregate" 3117  
list maintained under that section. 3118

(I) Customers that are part of a governmental aggregation 3119  
under this section shall be responsible only for such portion of 3120  
a surcharge under section 4928.144 of the Revised Code that is 3121  
proportionate to the benefits, as determined by the commission, 3122  
that electric load centers within the jurisdiction of the 3123  
governmental aggregation as a group receive. The proportionate 3124  
surcharge so established shall apply to each customer of the 3125  
governmental aggregation while the customer is part of that 3126  
aggregation. If a customer ceases being such a customer, the 3127  
otherwise applicable surcharge shall apply. Nothing in this 3128  
section shall result in less than full recovery by an electric 3129  
distribution utility of any surcharge authorized under section 3130  
4928.144 of the Revised Code. Nothing in this section shall 3131  
result in less than the full and timely imposition, charging, 3132  
collection, and adjustment by an electric distribution utility, 3133  
its assignee, or any collection agent, of the phase-in-recovery 3134  
charges authorized pursuant to a final financing order issued 3135  
pursuant to sections 4928.23 to 4928.2318 of the Revised Code. 3136

(J) On behalf of the customers that are part of a 3137  
governmental aggregation under this section and by filing 3138  
written notice with the public utilities commission, the 3139  
legislative authority that formed or is forming that 3140  
governmental aggregation may elect not to receive standby 3141  
service within the meaning of division (B) (2) (d) of section 3142  
4928.143 of the Revised Code from an electric distribution 3143  
utility in whose certified territory the governmental 3144  
aggregation is located and that operates under an approved 3145  
electric security plan under that section. Upon the filing of 3146  
that notice, the electric distribution utility shall not charge 3147  
any such customer to whom competitive retail electric generation 3148  
service is provided by another supplier under the governmental 3149

aggregation for the standby service. Any such consumer that 3150  
returns to the utility for competitive retail electric service 3151  
shall pay the market price of power incurred by the utility to 3152  
serve that consumer ~~plus any amount attributable to the~~ 3153  
~~utility's cost of compliance with the renewable energy resource~~ 3154  
~~provisions of section 4928.64 of the Revised Code to serve the~~ 3155  
consumer. Such market price shall include, but not be limited 3156  
to, capacity and energy charges; all charges associated with the 3157  
provision of that power supply through the regional transmission 3158  
organization, including, but not limited to, transmission, 3159  
ancillary services, congestion, and settlement and 3160  
administrative charges; and all other costs incurred by the 3161  
utility that are associated with the procurement, provision, and 3162  
administration of that power supply, as such costs may be 3163  
approved by the commission. The period of time during which the 3164  
market price ~~and renewable energy resource amount~~ shall be so 3165  
assessed on the consumer shall be from the time the consumer so 3166  
returns to the electric distribution utility until the 3167  
expiration of the electric security plan. However, if that 3168  
period of time is expected to be more than two years, the 3169  
commission may reduce the time period to a period of not less 3170  
than two years. 3171

(K) The commission shall adopt rules to encourage and 3172  
promote large-scale governmental aggregation in this state. For 3173  
that purpose, the commission shall conduct an immediate review 3174  
of any rules it has adopted for the purpose of this section that 3175  
are in effect on the effective date of the amendment of this 3176  
section by S.B. 221 of the 127th general assembly, July 31, 3177  
2008. Further, within the context of an electric security plan 3178  
under section 4928.143 of the Revised Code, the commission shall 3179  
consider the effect on large-scale governmental aggregation of 3180

any nonbypassable generation charges, however collected, that 3181  
would be established under that plan, except any nonbypassable 3182  
generation charges that relate to any cost incurred by the 3183  
electric distribution utility, the deferral of which has been 3184  
authorized by the commission prior to the effective date of the 3185  
amendment of this section by S.B. 221 of the 127th general 3186  
assembly, July 31, 2008. 3187

