As Reported by the House Rules and Reference Committee

133rd General Assembly
Regular Session **Sub. H. B. No. 6**
2019-2020

Representatives Callender, Wilkin

A BILL

To amend sections 303.213, 519.213, 713.081, 1710.06, 3706.02, 3706.03, 4906.10, 4906.13, 4906.20, 4906.201, 4928.01, 4928.02, 4928.142, 4928.143, 4928.20, 4928.61, 4928.62, 4928.641, 4928.645, 4928.66, 4928.6610, 5501.311, 5727.47, and 5727.75; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 519.214 (519.215); and to enact new section 519.214 and sections 3706.40, 3706.42, 3706.44, 3706.46, 3706.47, 3706.48, 3706.481, 3706.482, 3706.483, 3706.485, 3706.486, 3706.49, 3706.50, 4905.311, 4906.101, 4906.203, 4928.147, 4928.148, 4928.46, 4928.47, 4928.471, 4928.647, 4928.661, 4928.75, and 4928.80; to repeal section 4928.6616; and to repeal, effective January 1, 2020, sections 1710.061, 4928.64, 4928.643, 4928.644, and 4928.65 of the Revised Code to create the Ohio Clean Air Program, to facilitate and encourage electricity production and use from clean air resources, and to proactively engage the buying power of consumers in this state for the purpose of improving air quality in this state.

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

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

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

(B) Notwithstanding division (A) of section 303.211 of the Revised Code, sections 303.01 to 303.25 of the Revised Code confer power on a board of county commissioners or board of zoning appeals to adopt zoning regulations governing the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any small wind farm, whether publicly or privately owned, or the use of land for that purpose, which regulations may be more strict than the regulations prescribed in rules adopted under division (B)(2) of section 4906.20 of the Revised Code.

(C) The designation under this section of a small wind farm as a public utility for purposes of sections 303.01 to 303.25 of the Revised Code shall not affect the classification of a small wind farm 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 303.211 of the Revised Code or any other public utility for purposes of state and local taxation.

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

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

(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 Code shall apply to the petition.

(3) The form of the petition shall be substantially as

follows:

"PETITION FOR REFERENDUM OF WIND FARM CERTIFICATE

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

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

..... Signature

..... Residence address

..... Date of signing

STATEMENT OF CIRCULATOR

I, ... (name of circulator), declare under penalty of election falsification that I reside at the address appearing below my signature; that I am the circulator of the foregoing part petition containing ..... (number) signatures; that I have witnessed the affixing of every signature; that all signers were to the best of my knowledge and belief qualified to sign; and that every signature is to the best of my knowledge and

belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

..... (Signature of circulator)

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

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

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

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

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

Sec. 713.081. (A) As used in this section, "small wind farm" means wind turbines and associated facilities~~ with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of less than five megawatts~~ that are not subject to the jurisdiction of the

power siting board under sections 4906.20 and 4906.201 of the Revised Code.

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

(C) The designation under this section of a small wind farm as a public utility for purposes of sections 713.06 to 713.15 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.

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

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

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

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

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

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

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

Each appointed member shall be a resident of the state, and a qualified elector therein. The members of the authority first appointed shall continue in office for terms expiring on June 30, 1971, June 30, 1973, June 30, 1975, June 30, 1977, and June 30, 1978, respectively, the term of each member to be designated by the governor. ~~Appointed~~ Except as provided in division (B)(5) of this section, appointed members' terms of office shall be for eight years, commencing on the first day of July and ending on the thirtieth day of June. Each appointed member shall hold office from the date of ~~his~~ appointment until the end of the term for which ~~he was~~ appointed. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which ~~his~~ the member's predecessor was appointed shall hold office for the remainder of such term. Any appointed

member shall continue in office subsequent to the expiration date of ~~his~~ the member's term until ~~his~~ the member's successor takes office, or until a period of sixty days has elapsed, whichever occurs first. A member of the authority is eligible for reappointment. Each appointed member of the authority, before entering upon ~~his~~ official duties, shall take an oath as provided by Section 7 of Article XV, Ohio Constitution. The governor may at any time remove any member of the authority for misfeasance, nonfeasance, or malfeasance in office. The authority shall elect one of its appointed members as ~~chairman~~ chairperson and another as ~~vice-chairman~~ vice-chairperson, and shall appoint a secretary-treasurer who need not be a member of the authority. Four members of the authority shall constitute a quorum, and the affirmative vote of four members shall be necessary for any action taken by vote of the authority. No vacancy in the membership of the authority shall impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the authority.

~~Before~~ (C) Except as provided in division (D) of this section, before the issuance of any air quality revenue bonds under Chapter 3706. of the Revised Code, each appointed member of the authority shall give a surety bond to the state in the penal sum of twenty-five thousand dollars and the secretary-treasurer shall give such a bond in the penal sum of fifty thousand dollars, each such surety bond to be conditioned upon the faithful performance of the duties of the office, to be executed by a surety company authorized to transact business in this state, and to be approved by the governor and filed in the office of the secretary of state. ~~Each~~ Except as provided in division (B)(4) of this section, each appointed member of the authority shall receive an annual salary of five thousand

dollars, payable in monthly installments. Each member shall be reimbursed for ~~his~~ the actual expenses necessarily incurred in the performance of ~~his~~ official duties. All expenses incurred in carrying out Chapter 3706. of the Revised Code shall be payable solely from funds provided under Chapter 3706. of the Revised Code, appropriated for such purpose by the general assembly, or provided by the controlling board. No liability or obligation shall be incurred by the authority beyond the extent to which moneys have been so provided or appropriated.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Issue air quality revenue bonds of this state payable solely from revenues, to pay the cost of such projects, including any related commodity contracts.

(C) Any air quality project shall be determined by the authority to be not inconsistent with any applicable air quality standards duly established and then required to be met pursuant

to the "Clean Air Act," 84 Stat. 1679 (1970), 42 U.S.C.~~A.~~ 1857, as amended. Any resolution of the authority providing for acquiring or constructing such projects or for making a loan or grant for such projects shall include a finding by the authority that such determination has been made. Determinations by resolution of the authority that a project is an air quality facility under this chapter and is consistent with the purposes of section 13 of Article VIII, Ohio Constitution, and this chapter, shall be conclusive as to the validity and enforceability of the air quality revenue bonds issued to finance such project and of the resolutions, trust agreements or indentures, leases, subleases, sale agreements, loan agreements, and other agreements made in connection therewith, all in accordance with their terms.

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

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

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

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

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

(c) Either of the following:

(i) The facility has made a significant historical contribution to the air quality of the state by minimizing emissions that result from electricity generated in this state.

(ii) The facility will make a significant contribution toward minimizing emissions that result from electric generation in this state.

(d) The facility is interconnected with the transmission grid that is subject to the operational control of PJM interconnection, L.L.C., or its successor organization.

(e) The facility is a major utility facility in this state as defined in section 4906.01 of the Revised Code.

(f) The facility's owner maintains operations in this state.

(2) An electric generating facility in this state that uses or will use solar energy as the primary energy source that satisfies all of the criteria in divisions (A)(1)(a) to (e) of this section and that has obtained a certificate from the power siting board prior to June 1, 2019.

(B) "Program year" means the twelve-month period beginning the first day of June of a given year of the Ohio clean air program and ending the thirty-first day of May of the following year.

(C) "Electric distribution utility" and "renewable energy resource" have the same meanings as in section 4928.01 of the Revised Code.

(D) "Annual capacity factor" means the actual energy produced in a year divided by the energy that would have been produced if the facility was operating continuously at the maximum rating.

(E) "Clean air credit" means a credit that represents the clean air attributes of one megawatt hour of electric energy

produced from a certified clean air resource.

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

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

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

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

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

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

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

(C) Applications shall include all of the following information:

(1) The in-service date and estimated remaining useful life of the resource;

(2) For an existing resource, the quantity of megawatt hours generated by the resource annually during each of the previous five calendar years during which the resource was generating, and the annual capacity factor for each of those calendar years;

(3) A forecast estimate of the annual quantity of megawatt hours to be generated by the resource and the projected annual capacity factor over the remaining useful life of the resource;

(4) A forecast estimate of the emissions that would occur in this state during the remaining useful life of the resource if the resource discontinued operations prior to the end of the resource's useful life;

(5) Verified documentation demonstrating all of the following:

(a) That certification as a clean air resource and participation in the Ohio clean air program will permit the resource to reduce future emissions per unit of electrical energy generated in this state;

(b) That without certification as a clean air resource, the positive contributions to the air quality of this state that the resource has made and is capable of making in the future may be diminished or eliminated;

(c) That the clean air resource meets the definition of a clean air resource in section 3706.40 of the Revised Code;

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

(6) The resource's nameplate capacity;

(7) Any other data or information that the authority

requests and determines is necessary to evaluate an application for certification as a clean air resource or to demonstrate that certification would be in the public interest.