**Sec. 4928.61.** (A) There is hereby established in the state 3188  
treasury the advanced energy fund, into which shall be deposited 3189  
all advanced energy revenues remitted to the director of 3190  
development under division (B) of this section, for the 3191  
exclusive purposes of funding the advanced energy program 3192  
created under section 4928.62 of the Revised Code and paying the 3193  
program's administrative costs. Interest on the fund shall be 3194  
credited to the fund. 3195

(B) Advanced energy revenues shall include all of the 3196  
following: 3197

(1) Revenues remitted to the director after collection by 3198  
each electric distribution utility in this state of a temporary 3199  
rider on retail electric distribution service rates as such 3200  
rates are determined by the public utilities commission pursuant 3201  
to this chapter. The rider shall be a uniform amount statewide, 3202  
determined by the director of development, after consultation 3203  
with the public benefits advisory board created by section 3204  
4928.58 of the Revised Code. The amount shall be determined by 3205  
dividing an aggregate revenue target for a given year as 3206  
determined by the director, after consultation with the advisory 3207  
board, by the number of customers of electric distribution 3208  
utilities in this state in the prior year. Such aggregate 3209  
revenue target shall not exceed more than fifteen million 3210

dollars in any year through 2005 and shall not exceed more than 3211  
five million dollars in any year after 2005. The rider shall be 3212  
imposed beginning on the effective date of the amendment of this 3213  
section by Sub. H.B. 251 of the 126th general assembly, January 3214  
4, 2007, and shall terminate at the end of ten years following 3215  
the starting date of competitive retail electric service or 3216  
until the advanced energy fund, including interest, reaches one 3217  
hundred million dollars, whichever is first. 3218

(2) Revenues from payments, repayments, and collections 3219  
under the advanced energy program and from program income; 3220

(3) Revenues remitted to the director after collection by 3221  
a municipal electric utility or electric cooperative in this 3222  
state upon the utility's or cooperative's decision to 3223  
participate in the advanced energy fund; 3224

~~(4) Revenues from renewable energy compliance payments as~~ 3225  
~~provided under division (C) (2) of section 4928.64 of the Revised~~ 3226  
~~Code;~~ 3227

~~(5) Revenue from forfeitures under division (C) of section~~ 3228  
4928.66 of the Revised Code; 3229

~~(6)~~ (5) Funds transferred pursuant to division (B) of 3230  
Section 512.10 of S.B. 315 of the 129th general assembly; 3231

~~(7)~~ (6) Interest earnings on the advanced energy fund. 3232

(C) (1) Each electric distribution utility in this state 3233  
shall remit to the director on a quarterly basis the revenues 3234  
described in divisions (B) (1) and (2) of this section. Such 3235  
remittances shall occur within thirty days after the end of each 3236  
calendar quarter. 3237

(2) Each participating electric cooperative and 3238

participating municipal electric utility shall remit to the 3239  
director on a quarterly basis the revenues described in division 3240  
(B) (3) of this section. Such remittances shall occur within 3241  
thirty days after the end of each calendar quarter. For the 3242  
purpose of division (B) (3) of this section, the participation of 3243  
an electric cooperative or municipal electric utility in the 3244  
energy efficiency revolving loan program as it existed 3245  
immediately prior to the effective date of the amendment of this 3246  
section by Sub. H.B. 251 of the 126th general assembly, January 3247  
4, 2007, does not constitute a decision to participate in the 3248  
advanced energy fund under this section as so amended. 3249

(3) All remittances under divisions (C) (1) and (2) of this 3250  
section shall continue only until the end of ten years following 3251  
the starting date of competitive retail electric service or 3252  
until the advanced energy fund, including interest, reaches one 3253  
hundred million dollars, whichever is first. 3254