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

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

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

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

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

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

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

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

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

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

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

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

(B) The monthly charges established under division (A) of this section shall be in accordance with the following:

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

(a) For the year 2020, fifty cents;

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

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

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

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

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

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

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

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

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

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

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

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

(C) To ensure that the purchase of clean air credits remains affordable to retail customers if electricity prices increase, on the first day of April during the first program year and annually on that date in subsequent program years, the authority shall apply the credit price adjustment for the upcoming program year if the market price index exceeds the strike price on that date. This division shall apply only to

clean air resources fueled by nuclear power.

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

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

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

Sec. 3706.486. (A) If the money in the Ohio clean air program fund is insufficient in a particular month to make the remittances in the amount required under division (A) of section 3706.482 of the Revised Code, the Ohio air quality development authority shall, not later than fourteen days after the close of that month, direct the treasurer of state to remit money from the Ohio clean air program fund to pay for the unpaid credits before any other remittances are made. Remittances made under division (A) of this section shall be made in the following order of priority:

(1) To the owners of clean air resources fueled by nuclear

power;

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

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

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

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

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

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

(B) The authority shall not be required to direct distribution of moneys in the Ohio clean air program fund unless or until there are adequate moneys available in the Ohio clean air program fund. Nothing herein shall cause any such pledge to be construed or applied to create, directly or indirectly, a general obligation of or for this state.

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

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

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

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

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

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

Sec. 4906.10. (A) The power siting board shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation, or

maintenance of the major utility facility as the board considers appropriate. The certificate shall be subject to section 4906.101 of the Revised Code and conditioned upon the facility being in compliance with standards and rules adopted under sections 1501.33, 1501.34, and 4561.32 and Chapters 3704., 3734., and 6111. of the Revised Code. An applicant may withdraw an application if the board grants a certificate on terms, conditions, or modifications other than those proposed by the applicant in the application.

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

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

(2) The nature of the probable environmental impact;

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

(4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;

(5) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under sections 1501.33,

1501.34, and 4561.32 of the Revised Code. In determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of multi-modal planning and programs of the department of transportation under section 4561.341 of the Revised Code.

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

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

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

(B) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon that modification, provided that the municipal corporations and counties, and persons residing therein, affected by the modification shall have been given reasonable notice thereof.

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

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

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

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

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

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

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

Sec. 4906.13. (A) As used in this section and sections 4906.20, 4906.201, 4906.203, and 4906.98 of the Revised Code~~, "economically~~:

"Economically significant wind farm" means wind turbines and associated facilities with a single interconnection to the

electrical grid and designed for, or capable of, operation at an aggregate capacity of five or more megawatts but less than fifty megawatts. The term excludes any such wind farm in operation on June 24, 2008. The term also excludes one or more wind turbines and associated facilities that are primarily dedicated to providing electricity to a single customer at a single location and that are designed for, or capable of, operation at an aggregate capacity of less than twenty megawatts, as measured at the customer's point of interconnection to the electrical grid.

"Large wind farm" means an electric generating plant that consists of wind turbines and associated facilities with a single interconnection to the electrical grid that is a major utility facility as defined in section 4906.01 of the Revised Code.

(B) No public agency or political subdivision of this state may require any approval, consent, permit, certificate, or other condition for the construction or operation of a major utility facility or economically significant wind farm authorized by a certificate issued pursuant to Chapter 4906. of the Revised Code. Nothing herein shall prevent the application of state laws for the protection of employees engaged in the construction of such facility or wind farm nor of municipal regulations that do not pertain to the location or design of, or pollution control and abatement standards for, a major utility facility or economically significant wind farm for which a certificate has been granted under this chapter.

Sec. 4906.20. (A) ~~No~~ Subject to section 4906.203 of the Revised Code, no person shall commence to construct an economically significant wind farm in this state without first having obtained a certificate from the power siting board. An

economically significant wind farm with respect to which such a certificate is required shall be constructed, operated, and maintained in conformity with that certificate and any terms, conditions, and modifications it contains. A certificate shall be issued only pursuant to this section. The certificate may be transferred, subject to the approval of the board, to a person that agrees to comply with those terms, conditions, and modifications.

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

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

(2) Additionally, the rules shall prescribe reasonable regulations regarding any wind turbines and associated facilities of an economically significant wind farm, including, but not limited to, their location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement and including erosion control, aesthetics, recreational land use, wildlife protection, interconnection with power lines and with regional transmission organizations, independent transmission system operators, or similar organizations, ice throw, sound and noise levels, blade shear,

shadow flicker, decommissioning, and necessary cooperation for site visits and enforcement investigations.

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

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

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

(c) The setback shall apply in all cases except those in which all owners of property adjacent to the wind farm property waive application of the setback to that property pursuant to a

procedure the board shall establish by rule and except in which, in a particular case, the board determines that a setback greater than the minimum is necessary.

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

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

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

Sec. 4906.203. (A) If the power siting board issues a certificate under section 4906.20 of the Revised Code to an economically significant wind farm to be located in the unincorporated area of a township, the certificate shall be

conditioned upon the right of referendum as provided in section 519.214 of the Revised Code.

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

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

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

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

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

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

(1) "Ancillary service" means any function necessary to the provision of electric transmission or distribution service to a retail customer and includes, but is not limited to, scheduling, system control, and dispatch services; reactive supply from generation resources and voltage control service; reactive supply from transmission resources service; regulation service; frequency response service; energy imbalance service; operating reserve-spinning reserve service; operating reserve-supplemental reserve service; load following; back-up supply service; real-power loss replacement service; dynamic scheduling; system black start capability; and network stability

service.

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

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

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

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

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

(7) "Electric light company" has the same meaning as in section 4905.03 of the Revised Code and includes an electric services company, but excludes any self-generator to the extent that it consumes electricity it so produces, sells that

electricity for resale, or obtains electricity from a generating facility it hosts on its premises.

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

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

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

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

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

(13) "Governmental aggregator" means a legislative authority of a municipal corporation, a board of township trustees, or a board of county commissioners acting as an aggregator for the provision of a competitive retail electric service under authority conferred under section 4928.20 of the Revised Code.

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

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

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

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

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

(19) "Mercantile customer" means a commercial or

industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than seven hundred thousand kilowatt hours per year or is part of a national account involving multiple facilities in one or more states.

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

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

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

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

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

(25) "Advanced energy project" means any technologies, products, activities, or management practices or strategies that facilitate the generation or use of electricity or energy and that reduce or support the reduction of energy consumption or support the production of clean, renewable energy for industrial, distribution, commercial, institutional,

governmental, research, not-for-profit, or residential energy users, including, but not limited to, advanced energy resources and renewable energy resources. "Advanced energy project" also includes any project described in division (A), (B), or (C) of section 4928.621 of the Revised Code.

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

(27) "Retail electric service" means any service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption. For the purposes of this chapter,

retail electric service includes one or more of the following "service components": generation service, aggregation service, power marketing service, power brokerage service, transmission service, distribution service, ancillary service, metering service, and billing and collection service.

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

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

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

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

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

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

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

(d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity. For an industrial customer-generator with a net metering system that has a capacity of less than twenty megawatts and uses wind as energy, this means the net metering system was sized so as to not exceed one hundred per cent of the customer-generator's annual requirements for electric energy at the time of

interconnection.

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

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

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

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

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

(c) Clean coal technology that includes a carbon-based product that is chemically altered before combustion to demonstrate a reduction, as expressed as ash, in emissions of nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or sulfur trioxide in accordance with the American society of testing and materials standard D1757A or a reduction of metal oxide emissions in accordance with standard D5142 of that society, or clean coal technology that includes the design capability to control or prevent the emission of carbon dioxide, which design capability the commission shall adopt by rule and

shall be based on economically feasible best available technology or, in the absence of a determined best available technology, shall be of the highest level of economically feasible design capability for which there exists generally accepted scientific opinion;

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

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

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

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

(h) Any new, retrofitted, refueled, or repowered generating facility located in Ohio, including a simple or combined-cycle natural gas generating facility or a generating facility that uses biomass, coal, modular nuclear, or any other fuel as its input;

(i) Any uprated capacity of an existing electric generating facility if the uprated capacity results from the

deployment of advanced technology.

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

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

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

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

(i) Solar photovoltaic or solar thermal energy;

(ii) Wind energy;

(iii) Power produced by a hydroelectric facility;

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

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

(vi) Geothermal energy;

(vii) Fuel derived from solid wastes, as defined in section 3734.01 of the Revised Code, through fractionation, biological decomposition, or other process that does not principally involve combustion;

(viii) Biomass energy;

(ix) Energy produced by cogeneration technology that is placed into service on or before December 31, 2015, and for which more than ninety per cent of the total annual energy input is from combustion of a waste or byproduct gas from an air contaminant source in this state, which source has been in operation since on or before January 1, 1985, provided that the cogeneration technology is a part of a facility located in a county having a population of more than three hundred sixty-five thousand but less than three hundred seventy thousand according to the most recent federal decennial census;

(x) Biologically derived methane gas;

(xi) Heat captured from a generator of electricity, boiler, or heat exchanger fueled by biologically derived methane gas;

(xii) Energy derived from nontreated by-products of the pulping process or wood manufacturing process, including bark, wood chips, sawdust, and lignin in spent pulping liquors.

"Renewable energy resource" includes, but is not limited to, any fuel cell used in the generation of electricity, including, but not limited to, a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell; wind turbine located in the state's territorial waters of Lake Erie; methane gas emitted from an abandoned coal mine; waste energy recovery 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, except that a waste energy recovery system described in division (A)(38)(b) of this section

may be included only if it was placed into service between January 1, 2002, and December 31, 2004; storage facility that will promote the better utilization of a renewable energy resource; or distributed generation system used by a customer to generate electricity from any such energy.

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

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

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

(ii) The facility demonstrates that it complies with the water quality standards of this state, which compliance may consist of certification under Section 401 of the "Clean Water Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and demonstrates that it has not contributed to a finding by this state that the river has impaired water quality under Section 303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 U.S.C. 1313.

(iii) The facility complies with mandatory prescriptions

regarding fish passage as required by the federal energy regulatory commission license issued for the project, regarding fish protection for riverine, anadromous, and catadromous fish.

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

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

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

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

(viii) The facility is not recommended for removal by any federal agency or agency of any state, to the extent the particular agency has jurisdiction over the facility.

(c) The standards in divisions (A)(37)(b)(i) to (viii) of

this section do not apply to a small hydroelectric facility under division (A)(37)(a)(iv) of this section.

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

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

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

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

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

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

(40) "Combined heat and power system" means the coproduction of electricity and useful thermal energy from the same fuel source designed to achieve thermal-efficiency levels of at least sixty per cent, with at least twenty per cent of the

system's total useful energy in the form of thermal energy.

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

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

(43) "National security generation resource net impact" means retail recovery of prudently incurred costs related to a national security generation resource, less any revenues realized from offering the contractual commitment related to a national security generation resource into the wholesale markets, provided that where the net revenues exceed net costs, those excess revenues shall be credited to customers.

(B) For the purposes of this chapter, a retail electric service component shall be deemed a competitive retail electric

service if the service component is competitive pursuant to a declaration by a provision of the Revised Code or pursuant to an order of the public utilities commission authorized under division (A) of section 4928.04 of the Revised Code. Otherwise, the service component shall be deemed a noncompetitive retail electric service.

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

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

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

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

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

(E) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and

the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language;

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

(G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;

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

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

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

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

(L) Protect at-risk populations, including, but not

limited to, when considering the implementation of any new advanced energy or renewable energy resource;

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

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

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

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

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

(B) An electric distribution utility, including all electric distribution utilities in the same holding company, shall bid all output from the national security generation

resource into the wholesale market and shall not use the output in supplying its standard service offer provided under section 4928.142 or 4928.143 of the Revised Code.

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

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

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

(3) Provide for discontinuation, subject to final reconciliation, of the nonbypassable rate mechanism on December 31, 2030, unless the mechanism is extended by the general

assembly under division (B) of this section.

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

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

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

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

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

(C) The report shall incorporate the policy of facilitating the state's effectiveness in the global economy by minimizing any adverse impact on trade-exposed industrial manufacturers.

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

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

(2) A customer-sited renewable energy resource;

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

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

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

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

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

(2) Not later than two hundred seventy-five days after the

effective date of this section, the commission shall promulgate rules for further implementation and administration of this section.

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

(B) The commission shall issue an order approving an application for a decoupling mechanism filed under division (A) of this section not later than sixty days after the application is filed. In determining that an application is not unjust and unreasonable, the commission shall verify that the rate schedule or schedules are designed to recover the electric distribution utility's 2018 annual revenues as described in division (A) of this section and that the decoupling rate design is aligned with the rate design of the electric distribution utility's existing base distribution rates. The decoupling mechanism shall recover an amount equal to the base distribution revenue and revenue resulting from implementation of section 4928.66 of the Revised Code, excluding program costs and shared savings, and recovered

pursuant to an approved electric security plan under section 4928.143 of the Revised Code, as of the twelve-month period ending on December 31, 2018. The decoupling mechanism shall be adjusted annually thereafter to reconcile any over recovery or under recovery from the prior year and to enable an electric distribution utility to recover the same level of revenues described in division (A) of this section in each year.

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

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

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

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

by doing either of the following:

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

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

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

(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 schedules.

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

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

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

(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.

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 of one per cent in 2012, nine-tenths of one per cent in 2013, and one per cent in 2014. In 2015 and 2016, an electric distribution utility shall achieve energy savings equal to the result of subtracting the cumulative energy savings achieved since 2009 from the product of multiplying the baseline for energy savings, described in division (A)(2)(a) of this section,

by four and two-tenths of one per cent. If the result is zero or less for the year for which the calculation is being made, the utility shall not be required to achieve additional energy savings for that year, but may achieve additional energy savings for that year. ~~Thereafter, the~~ The annual savings requirements shall be, for years 2017, 2018, 2019, and 2020, an additional one per cent of the baseline~~, and two per cent each year thereafter, achieving cumulative energy savings in excess of twenty-two per cent by the end of 2027~~. For purposes of a waste energy recovery or combined heat and power system, an electric distribution utility shall not apply more than the total annual percentage of the electric distribution utility's industrial-customer load, relative to the electric distribution utility's total load, to the annual energy savings requirement.

(b) Beginning in 2009, an electric distribution utility shall implement peak demand reduction programs designed to achieve a one per cent reduction in peak demand in 2009 and an additional seventy-five hundredths of one per cent reduction each year through 2014. In 2015 and 2016, an electric distribution utility shall achieve a reduction in peak demand equal to the result of subtracting the cumulative peak demand reductions achieved since 2009 from the product of multiplying the baseline for peak demand reduction, described in division (A)(2)(a) of this section, by four and seventy-five hundredths of one per cent. If the result is zero or less for the year for which the calculation is being made, the utility shall not be required to achieve an additional reduction in peak demand for that year, but may achieve an additional reduction in peak demand for that year. In 2017 and each year thereafter through 2020, the utility shall achieve an additional seventy-five hundredths of one per cent reduction in peak demand.

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

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

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

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

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

(b) The commission may amend the benchmarks set forth in division (A)(1)(a) or (b) of this section if, after application by the electric distribution utility, the commission determines that the amendment is necessary because the utility cannot reasonably achieve the benchmarks due to regulatory, economic, or technological reasons beyond its reasonable control.

(c) Compliance with divisions (A)(1)(a) and (b) of this section shall be measured by including the effects of all demand-response programs for mercantile customers of the subject

electric distribution utility, all waste energy recovery systems and all combined heat and power systems, and all such mercantile customer-sited energy efficiency, including waste energy recovery and combined heat and power, and peak demand reduction programs, adjusted upward by the appropriate loss factors. Any mechanism designed to recover the cost of energy efficiency, including waste energy recovery and combined heat and power, and peak demand reduction programs under divisions (A)(1)(a) and (b) of this section may exempt mercantile customers that commit their demand-response or other customer-sited capabilities, whether existing or new, for integration into the electric distribution utility's demand-response, energy efficiency, including waste energy recovery and combined heat and power, or peak demand reduction programs, if the commission determines that that exemption reasonably encourages such customers to commit those capabilities to those programs. If a mercantile customer makes such existing or new demand-response, energy efficiency, including waste energy recovery and combined heat and power, or peak demand reduction capability available to an electric distribution utility pursuant to division (A)(2)(c) of this section, the electric utility's baseline under division (A)(2)(a) of this section shall be adjusted to exclude the effects of all such demand-response, energy efficiency, including waste energy recovery and combined heat and power, or peak demand reduction programs that may have existed during the period used to establish the baseline. The baseline also shall be normalized for changes in numbers of customers, sales, weather, peak demand, and other appropriate factors so that the compliance measurement is not unduly influenced by factors outside the control of the electric distribution utility.