(D) Any moneys collected in rates for non-low-income 3255  
customer energy efficiency programs, as of October 5, 1999, and 3256  
not contributed to the energy efficiency revolving loan fund 3257  
authorized under this section prior to the effective date of its 3258  
amendment by Sub. H.B. 251 of the 126th general assembly, 3259  
January 4, 2007, shall be used to continue to fund cost- 3260  
effective, residential energy efficiency programs, be 3261  
contributed into the universal service fund as a supplement to 3262  
that required under section 4928.53 of the Revised Code, or be 3263  
returned to ratepayers in the form of a rate reduction at the 3264  
option of the affected electric distribution utility. 3265

**Sec. 4928.62.** (A) There is hereby created the advanced 3266  
energy program, which shall be administered by the director of 3267  
development. Under the program, the director may authorize the 3268

use of moneys in the advanced energy fund for financial, 3269  
technical, and related assistance for advanced energy projects 3270  
in this state or for economic development assistance, in 3271  
furtherance of the purposes set forth in section 4928.63 of the 3272  
Revised Code. 3273

(1) To the extent feasible given approved applications for 3274  
assistance, the assistance shall be distributed among the 3275  
certified territories of electric distribution utilities and 3276  
participating electric cooperatives, and among the service areas 3277  
of participating municipal electric utilities, in amounts 3278  
proportionate to the remittances of each utility and cooperative 3279  
under divisions (B)(1) and (3) of section 4928.61 of the Revised 3280  
Code. 3281

(2) The funds described in division (B) ~~(6)~~ (5) of section 3282  
4928.61 of the Revised Code shall not be subject to the 3283  
territorial requirements of division (A)(1) of this section. 3284

(3) The director shall not authorize financial assistance 3285  
for an advanced energy project under the program unless the 3286  
director first determines that the project will create new jobs 3287  
or preserve existing jobs in this state or use innovative 3288  
technologies or materials. 3289

(B) In carrying out sections 4928.61 to 4928.63 of the 3290  
Revised Code, the director may do all of the following to 3291  
further the public interest in advanced energy projects and 3292  
economic development: 3293

(1) Award grants, contracts, loans, loan participation 3294  
agreements, linked deposits, and energy production incentives; 3295

(2) Acquire in the name of the director any property of 3296  
any kind or character in accordance with this section, by 3297



purchase, purchase at foreclosure, or exchange, on such terms 3298  
and in such manner as the director considers proper; 3299

(3) Make and enter into all contracts and agreements 3300  
necessary or incidental to the performance of the director's 3301  
duties and the exercise of the director's powers under sections 3302  
4928.61 to 4928.63 of the Revised Code; 3303

(4) Employ or enter into contracts with financial 3304  
consultants, marketing consultants, consulting engineers, 3305  
architects, managers, construction experts, attorneys, technical 3306  
monitors, energy evaluators, or other employees or agents as the 3307  
director considers necessary, and fix their compensation; 3308

(5) Adopt rules prescribing the application procedures for 3309  
financial assistance under the advanced energy program; the 3310  
fees, charges, interest rates, payment schedules, local match 3311  
requirements, and other terms and conditions of any grants, 3312  
contracts, loans, loan participation agreements, linked 3313  
deposits, and energy production incentives; criteria pertaining 3314  
to the eligibility of participating lending institutions; and 3315  
any other matters necessary for the implementation of the 3316  
program; 3317

(6) Do all things necessary and appropriate for the 3318  
operation of the program. 3319

(C) The department of development may hold ownership to 3320  
any unclaimed energy efficiency and renewable energy emission 3321  
allowances provided for in Chapter 3745-14 of the Administrative 3322  
Code or otherwise, that result from advanced energy projects 3323  
that receive funding from the advanced energy fund, and it may 3324  
use the allowances to further the public interest in advanced 3325  
energy projects or for economic development. 3326

(D) Financial statements, financial data, and trade secrets submitted to or received by the director from an applicant or recipient of financial assistance under sections 4928.61 to 4928.63 of the Revised Code, or any information taken from those statements, data, or trade secrets for any purpose, are not public records for the purpose of section 149.43 of the Revised Code.