(d)(i) Programs implemented by a utility may include the

following:

(I) Demand-response programs;

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

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

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

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

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

(iii) Division (A)(2)(c) of this section shall be applied to include facilitating efforts by a mercantile customer or group of those customers to offer customer-sited demand-response, energy efficiency, including waste energy recovery and combined heat and power, or peak demand reduction capabilities to the electric distribution utility as part of a reasonable arrangement submitted to the commission pursuant to section 4905.31 of the Revised Code.

(e) No programs or improvements described in division (A)(2)(d) of this section shall conflict with any statewide

building code adopted by the board of building standards.

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

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

(D) The commission may establish rules regarding the content of an application by an electric distribution utility for commission approval of a revenue decoupling mechanism under this division. Such an application shall not be considered an application to increase rates and may be included as part of a proposal to establish, continue, or expand energy efficiency or

conservation programs. The commission by order may approve an application under this division if it determines both that the revenue decoupling mechanism provides for the recovery of revenue that otherwise may be forgone by the utility as a result of or in connection with the implementation by the electric distribution utility of any energy efficiency or energy conservation programs and reasonably aligns the interests of the utility and of its customers in favor of those programs.

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

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

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

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

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

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

(1) The size and scope of the programs;

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

(3) Recovery of costs and incentives;

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

(B) The commission shall issue an order approving or modifying and approving an application if it finds that the proposed programs will be cost-effective, in the public interest, and consistent with state policy as specified in section 4928.02 of the Revised Code.

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

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

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

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

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

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

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

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

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

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

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

(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;

(2) A plan approved under section 4928.661 of the Revised Code or under rules adopted under that section.

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.

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:

(1) A fixed monthly service fee;

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

(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.

(C) The electric distribution utility shall be eligible to recover any revenue loss associated with customer migration to this new tariff.

Sec. 5727.47. (A) Notice of each assessment certified or issued pursuant to section 5727.23 or 5727.38 of the Revised Code shall be mailed to the public utility, and its mailing shall be prima-facie evidence of its receipt by the public

utility to which it is addressed. With the notice, the tax commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition. ~~If~~ Except as otherwise provided in division (G) of this section, if a public utility objects to such an assessment, it may file with the commissioner, either personally or by certified mail, within sixty days after the mailing of the notice of assessment a written petition for reassessment signed by the utility's authorized agent having knowledge of the facts. The date the commissioner receives the petition shall be considered the date of filing. The petition shall indicate the utility's objections, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination.

In the case of a petition seeking a reduction in taxable value filed with respect to an assessment certified under section 5727.23 of the Revised Code, the petitioner shall state in the petition the total amount of reduction in taxable value sought by the petitioner. If the petitioner objects to the percentage of true value at which taxable property is assessed by the commissioner, the petitioner shall state in the petition the total amount of reduction in taxable value sought both with and without regard to the objection pertaining to the percentage of true value at which its taxable property is assessed. If a petitioner objects to the commissioner's apportionment of the taxable value of the petitioner's taxable property, the petitioner shall distinctly state in the petition that the petitioner objects to the commissioner's apportionment, and, within forty-five days after filing the petition for reassessment, shall submit the petitioner's proposed apportionment of the taxable value of its taxable property among

taxing districts. If a petitioner that objects to the commissioner's apportionment fails to state its objections to that apportionment in its petition for reassessment or fails to submit its proposed apportionment within forty-five days after filing the petition for reassessment, the commissioner shall dismiss the petitioner's objection to the commissioner's apportionment, and the taxable value of the petitioner's taxable property, subject to any adjustment to taxable value pursuant to the petition or appeal, shall be apportioned in the manner used by the commissioner in the preliminary or amended preliminary assessment certified under section 5727.23 of the Revised Code.

If an additional objection seeking a reduction in taxable value in excess of the reduction stated in the original petition is properly and timely raised with respect to an assessment issued under section 5727.23 of the Revised Code, the petitioner shall state the total amount of the reduction in taxable value sought in the additional objection both with and without regard to any reduction in taxable value pertaining to the percentage of true value at which taxable property is assessed. If a petitioner fails to state the reduction in taxable value sought in the original petition or in additional objections properly raised after the petition is filed, the commissioner shall notify the petitioner of the failure by certified mail. If the petitioner fails to notify the commissioner in writing of the reduction in taxable value sought in the petition or in an additional objection within thirty days after receiving the commissioner's notice, the commissioner shall dismiss the petition or the additional objection in which that reduction is sought.

(B)(1) Subject to divisions (B)(2) and (3) of this section, a public utility filing a petition for reassessment

regarding an assessment certified or issued under section 5727.23 or 5727.38 of the Revised Code shall pay the tax with respect to the assessment objected to as required by law. The acceptance of any tax payment by the treasurer of state, tax commissioner, or any county treasurer shall not prejudice any claim for taxes on final determination by the commissioner or final decision by the board of tax appeals or any court.

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

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

(b) If the petitioner objects to the commissioner's apportionment of the taxable value of the petitioner's taxable property, the petitioner is not required to pay the tax otherwise due on the part of the taxable value apportioned to any taxing district that the petitioner objects to, subject to division (B)(2)(c) of this section. If, pursuant to division (A) of this section, the petitioner has, in a proper and timely manner, apportioned taxable value to a taxing district to which the commissioner did not apportion the petitioner's taxable value, the petitioner shall pay the tax due on the taxable value that the petitioner has apportioned to the taxing district, subject to division (B)(2)(c) of this section.

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

(3) Any part of the tax that, under division (B)(2)(a) or (b) of this section, is not paid shall be collected upon receipt of the notification as provided in section 5727.471 of the Revised Code with interest thereon computed in the same manner as interest is computed under division (E) of section 5715.19 of the Revised Code, subject to any correction of the assessment by the commissioner under division (E) of this section or the final judgment of the board of tax appeals or a court to which the board's final judgment is appealed. The penalty imposed under section 323.121 of the Revised Code shall apply only to the unpaid portion of the tax if the petitioner's tax payment is less than the amount of tax due based on the taxable value reflected on the last appeal notice issued by the commissioner under division (C) of this section.

(C) Upon receipt of a properly filed petition for

reassessment with respect to an assessment certified under section 5727.23 of the Revised Code, the tax commissioner shall notify the treasurer of state or the auditor of each county to which the assessment objected to has been certified. In the case of a petition with respect to an assessment certified under section 5727.23 of the Revised Code, the commissioner shall issue an appeal notice within thirty days after receiving the amount of the taxable value reduction and apportionment changes sought by the petitioner in the original petition or in any additional objections properly and timely raised by the petitioner. The appeal notice shall indicate the amount of the reduction in taxable value sought in the petition or in the additional objections and the extent to which the reduction in taxable value and any change in apportionment requested by the petitioner would affect the commissioner's apportionment of the taxable value among taxing districts in the county as shown in the assessment. If a petitioner is seeking a reduction in taxable value on the basis of a lower percentage of true value than the percentage at which the commissioner assessed the petitioner's taxable property, the appeal notice shall indicate the reduction in taxable value sought by the petitioner without regard to the reduction sought on the basis of the lower percentage and shall indicate that the petitioner is required to pay tax on the reduced taxable value determined without regard to the reduction sought on the basis of a lower percentage of true value, as provided under division (B)(2)(c) of this 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 appeals or of any court to which the decision has been appealed becomes final, the commissioner shall notify the public utility and, as appropriate, shall proceed under section 5727.42 of the Revised Code, or notify the applicable county auditor, who shall proceed under section 5727.471 of the Revised Code.

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

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

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

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

(1) "Qualified energy project" means an energy project certified by the director of development services pursuant to this section.

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

(3) "Alternative energy zone" means a county declared as such by the board of county commissioners under division (E)(1)

(b) or (c) of this section.

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

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

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

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

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

(b) Construction or installation of the energy facility begins on or after January 1, 2009, and before January 1, 2021. For the purposes of this division, construction begins on the earlier of the date of application for a certificate or other approval or permit described in division (B)(1)(a) of this

section, or the date the contract for the construction or installation of the energy facility is entered into.

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

(2) If tangible personal property of a qualified energy project using renewable energy resources was exempt from taxation under this section beginning in any of tax years 2011 through 2021, and the certification under division (E)(2) of this section has not been revoked, the tangible personal property of the qualified energy project is exempt from taxation for tax year 2022 and all ensuing tax years if the property was placed into service before January 1, 2022, as certified in the construction progress report required under division (F)(2) of this section. Tangible personal property that has not been placed into service before that date is taxable property subject to taxation. An energy project for which certification has been revoked is ineligible for further exemption under this section. Revocation does not affect the tax-exempt status of the project's tangible personal property for the tax year in which revocation occurs or any prior tax year.