(E) Nothing in the amendments of sections 4928.61, 4928.62, and 4928.63 of the Revised Code by Sub. H.B. 251 of the 126th general assembly shall affect any pending or effected assistance, pending or effected purchases or exchanges of property made, or pending or effected contracts or agreements entered into pursuant to division (A) or (B) of this section as the section existed prior to the effective date of those amendments, January 4, 2007, or shall affect the exemption provided under division (C) of this section as the section existed prior to that effective date.

(F) Any assistance a school district receives for an advanced energy project, including a geothermal heating, ventilating, and air conditioning system, shall be in addition to any assistance provided under Chapter 3318. of the Revised Code and shall not be included as part of the district or state portion of the basic project cost under that chapter.

**Sec. 4928.641.** (A) As used in this section, "net cost" means a charge or a credit and constitutes the ongoing costs including the charges incurred by the utility under each contract, including the annual renewable energy credit inventory amortization charge in division (E) (3) of this section, the carrying charges, less the revenue received by the utility as a result of liquidating into competitive markets the electrical

and renewable products provided to the utility under the same 3357  
contract, including capacity, ancillary services, and renewable 3358  
energy credits. 3359

(B) All prudently incurred costs incurred by an electric 3360  
distribution utility associated with contractual obligations 3361  
that existed prior to the effective date of the amendments to 3362  
this section by H.B. 6 of the 133rd general assembly to 3363  
implement section 4928.64 of the Revised Code shall be 3364  
recoverable from the utility's retail customers as a 3365  
distribution expense if the money received from the Ohio clean 3366  
air program fund, created under section 3706.46 of the Revised 3367  
Code, is insufficient to offset those costs. Such costs are 3368  
ongoing costs and shall include costs incurred to discontinue 3369  
existing programs that were implemented by the electric 3370  
distribution utility under section 4928.64 of the Revised Code. 3371

(C) If an electric distribution utility has executed a 3372  
contract before April 1, 2014, to procure renewable energy 3373  
resources to implement section 4928.64 of the Revised Code and 3374  
there are ongoing costs associated with that contract that are 3375  
being recovered from customers through a bypassable charge as of 3376  
the effective date of S.B. 310 the amendments to this section by 3377  
H.B. 6 of the 130th-133rd general assembly, that cost recovery 3378  
shall continue on a bypassable basis, upon final 3379  
reconciliation, be replaced with the accounting mechanism 3380  
permitted under this section. The accounting mechanism shall be 3381  
effective for the remaining term of the contract and for a 3382  
subsequent reconciliation period until all the prudently 3383  
incurred costs associated with that contract are fully 3384  
recovered. 3385

~~(B) Division (A) of this section applies only to costs~~ 3386

~~associated with the original term of a contract described in~~ 3387  
~~that division and entered into before April 1, 2014. This~~ 3388  
~~section does not permit recovery of costs associated with an~~ 3389  
~~extension of such a contract. This section does not permit~~ 3390  
~~recovery of costs associated with an amendment of such a~~ 3391  
~~contract if that amendment was made on or after April 1, 2014.~~ 3392

(D) Subject to the requirements for recovery of ongoing 3393  
costs under section 4928.64 of the Revised Code, the public 3394  
utilities commission shall, in accordance with division (E) of 3395  
this section, approve an accounting mechanism for each electric 3396  
distribution utility that demonstrates that it has incurred or 3397  
will incur ongoing costs as described in division (B) of this 3398  
section. 3399

(E) All of the following shall apply to the accounting 3400  
mechanism: 3401

(1) Subject to division (F) of this section, the 3402  
accounting mechanism shall reflect the forecasted annual net 3403  
costs to be incurred by the utility under each contract 3404  
described in division (C) of this section, subject to subsequent 3405  
reconciliation to actual net costs. 3406

(2) The book value of an electric distribution utility's 3407  
inventory of renewable energy credits, as of the effective date 3408  
of the amendments to this section by H.B. 6 of the 133rd general 3409  
assembly, shall be reflected in the accounting mechanism over an 3410  
amortization period that is substantially similar to the 3411  
remaining term of any contracts described in division (C) of 3412  
this section. 3413

(3) The electric distribution utility shall, in a timely 3414  
manner, liquidate the renewable energy credits in its inventory 3415

and apply the resulting revenue against such recovery. 3416

(F) Not later than ninety days after the effective date of 3417  
the amendments to this section by H.B. 6 of the 133rd general 3418  
assembly, the commission shall approve an appropriate accounting 3419  
mechanism that is reasonable and appropriate to implement the 3420  
requirements of this section and permits a full recovery of the 3421  
utility's net costs, including the accounting authority for the 3422  
utility to establish and adjust regulatory assets and regulatory 3423  
liabilities consistent with this section. The electric 3424  
distribution utility shall be entitled to collect a carrying 3425  
charge on such regulatory assets on the effective date of the 3426  
amendments to this section by H.B. 6 of the 133rd general 3427  
assembly and continuing until the regulatory asset is completely 3428  
recovered. Such carrying charge shall include the electric 3429  
distribution utility's cost of capital including the most recent 3430  
authorized rate of return on equity. The carrying charge shall 3431  
also be applied to any regulatory liability created as a result 3432  
of the cost recovery mechanism. In each subsequent rate 3433  
proceeding under Chapter 4909. of the Revised Code or section 3434  
4928.143 of the Revised Code involving the electric distribution 3435  
utility, the commission shall permit recovery as a distribution 3436  
expense of the regulatory assets existing at that time until the 3437  
utility's net costs are fully recovered. Those costs shall be 3438  
assigned to each customer class using the base distribution 3439  
revenue allocation. 3440

(G) The electric distribution utility shall apply to the 3441  
Ohio air quality development authority for reimbursement of its 3442  
net costs, in accordance with section 3706.485 of the Revised 3443  
Code. To facilitate the authority's consideration of the 3444  
utility's application, the commission shall annually certify 3445  
each electric distribution utility's forecasted net costs under 3446

this section to the authority. The commission shall credit any 3447  
revenue received by the utility from the Ohio clean air program 3448  
fund under section 3706.485 of the Revised Code against the net 3449  
costs that would otherwise be recovered through the utility's 3450  
rates. 3451

**Sec. 4928.645.** (A) An electric distribution utility or 3452  
electric services company may use, ~~for the purpose of complying~~ 3453  
~~with the requirements under divisions (B) (1) and (2) of section~~ 3454  
~~4928.64 of the Revised Code,~~ renewable energy credits any time 3455  
in the five calendar years following the date of their purchase 3456  
or acquisition from any entity, including, but not limited to, 3457  
the following: 3458

(1) A mercantile customer; 3459

(2) An owner or operator of a hydroelectric generating 3460  
facility that is located at a dam on a river, or on any water 3461  
discharged to a river, that is within or bordering this state or 3462  
within or bordering an adjoining state, or that produces power 3463  
that can be shown to be deliverable into this state; 3464

(3) A seller of compressed natural gas that has been 3465  
produced from biologically derived methane gas, provided that 3466  
the seller may only provide renewable energy credits for metered 3467  
amounts of gas. 3468

(B) (1) The public utilities commission shall adopt rules 3469  
specifying that one unit of credit shall equal one megawatt hour 3470  
of electricity derived from renewable energy resources, except 3471  
that, for a generating facility of seventy-five megawatts or 3472  
greater that is situated within this state and has committed by 3473  
December 31, 2009, to modify or retrofit its generating unit or 3474  
units to enable the facility to generate principally from 3475