(C) Tangible personal property of a qualified energy

project using clean coal technology, advanced nuclear technology, or cogeneration technology is exempt from taxation for the first tax year that the property would be listed for taxation and all subsequent years if all of the following circumstances are met:

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

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

(3) The certification for the qualified energy project issued under division (E)(2) of this section has not been revoked. An energy project for which certification has been revoked is ineligible for exemption under this section. Revocation does not affect the tax-exempt status of the project's tangible personal property for the tax year in which revocation occurs or any prior tax year.

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

qualified energy project is exempted under this section.

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

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

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

(b) The director shall forward a copy of each application for certification of an energy project with a nameplate capacity of ~~five~~ twenty megawatts or greater to the board of county commissioners of each county in which the project is located and to each taxing unit with territory located in each of the affected counties. Any board that receives from the director a copy of an application submitted under this division shall adopt a resolution approving or rejecting the application unless it has adopted a resolution under division (E)(1)(c) of this section. A resolution adopted under division (E)(1)(b) or (c) of this section may require an annual service payment to be made in addition to the service payment required under division (G) of this section. The sum of the service payment required in the resolution and the service payment required under division (G) of this section shall not exceed nine thousand dollars per megawatt of nameplate capacity located in the county. The resolution shall specify the time and manner in which the payments required by the resolution shall be paid to the county treasurer. The county treasurer shall deposit the payment to the credit of the county's general fund to be used for any purpose for which money credited to that fund may be used.

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

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

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

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

(a) The application was timely submitted.

(b) For an energy project with a nameplate capacity of ~~five~~ twenty megawatts or greater, a board of county commissioners of at least one county in which the project is located has adopted a resolution approving the application under division (E)(1)(b) or (c) of this section.

(c) No portion of the project's facility was used to

supply electricity before December 31, 2009.

(3) The director shall deny a certification application if the director determines the person has failed to comply with any requirement under this section. The director may revoke a certification if the director determines the person, or subsequent owner or lessee pursuant to a sale and leaseback transaction of the qualified energy project, has failed to comply with any requirement under this section. Upon certification or revocation, the director shall notify the person, owner, or lessee, the tax commissioner, and the county auditor of a county in which the project is located of the certification or revocation. Notice shall be provided in a manner convenient to the director.

(F) The owner or a lessee pursuant to a sale and leaseback transaction of a qualified energy project shall do each of the following:

(1) Comply with all applicable regulations;

(2) File with the director of development services a certified construction progress report before the first day of March of each year during the energy facility's construction or installation indicating the percentage of the project completed, and the project's nameplate capacity, as of the preceding thirty-first day of December. Unless otherwise instructed by the director of development services, the owner or lessee of an energy project shall file a report with the director on or before the first day of March each year after completion of the energy facility's construction or installation indicating the project's nameplate capacity as of the preceding thirty-first day of December. Not later than sixty days after June 17, 2010, the owner or lessee of an energy project, the construction of

which was completed before June 17, 2010, shall file a certificate indicating the project's nameplate capacity.

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

(4) For energy projects with a nameplate capacity of ~~five~~ twenty megawatts or greater, repair all roads, bridges, and culverts affected by construction as reasonably required to restore them to their preconstruction condition, as determined by the county engineer in consultation with the local jurisdiction responsible for the roads, bridges, and culverts. In the event that the county engineer deems any road, bridge, or culvert to be inadequate to support the construction or decommissioning of the energy facility, the road, bridge, or culvert shall be rebuilt or reinforced to the specifications established by the county engineer prior to the construction or decommissioning of the facility. The owner or lessee of the facility shall post a bond in an amount established by the county engineer and to be held by the board of county commissioners to ensure funding for repairs of roads, bridges, and culverts affected during the construction. The bond shall be released by the board not later than one year after the date the repairs are completed. The energy facility owner or lessee pursuant to a sale and leaseback transaction shall post a bond, as may be required by the Ohio power siting board in the certificate authorizing commencement of construction issued pursuant to section 4906.10 of the Revised Code, to ensure funding for repairs to roads, bridges, and culverts resulting from decommissioning of the facility. The energy facility owner

or lessee and the county engineer may enter into an agreement regarding specific transportation plans, reinforcements, modifications, use and repair of roads, financial security to be provided, and any other relevant issue.

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

(6) Maintain a ratio of Ohio-domiciled full-time equivalent employees employed in the construction or installation of the energy project to total full-time equivalent employees employed in the construction or installation of the energy project of not less than eighty per cent in the case of a solar energy project, and not less than fifty per cent in the case of any other energy project. In the case of an energy project for which certification from the power siting board is required under section 4906.20 of the Revised Code, the number of full-time equivalent employees employed in the construction or installation of the energy project equals the number actually employed or the number projected to be employed in the certificate application, if such projection is required under regulations adopted pursuant to section 4906.03 of the Revised Code, whichever is greater. For all other energy projects, the number of full-time equivalent employees employed in the construction or installation of the energy project equals the number actually employed or the number projected to be employed by the director of development services, whichever is greater. To estimate the number of employees to be employed in the

construction or installation of an energy project, the director shall use a generally accepted job-estimating model in use for renewable energy projects, including but not limited to the job and economic development impact model. The director may adjust an estimate produced by a model to account for variables not accounted for by the model.

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

(8) ~~Offer to sell power or renewable energy credits from the energy project to electric distribution utilities or electric service companies subject to renewable energy resource requirements under section 4928.64 of the Revised Code that have issued requests for proposal for such power or renewable energy credits. If no electric distribution utility or electric service company issues a request for proposal on or before December 31, 2010, or accepts an offer for power or renewable energy credits within forty-five days after the offer is submitted, power or renewable energy credits from the energy project may be sold to other persons. Division (F)(8) of this section does not apply if:~~

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

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

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

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

(G) The owner or a lessee pursuant to a sale and leaseback transaction of a qualified energy project shall make annual service payments in lieu of taxes to the county treasurer on or before the final dates for payments of taxes on public utility personal property on the real and public utility personal property tax list for each tax year for which property of the energy project is exempt from taxation under this section. The county treasurer shall allocate the payment on the basis of the project's physical location. Upon receipt of a payment, or if timely payment has not been received, the county treasurer shall certify such receipt or non-receipt to the director of development services and tax commissioner in a form determined by the director and commissioner, respectively. Each payment shall be in the following amount:

(1) In the case of a solar energy project, seven thousand

dollars per megawatt of nameplate capacity located in the county as of December 31, 2010, for tax year 2011, as of December 31, 2011, for tax year 2012, as of December 31, 2012, for tax year 2013, as of December 31, 2013, for tax year 2014, as of December 31, 2014, for tax year 2015, as of December 31, 2015, for tax year 2016, and as of December 31, 2016, for tax year 2017 and each tax year thereafter;

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

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

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

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

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

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

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

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

(H) The director of development services in consultation with the tax commissioner shall adopt rules pursuant to Chapter 119. of the Revised Code to implement and enforce this section.

Section 2. That existing sections 303.213, 519.213, 519.214, 713.081, 3706.02, 3706.03, 4906.10, 4906.13, 4906.20,

4906.201, 4928.01, 4928.02, 4928.66, 4928.6610, 5727.47, and 5727.75 of the Revised Code are hereby repealed.

Section 3. That section 4928.6616 of the Revised Code is hereby repealed.

Section 4. The amendments by this act to division (A)(34) of section 4928.01 of the Revised Code, division (C) of section 4928.66 of the Revised Code, and divisions (F)(8) and (9) of section 5727.75 of the Revised Code take effect January 1, 2020.

Section 5. That sections 1710.06, 4928.142, 4928.143, 4928.20, 4928.61, 4928.62, 4928.641, 4928.645, and 5501.311 of the Revised Code be amended to read as follows:

Sec. 1710.06. (A) The board of directors of a special improvement district may develop and adopt one or more written plans for public improvements or public services that benefit all or any part of the district. Each plan shall set forth the specific public improvements or public services that are to be provided, identify the area in which they will be provided, and specify the method of assessment to be used. Each plan for public improvements or public services shall indicate the period of time the assessments are to be levied for the improvements and services and, if public services are included in the plan, the period of time the services are to remain in effect. Plans for public improvements may include the planning, design, construction, reconstruction, enlargement, or alteration of any public improvements and the acquisition of land for the improvements. Plans for public improvements or public services may also include, but are not limited to, provisions for the following:

(1) Creating and operating the district and the nonprofit

corporation under this chapter, including hiring employees and professional services, contracting for insurance, and purchasing or leasing office space and office equipment and other requirements of the district;

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

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

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

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

(6) Sale, lease, lease with an option to purchase, conveyance of other interests in, or other contracts for the acquisition, construction, maintenance, repair, furnishing, equipping, operation, or improvement of any special energy improvement project by the special improvement district, between a participating political subdivision and the special improvement district, and between the special improvement district and any owner of real property in the special improvement district on which a special energy improvement project has been acquired, installed, equipped, or improved~~; and~~

~~(7) Aggregating the renewable energy credits generated by one or more special energy improvement projects within a special~~

~~improvement district, upon the consent of the owners of the credits and for the purpose of negotiating and completing the sale of such credits~~.