biomass energy by June 30, 2013, each megawatt hour of 3476  
electricity generated principally from that biomass energy shall 3477  
equal, in units of credit, the product obtained by multiplying 3478  
the actual percentage of biomass feedstock heat input used to 3479  
generate such megawatt hour by the quotient obtained by dividing 3480  
the ~~then existing~~ unit dollar amount used, on December 31, 2019, 3481  
to determine a renewable energy compliance payment as provided 3482  
under former division (C) (2) (b) of section 4928.64 of the 3483  
Revised Code by the then existing market value of one renewable 3484  
energy credit, but such megawatt hour shall not equal less than 3485  
one unit of credit. Renewable energy resources do not have to be 3486  
converted to electricity in order to be eligible to receive 3487  
renewable energy credits. The rules shall specify that, for 3488  
purposes of converting the quantity of energy derived from 3489  
biologically derived methane gas to an electricity equivalent, 3490  
one megawatt hour equals 3,412,142 British thermal units. 3491

(2) The rules also shall provide for this state a system 3492  
of registering renewable energy credits by specifying which of 3493  
any generally available registries shall be used for that 3494  
purpose and not by creating a registry. That selected system of 3495  
registering renewable energy credits shall allow a hydroelectric 3496  
generating facility to be eligible for obtaining renewable 3497  
energy credits and shall allow customer-sited projects or 3498  
actions the broadest opportunities to be eligible for obtaining 3499  
renewable energy credits. 3500

**Sec. 5501.311.** (A) Notwithstanding sections 123.01 and 3501  
127.16 of the Revised Code the director of transportation may 3502  
lease or lease-purchase all or any part of a transportation 3503  
facility to or from one or more persons, one or more 3504  
governmental agencies, a transportation improvement district, or 3505  
any combination thereof, and may grant leases, easements, or 3506

licenses for lands under the control of the department of 3507  
transportation. The director may adopt rules necessary to give 3508  
effect to this section. 3509

(B) Plans and specifications for the construction of a 3510  
transportation facility under a lease or lease-purchase 3511  
agreement are subject to approval of the director and must meet 3512  
or exceed all applicable standards of the department. 3513

(C) Any lease or lease-purchase agreement under which the 3514  
department is the lessee shall be for a period not exceeding the 3515  
then current two-year period for which appropriations have been 3516  
made by the general assembly to the department, and such 3517  
agreement may contain such other terms as the department and the 3518  
other parties thereto agree, notwithstanding any other provision 3519  
of law, including provisions that rental payments in amounts 3520  
sufficient to pay bond service charges payable during the 3521  
current two-year lease term shall be an absolute and 3522  
unconditional obligation of the department independent of all 3523  
other duties under the agreement without set-off or deduction or 3524  
any other similar rights or defenses. Any such agreement may 3525  
provide for renewal of the agreement at the end of each term for 3526  
another term, not exceeding two years, provided that no renewal 3527  
shall be effective until the effective date of an appropriation 3528  
enacted by the general assembly from which the department may 3529  
lawfully pay rentals under such agreement. Any such agreement 3530  
may include, without limitation, any agreement by the department 3531  
with respect to any costs of transportation facilities to be 3532  
included prior to acquisition and construction of such 3533  
transportation facilities. Any such agreement shall not 3534  
constitute a debt or pledge of the faith and credit of the 3535  
state, or of any political subdivision of the state, and the 3536  
lessor shall have no right to have taxes or excises levied by 3537



the general assembly, or the taxing authority of any political 3538  
subdivision of the state, for the payment of rentals thereunder. 3539  
Any such agreement shall contain a statement to that effect. 3540

(D) A municipal corporation, township, or county may use 3541  
service payments in lieu of taxes credited to special funds or 3542  
accounts pursuant to sections 5709.43, 5709.47, 5709.75, and 3543  
5709.80 of the Revised Code to provide its contribution to the 3544  
cost of a transportation facility, provided such facility was 3545  
among the purposes for which such service payments were 3546  
authorized. The contribution may be in the form of a lump sum or 3547  
periodic payments. 3548

(E) Pursuant to the "Telecommunications Act of 1996," 110 3549  
Stat. 152, 47 U.S.C. 332 note, the director may grant a lease, 3550  
easement, or license in a transportation facility to a 3551  
telecommunications service provider for construction, placement, 3552  
or operation of a telecommunications facility. An interest 3553  
granted under this division is subject to all of the following 3554  
conditions: 3555