(B) Once the board of directors of the special improvement district adopts a plan, it shall submit the plan to the legislative authority of each participating political subdivision and the municipal executive of each municipal corporation in which the district is located, if any. The legislative authorities and municipal executives shall review the plan and, within sixty days after receiving it, may submit their comments and recommendations about it to the district. After reviewing these comments and recommendations, the board of directors may amend the plan. It may then submit the plan, amended or otherwise, in the form of a petition to members of the district whose property may be assessed for the plan. Once the petition is signed by those members who own at least sixty per cent of the front footage of property that is to be assessed and that abuts upon a street, alley, public road, place, boulevard, parkway, park entrance, easement, or other public improvement, or those members who own at least seventy-five per cent of the area to be assessed for the improvement or service, the petition may be submitted to each legislative authority for approval. Except as provided in division (H) of section 1710.02 of the Revised Code, if the special improvement district was created for the purpose of developing and implementing plans for special energy improvement projects or shoreline improvement projects, the petition required under this division shall be signed by one hundred per cent of the owners of the area of all real property located within the area to be assessed for the special energy improvement project or shoreline improvement project.

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

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

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

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

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

to the board of township trustees.

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

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

Sec. 4928.142. (A) For the purpose of complying with section 4928.141 of the Revised Code and subject to division (D) of this section and, as applicable, subject to the rate plan requirement of division (A) of section 4928.141 of the Revised Code, an electric distribution utility may establish a standard service offer price for retail electric generation service that is delivered to the utility under a market-rate offer.

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

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

(b) Clear product definition;

(c) Standardized bid evaluation criteria;

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

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

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

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

(B) Prior to initiating a competitive bidding process for a market-rate offer under division (A) of this section, the electric distribution utility shall file an application with the commission. An electric distribution utility may file its application with the commission prior to the effective date of the commission rules required under division (A)(2) of this section, and, as the commission determines necessary, the utility shall immediately conform its filing to the rules upon

their taking effect.

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

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

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

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

The commission shall initiate a proceeding and, within ninety days after the application's filing date, shall determine by order whether the electric distribution utility and its market-rate offer meet all of the foregoing requirements. If the finding is positive, the electric distribution utility may

initiate its competitive bidding process. If the finding is negative as to one or more requirements, the commission in the order shall direct the electric distribution utility regarding how any deficiency may be remedied in a timely manner to the commission's satisfaction; otherwise, the electric distribution utility shall withdraw the application. However, if such remedy is made and the subsequent finding is positive and also if the electric distribution utility made a simultaneous filing under this section and section 4928.143 of the Revised Code, the utility shall not initiate its competitive bid until at least one hundred fifty days after the filing date of those applications.

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

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

(2) There were four or more bidders.

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

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

(D) The first application filed under this section by an electric distribution utility that, as of July 31, 2008, directly owns, in whole or in part, operating electric generating facilities that had been used and useful in this state shall require that a portion of that utility's standard service offer load for the first five years of the market rate offer be competitively bid under division (A) of this section as follows: ten per cent of the load in year one, not more than twenty per cent in year two, thirty per cent in year three, forty per cent in year four, and fifty per cent in year five. Consistent with those percentages, the commission shall determine the actual percentages for each year of years one through five. The standard service offer price for retail electric generation service under this first application shall be a proportionate blend of the bid price and the generation service price for the remaining standard service offer load, which latter price shall be equal to the electric distribution utility's most recent standard service offer price, adjusted upward or downward as the commission determines reasonable, relative to the jurisdictional portion of any known and measurable changes from the level of any one or more of the

following costs as reflected in that most recent standard service offer price:

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

(2) Its prudently incurred purchased power costs;

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

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

In making any adjustment to the most recent standard service offer price on the basis of costs described in division (D) of this section, the commission shall include the benefits that may become available to the electric distribution utility as a result of or in connection with the costs included in the adjustment, including, but not limited to, the utility's receipt of emissions credits or its receipt of tax benefits or of other benefits, and, accordingly, the commission may impose such conditions on the adjustment to ensure that any such benefits are properly aligned with the associated cost responsibility. The commission shall also determine how such adjustments will affect the electric distribution utility's return on common equity that may be achieved by those adjustments. The commission shall not apply its consideration of the return on common equity to reduce any adjustments authorized under this division unless the adjustments will cause the electric distribution utility to earn a return on common equity that is significantly in excess

of the return on common equity that is earned by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate. The burden of proof for demonstrating that significantly excessive earnings will not occur shall be on the electric distribution utility.

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

(E) Beginning in the second year of a blended price under division (D) of this section and notwithstanding any other requirement of this section, the commission may alter prospectively the proportions specified in that division to mitigate any effect of an abrupt or significant change in the electric distribution utility's standard service offer price that would otherwise result in general or with respect to any rate group or rate schedule but for such alteration. Any such alteration shall be made not more often than annually, and the commission shall not, by altering those proportions and in any event, including because of the length of time, as authorized under division (C) of this section, taken to approve the market rate offer, cause the duration of the blending period to exceed

ten years as counted from the effective date of the approved market rate offer. Additionally, any such alteration shall be limited to an alteration affecting the prospective proportions used during the blending period and shall not affect any blending proportion previously approved and applied by the commission under this division.

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

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

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

(1) An electric security plan shall include provisions relating to the supply and pricing of electric generation service. In addition, if the proposed electric security plan has a term longer than three years, it may include provisions in the

plan to permit the commission to test the plan pursuant to division (E) of this section and any transitional conditions that should be adopted by the commission if the commission terminates the plan as authorized under that division.

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

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

(b) A reasonable allowance for construction work in progress for any of the electric distribution utility's cost of constructing an electric generating facility or for an environmental expenditure for any electric generating facility of the electric distribution utility, provided the cost is incurred or the expenditure occurs on or after January 1, 2009. Any such allowance shall be subject to the construction work in progress allowance limitations of division (A) of section 4909.15 of the Revised Code, except that the commission may authorize such an allowance upon the incurrence of the cost or occurrence of the expenditure. No such allowance for generating facility construction shall be authorized, however, unless the commission first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility. Further, no such allowance shall be authorized unless the facility's construction

was sourced through a competitive bid process, regarding which process the commission may adopt rules. An allowance approved under division (B)(2)(b) of this section shall be established as a nonbypassable surcharge for the life of the facility.

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

(d) Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing

certainty regarding retail electric service;

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

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

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

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

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

(h) Provisions regarding the utility's distribution service, including, without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary, provisions regarding single issue ratemaking, a revenue decoupling mechanism or any other incentive ratemaking, and provisions regarding distribution infrastructure and modernization incentives for the electric distribution utility. The latter may include a long-term energy delivery infrastructure modernization plan for that utility or any plan providing for the utility's recovery of costs, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on such infrastructure modernization.

As part of its determination as to whether to allow in an electric distribution utility's electric security plan inclusion of any provision described in division (B)(2)(h) of this section, the commission shall examine the reliability of the electric distribution utility's distribution system and ensure that customers' and the electric distribution utility's expectations are aligned and that the electric distribution utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system.

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

(C)(1) The burden of proof in the proceeding shall be on the electric distribution utility. The commission shall issue an order under this division for an initial application under this section not later than one hundred fifty days after the application's filing date and, for any subsequent application by the utility under this section, not later than two hundred seventy-five days after the application's filing date. Subject to division (D) of this section, the commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. Additionally, if the

commission so approves an application that contains a surcharge under division (B)(2)(b) or (c) of this section, the commission shall ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge. Otherwise, the commission by order shall disapprove the application.