(1) The transportation facility is owned in fee simple or 3556  
easement by this state at the time the lease, easement, or 3557  
license is granted to the telecommunications provider. 3558

(2) The lease, easement, or license shall be granted on a 3559  
competitive basis in accordance with policies and procedures to 3560  
be determined by the director. The policies and procedures may 3561  
include provisions for master leases for multiple sites. 3562

(3) The telecommunications facility shall be designed to 3563  
accommodate the state's multi-agency radio communication system, 3564  
the intelligent transportation system, and the department's 3565  
communication system as the director may determine is necessary 3566

for highway or other departmental purposes. 3567

(4) The telecommunications facility shall be designed to 3568  
accommodate such additional telecommunications equipment as may 3569  
feasibly be co-located thereon as determined in the discretion 3570  
of the director. 3571

(5) The telecommunications service providers awarded the 3572  
lease, easement, or license, agree to permit other 3573  
telecommunications service providers to co-locate on the 3574  
telecommunications facility, and agree to the terms and 3575  
conditions of the co-location as determined in the discretion of 3576  
the director. 3577

(6) The director shall require indemnity agreements in 3578  
favor of the department as a condition of any lease, easement, 3579  
or license granted under this division. Each indemnity agreement 3580  
shall secure this state and its agents from liability for 3581  
damages arising out of safety hazards, zoning, and any other 3582  
matter of public interest the director considers necessary. 3583

(7) The telecommunications service provider fully complies 3584  
with any permit issued under section 5515.01 of the Revised Code 3585  
pertaining to land that is the subject of the lease, easement, 3586  
or license. 3587

(8) All plans and specifications shall meet with the 3588  
director's approval. 3589

(9) Any other conditions the director determines 3590  
necessary. 3591

(F) In accordance with section 5501.031 of the Revised 3592  
Code, to further efforts to promote energy conservation and 3593  
energy efficiency, the director may grant a lease, easement, or 3594  
license in a transportation facility to a utility service 3595

provider that has received its certificate from the Ohio power 3596  
siting board or appropriate local entity for construction, 3597  
placement, or operation of an alternative energy generating 3598  
facility service provider as defined in section 4928.64 of the 3599  
Revised Code as that section existed prior to January 1, 2020. 3600  
An interest granted under this division is subject to all of the 3601  
following conditions: 3602

(1) The transportation facility is owned in fee simple or 3603  
in easement by this state at the time the lease, easement, or 3604  
license is granted to the utility service provider. 3605

(2) The lease, easement, or license shall be granted on a 3606  
competitive basis in accordance with policies and procedures to 3607  
be determined by the director. The policies and procedures may 3608  
include provisions for master leases for multiple sites. 3609

(3) The alternative energy generating facility shall be 3610  
designed to provide energy for the department's transportation 3611  
facilities with the potential for selling excess power on the 3612  
power grid, as the director may determine is necessary for 3613  
highway or other departmental purposes. 3614

(4) The director shall require indemnity agreements in 3615  
favor of the department as a condition of any lease, easement, 3616  
or license granted under this division. Each indemnity agreement 3617  
shall secure this state from liability for damages arising out 3618  
of safety hazards, zoning, and any other matter of public 3619  
interest the director considers necessary. 3620

(5) The alternative energy service provider fully complies 3621  
with any permit issued by the Ohio power siting board under 3622  
Chapter 4906. of the Revised Code and complies with section 3623  
5515.01 of the Revised Code pertaining to land that is the 3624

subject of the lease, easement, or license. 3625

(6) All plans and specifications shall meet with the 3626  
director's approval. 3627

(7) Any other conditions the director determines 3628  
necessary. 3629

(G) Money the department receives under this section shall 3630  
be deposited into the state treasury to the credit of the 3631  
highway operating fund. 3632

(H) A lease, easement, or license granted under division 3633  
(E) or (F) of this section, and any telecommunications facility 3634  
or alternative energy generating facility relating to such 3635  
interest in a transportation facility, is hereby deemed to 3636  
further the essential highway purpose of building and 3637  
maintaining a safe, energy-efficient, and accessible 3638  
transportation system. 3639

**Section 6.** That existing sections 1710.06, 4928.142, 3640  
4928.143, 4928.20, 4928.61, 4928.62, 4928.641, 4928.645, and 3641  
5501.311 of the Revised Code are hereby repealed. 3642

**Section 7.** That sections 1710.061, 4928.64, 4928.643, 3643  
4928.644, and 4928.65 of the Revised Code are hereby repealed. 3644

**Section 8.** Sections 5, 6, and 7 of this act take effect 3645  
January 1, 2020. 3646

**Section 9.** (A) Not earlier than two years after the 3647  
effective date of this section, the Director of Environmental 3648  
Protection may apply to the Administrator of the United States 3649  
Environmental Protection Agency for an exemption from the 3650  
requirement to implement the decentralized motor vehicle 3651  
inspection and maintenance program established under section 3652

3704.14 of the Revised Code. In making the application and for 3653  
purposes of complying with the "Federal Clean Air Act," the 3654  
Director shall request the Administrator to authorize the 3655  
implementation of the Ohio Clean Air Program established by this 3656  
act as an alternative to the decentralized program in those 3657  
areas of the state where the program is currently operating. 3658

(B) As used in this section, "Federal Clean Air Act" has 3659  
the same meaning as in section 3704.01 of the Revised Code. 3660

**Section 10.** (A) In 2020, the Public Utilities Commission 3661  
shall review an electric distribution utility's or electric 3662  
services company's compliance with the benchmarks for 2019 under 3663  
division (B) (2) of section 4928.64 of the Revised Code as that 3664  
division existed on the effective date of this section, and in 3665  
the course of that review, shall identify any undercompliance or 3666  
noncompliance of the utility or company that it determines is 3667  
weather-related, related to equipment or resource shortages for 3668  
qualifying renewable energy resources as applicable, or is 3669  
otherwise outside the utility's or company's control. 3670

(B) Subject to the cost cap provisions of division (C) (3) 3671  
of section 4928.64 of the Revised Code as that section existed 3672  
on the effective date of this section, if the commission 3673  
determines, after notice and opportunity for hearing, and based 3674  
upon its findings in the review under division (A) of this 3675  
section regarding avoidable undercompliance or noncompliance, 3676  
but subject to the force-majeure provisions of division (C) (4) 3677  
(a) of section 4928.64 of the Revised Code as that section 3678  
existed on the effective date of this section, that the utility 3679  
or company has failed to comply with the benchmarks for 2019, 3680  
the commission shall impose a renewable energy compliance 3681  
payment on the utility or company. 3682

(1) The compliance payment pertaining to the solar energy resource benchmark for 2019 shall be two hundred dollars per megawatt hour of undercompliance or noncompliance in the period under review.

(2) The compliance payment pertaining to the renewable energy resource benchmark for 2019 shall be assessed in accordance with division (C) (2) (b) of section 4928.64 of the Revised Code as that section existed on the effective date of this section.

(C) Division (C) (2) (c) of section 4928.64 of the Revised Code as that section existed on the effective date of this section applies to compliance payments imposed under this section.

**Section 11.** If any provisions of a section as amended or enacted by this act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section or related sections that can be given effect without the invalid provision or application, and to this end the provisions are severable.

**Section 12.** The amendment by this act of divisions (B) (1) (c), (C) (2), (E), and (F) (4), (5), and (7) of section 5727.75 of the Revised Code applies to both of the following:

(A) Energy projects certified by the Director of Development Services on or after the effective date of this section;

(B) Existing qualified energy projects that, on the effective date of this section, have a nameplate capacity of fewer than five megawatts.