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

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

(D) Regarding the rate plan requirement of division (A) of section 4928.141 of the Revised Code, if an electric distribution utility that has a rate plan that extends beyond December 31, 2008, files an application under this section for the purpose of its compliance with division (A) of section 4928.141 of the Revised Code, that rate plan and its terms and conditions are hereby incorporated into its proposed electric security plan and shall continue in effect until the date

scheduled under the rate plan for its expiration, and that portion of the electric security plan shall not be subject to commission approval or disapproval under division (C) of this section, and the earnings test provided for in division (F) of this section shall not apply until after the expiration of the rate plan. However, that utility may include in its electric security plan under this section, and the commission may approve, modify and approve, or disapprove subject to division (C) of this section, provisions for the incremental recovery or the deferral of any costs that are not being recovered under the rate plan and that the utility incurs during that continuation period to comply with section 4928.141~~, division (B)~~ of ~~section 4928.64,~~ the Revised Code or division (A) of section 4928.66 of the Revised Code.

(E) If an electric security plan approved under division (C) of this section, except one withdrawn by the utility as authorized under that division, has a term, exclusive of phase-ins or deferrals, that exceeds three years from the effective date of the plan, the commission shall test the plan in the fourth year, and if applicable, every fourth year thereafter, to determine whether the plan, including its then-existing pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, continues to be more favorable in the aggregate and during the remaining term of the plan as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. The commission shall also determine the prospective effect of the electric security plan to determine if that effect is substantially likely to provide the electric distribution utility with a return on common equity that is significantly in excess of the return on common equity that is likely to be earned by publicly traded

companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate. The burden of proof for demonstrating that significantly excessive earnings will not occur shall be on the electric distribution utility. If the test results are in the negative or the commission finds that continuation of the electric security plan will result in a return on equity that is significantly in excess of the return on common equity that is likely to be earned by publicly traded companies, including utilities, that will face comparable business and financial risk, with such adjustments for capital structure as may be appropriate, during the balance of the plan, the commission may terminate the electric security plan, but not until it shall have provided interested parties with notice and an opportunity to be heard. The commission may impose such conditions on the plan's termination as it considers reasonable and necessary to accommodate the transition from an approved plan to the more advantageous alternative. In the event of an electric security plan's termination pursuant to this division, the commission shall permit the continued deferral and phase-in of any amounts that occurred prior to that termination and the recovery of those amounts as contemplated under that electric security plan.

(F) With regard to the provisions that are included in an electric security plan under this section, the commission shall consider, following the end of each annual period of the plan, if any such adjustments resulted in excessive earnings as measured by whether the earned return on common equity of the electric distribution utility is significantly in excess of the return on common equity that was earned during the same period by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments

for capital structure as may be appropriate. Consideration also shall be given to the capital requirements of future committed investments in this state. The burden of proof for demonstrating that significantly excessive earnings did not occur shall be on the electric distribution utility. If the commission finds that such adjustments, in the aggregate, did result in significantly excessive earnings, it shall require the electric distribution utility to return to consumers the amount of the excess by prospective adjustments; provided that, upon making such prospective adjustments, the electric distribution utility shall have the right to terminate the plan and immediately file an application pursuant to section 4928.142 of the Revised Code. Upon termination of a plan under this division, rates shall be set on the same basis as specified in division (C)(2)(b) of this section, and the commission shall permit the continued deferral and phase-in of any amounts that occurred prior to that termination and the recovery of those amounts as contemplated under that electric security plan. In making its determination of significantly excessive earnings under this division, the commission shall not consider, directly or indirectly, the revenue, expenses, or earnings of any affiliate or parent company.

Sec. 4928.20. (A) The legislative authority of a municipal corporation may adopt an ordinance, or the board of township trustees of a township or the board of county commissioners of a county may adopt a resolution, under which, on or after the starting date of competitive retail electric service, it may aggregate in accordance with this section the retail electrical loads located, respectively, within the municipal corporation, township, or unincorporated area of the county and, for that purpose, may enter into service agreements to facilitate for

those loads the sale and purchase of electricity. The legislative authority or board also may exercise such authority jointly with any other such legislative authority or board. For customers that are not mercantile customers, an ordinance or resolution under this division shall specify whether the aggregation will occur only with the prior, affirmative consent of each person owning, occupying, controlling, or using an electric load center proposed to be aggregated or will occur automatically for all such persons pursuant to the opt-out requirements of division (D) of this section. The aggregation of mercantile customers shall occur only with the prior, affirmative consent of each such person owning, occupying, controlling, or using an electric load center proposed to be aggregated. Nothing in this division, however, authorizes the aggregation of the retail electric loads of an electric load center, as defined in section 4933.81 of the Revised Code, that is located in the certified territory of a nonprofit electric supplier under sections 4933.81 to 4933.90 of the Revised Code or an electric load center served by transmission or distribution facilities of a municipal electric utility.

(B) If an ordinance or resolution adopted under division (A) of this section specifies that aggregation of customers that are not mercantile customers will occur automatically as described in that division, the ordinance or resolution shall direct the board of elections to submit the question of the authority to aggregate to the electors of the respective municipal corporation, township, or unincorporated area of a county at a special election on the day of the next primary or general election in the municipal corporation, township, or county. The legislative authority or board shall certify a copy of the ordinance or resolution to the board of elections not

less than ninety days before the day of the special election. No ordinance or resolution adopted under division (A) of this section that provides for an election under this division shall take effect unless approved by a majority of the electors voting upon the ordinance or resolution at the election held pursuant to this division.

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

(D) No legislative authority or board, pursuant to an ordinance or resolution under divisions (A) and (B) of this section that provides for automatic aggregation of customers that are not mercantile customers as described in division (A) of this section, shall aggregate the electrical load of any electric load center located within its jurisdiction unless it in advance clearly discloses to the person owning, occupying, controlling, or using the load center that the person will be enrolled automatically in the aggregation program and will remain so enrolled unless the person affirmatively elects by a stated procedure not to be so enrolled. The disclosure shall state prominently the rates, charges, and other terms and conditions of enrollment. The stated procedure shall allow any

person enrolled in the aggregation program the opportunity to opt out of the program every three years, without paying a switching fee. Any such person that opts out before the commencement of the aggregation program pursuant to the stated procedure shall default to the standard service offer provided under section 4928.14 or division (D) of section 4928.35 of the Revised Code until the person chooses an alternative supplier.

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

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

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

(b) The petitions shall contain the signatures of not less than ten per cent of the total number of electors in, respectively, the township or the unincorporated area of the county who voted for the office of governor at the preceding general election for that office in that area.

(F) A governmental aggregator under division (A) of this section is not a public utility engaging in the wholesale

purchase and resale of electricity, and provision of the aggregated service is not a wholesale utility transaction. A governmental aggregator shall be subject to supervision and regulation by the public utilities commission only to the extent of any competitive retail electric service it provides and commission authority under this chapter.

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

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

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

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

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

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

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

(I) Customers that are part of a governmental aggregation under this section shall be responsible only for such portion of a surcharge under section 4928.144 of the Revised Code that is proportionate to the benefits, as determined by the commission,

that electric load centers within the jurisdiction of the governmental aggregation as a group receive. The proportionate surcharge so established shall apply to each customer of the governmental aggregation while the customer is part of that aggregation. If a customer ceases being such a customer, the otherwise applicable surcharge shall apply. Nothing in this section shall result in less than full recovery by an electric distribution utility of any surcharge authorized under section 4928.144 of the Revised Code. Nothing in this section shall result in less than the full and timely imposition, charging, collection, and adjustment by an electric distribution utility, its assignee, or any collection agent, of the phase-in-recovery charges authorized pursuant to a final financing order issued pursuant to sections 4928.23 to 4928.2318 of the Revised Code.

(J) On behalf of the customers that are part of a governmental aggregation under this section and by filing written notice with the public utilities commission, the legislative authority that formed or is forming that governmental aggregation may elect not to receive standby service within the meaning of division (B)(2)(d) of section 4928.143 of the Revised Code from an electric distribution utility in whose certified territory the governmental aggregation is located and that operates under an approved electric security plan under that section. Upon the filing of that notice, the electric distribution utility shall not charge any such customer to whom competitive retail electric generation service is provided by another supplier under the governmental aggregation for the standby service. Any such consumer that returns to the utility for competitive retail electric service shall pay the market price of power incurred by the utility to serve that consumer ~~plus any amount attributable to the~~

~~utility's cost of compliance with the renewable energy resource provisions of section 4928.64 of the Revised Code to serve the consumer~~. Such market price shall include, but not be limited to, capacity and energy charges; all charges associated with the provision of that power supply through the regional transmission organization, including, but not limited to, transmission, ancillary services, congestion, and settlement and administrative charges; and all other costs incurred by the utility that are associated with the procurement, provision, and administration of that power supply, as such costs may be approved by the commission. The period of time during which the market price ~~and renewable energy resource amount~~ shall be so assessed on the consumer shall be from the time the consumer so returns to the electric distribution utility until the expiration of the electric security plan. However, if that period of time is expected to be more than two years, the commission may reduce the time period to a period of not less than two years.

(K) The commission shall adopt rules to encourage and promote large-scale governmental aggregation in this state. For that purpose, the commission shall conduct an immediate review of any rules it has adopted for the purpose of this section that are in effect on the effective date of the amendment of this section by S.B. 221 of the 127th general assembly, July 31, 2008. Further, within the context of an electric security plan under section 4928.143 of the Revised Code, the commission shall consider the effect on large-scale governmental aggregation of any nonbypassable generation charges, however collected, that would be established under that plan, except any nonbypassable generation charges that relate to any cost incurred by the electric distribution utility, the deferral of which has been

authorized by the commission prior to the effective date of the amendment of this section by S.B. 221 of the 127th general assembly, July 31, 2008.

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

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

(1) Revenues remitted to the director after collection by each electric distribution utility in this state of a temporary rider on retail electric distribution service rates as such rates are determined by the public utilities commission pursuant to this chapter. The rider shall be a uniform amount statewide, determined by the director of development, after consultation with the public benefits advisory board created by section 4928.58 of the Revised Code. The amount shall be determined by dividing an aggregate revenue target for a given year as determined by the director, after consultation with the advisory board, by the number of customers of electric distribution utilities in this state in the prior year. Such aggregate revenue target shall not exceed more than fifteen million dollars in any year through 2005 and shall not exceed more than five million dollars in any year after 2005. The rider shall be imposed beginning on the effective date of the amendment of this section by Sub. H.B. 251 of the 126th general assembly, January

4, 2007, and shall terminate at the end of ten years following the starting date of competitive retail electric service or until the advanced energy fund, including interest, reaches one hundred million dollars, whichever is first.

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

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

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

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

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

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

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

(2) Each participating electric cooperative and participating municipal electric utility shall remit to the director on a quarterly basis the revenues described in division (B)(3) of this section. Such remittances shall occur within thirty days after the end of each calendar quarter. For the

purpose of division (B)(3) of this section, the participation of an electric cooperative or municipal electric utility in the energy efficiency revolving loan program as it existed immediately prior to the effective date of the amendment of this section by Sub. H.B. 251 of the 126th general assembly, January 4, 2007, does not constitute a decision to participate in the advanced energy fund under this section as so amended.

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

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

Sec. 4928.62. (A) There is hereby created the advanced energy program, which shall be administered by the director of development. Under the program, the director may authorize the use of moneys in the advanced energy fund for financial, technical, and related assistance for advanced energy projects in this state or for economic development assistance, in furtherance of the purposes set forth in section 4928.63 of the

Revised Code.

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

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

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

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

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

(2) Acquire in the name of the director any property of any kind or character in accordance with this section, by purchase, purchase at foreclosure, or exchange, on such terms and in such manner as the director considers proper;

(3) Make and enter into all contracts and agreements necessary or incidental to the performance of the director's

duties and the exercise of the director's powers under sections 4928.61 to 4928.63 of the Revised Code;

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

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

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

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

(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 contract, including capacity, ancillary services, and renewable energy credits.

(B) All prudently incurred costs incurred by an electric

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

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

~~(B) Division (A) of this section applies only to costs associated with the original term of a contract described in that division and entered into before April 1, 2014. This section does not permit recovery of costs associated with an extension of such a contract. This section does not permit recovery of costs associated with an amendment of such a~~

~~contract if that amendment was made on or after April 1, 2014.~~

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

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

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

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

(3) The electric distribution utility shall, in a timely manner, liquidate the renewable energy credits in its inventory and apply the resulting revenue against such recovery.

(F) Not later than ninety days after the effective date of the amendments to this section by H.B. 6 of the 133rd general assembly, the commission shall approve an appropriate accounting mechanism that is reasonable and appropriate to implement the

requirements of this section and permits a full recovery of the utility's net costs, including the accounting authority for the utility to establish and adjust regulatory assets and regulatory liabilities consistent with this section. The electric distribution utility shall be entitled to collect a carrying charge on such regulatory assets on the effective date of the amendments to this section by H.B. 6 of the 133rd general assembly and continuing until the regulatory asset is completely recovered. Such carrying charge shall include the electric distribution utility's cost of capital including the most recent authorized rate of return on equity. The carrying charge shall also be applied to any regulatory liability created as a result of the cost recovery mechanism. In each subsequent rate proceeding under Chapter 4909. of the Revised Code or section 4928.143 of the Revised Code involving the electric distribution utility, the commission shall permit recovery as a distribution expense of the regulatory assets existing at that time until the utility's net costs are fully recovered. Those costs shall be assigned to each customer class using the base distribution revenue allocation.

(G) The electric distribution utility shall apply to the Ohio air quality development authority for reimbursement of its net costs, in accordance with section 3706.485 of the Revised Code. To facilitate the authority's consideration of the utility's application, the commission shall annually certify each electric distribution utility's forecasted net costs under this section to the authority. The commission shall credit any revenue received by the utility from the Ohio clean air program fund under section 3706.485 of the Revised Code against the net costs that would otherwise be recovered through the utility's rates.

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

(1) A mercantile customer;

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

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

(B)(1) The public utilities commission shall adopt rules specifying that one unit of credit shall equal one megawatt hour of electricity derived from renewable energy resources, except that, for a generating facility of seventy-five megawatts or greater that is situated within this state and has committed by December 31, 2009, to modify or retrofit its generating unit or units to enable the facility to generate principally from biomass energy by June 30, 2013, each megawatt hour of electricity generated principally from that biomass energy shall equal, in units of credit, the product obtained by multiplying the actual percentage of biomass feedstock heat input used to generate such megawatt hour by the quotient obtained by dividing the ~~then existing~~ unit dollar amount used, on December 31, 2019,

to determine a renewable energy compliance payment as provided under former division (C)(2)(b) of section 4928.64 of the Revised Code by the then existing market value of one renewable energy credit, but such megawatt hour shall not equal less than one unit of credit. Renewable energy resources do not have to be converted to electricity in order to be eligible to receive renewable energy credits. The rules shall specify that, for purposes of converting the quantity of energy derived from biologically derived methane gas to an electricity equivalent, one megawatt hour equals 3,412,142 British thermal units.

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

Sec. 5501.311. (A) Notwithstanding sections 123.01 and 127.16 of the Revised Code the director of transportation may lease or lease-purchase all or any part of a transportation facility to or from one or more persons, one or more governmental agencies, a transportation improvement district, or any combination thereof, and may grant leases, easements, or licenses for lands under the control of the department of transportation. The director may adopt rules necessary to give effect to this section.

(B) Plans and specifications for the construction of a transportation facility under a lease or lease-purchase

agreement are subject to approval of the director and must meet or exceed all applicable standards of the department.

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

(D) A municipal corporation, township, or county may use service payments in lieu of taxes credited to special funds or

accounts pursuant to sections 5709.43, 5709.47, 5709.75, and 5709.80 of the Revised Code to provide its contribution to the cost of a transportation facility, provided such facility was among the purposes for which such service payments were authorized. The contribution may be in the form of a lump sum or periodic payments.

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

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

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

(3) The telecommunications facility shall be designed to accommodate the state's multi-agency radio communication system, the intelligent transportation system, and the department's communication system as the director may determine is necessary for highway or other departmental purposes.

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

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

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

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

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

(9) Any other conditions the director determines necessary.

(F) In accordance with section 5501.031 of the Revised Code, to further efforts to promote energy conservation and energy efficiency, the director may grant a lease, easement, or license in a transportation facility to a utility service provider that has received its certificate from the Ohio power siting board or appropriate local entity for construction, placement, or operation of an alternative energy generating facility service provider as defined in section 4928.64 of the Revised Code as that section existed prior to January 1, 2020.

An interest granted under this division is subject to all of the following conditions:

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

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

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

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

(5) The alternative energy service provider fully complies with any permit issued by the Ohio power siting board under Chapter 4906. of the Revised Code and complies with section 5515.01 of the Revised Code pertaining to land that is the subject of the lease, easement, or license.

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

(7) Any other conditions the director determines necessary.

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

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

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

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

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

Section 9. (A) Not earlier than two years after the effective date of this section, the Director of Environmental Protection may apply to the Administrator of the United States Environmental Protection Agency for an exemption from the requirement to implement the decentralized motor vehicle inspection and maintenance program established under section 3704.14 of the Revised Code. In making the application and for purposes of complying with the "Federal Clean Air Act," the Director shall request the Administrator to authorize the implementation of the Ohio Clean Air Program established by this act as an alternative to the decentralized program in those areas of the state where the program is currently operating.

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

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

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

(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.