

**As Introduced**

**134th General Assembly**

**Regular Session**

**2021-2022**

**H. B. No. 351**

**Representatives Lanese, Stoltzfus**

**Cosponsors: Representatives Ferguson, Holmes, Koehler, Manchester, Manning,  
Troy, Weinstein**

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**A BILL**

To amend section 4928.01 and to repeal section 1  
4928.148 of the Revised Code to repeal the 2  
nonbypassable cost recovery mechanisms 3  
associated with legacy generation resources and 4  
to provide customer refunds. 5

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

**Section 1.** That section 4928.01 of the Revised Code be 6  
amended to read as follows: 7

**Sec. 4928.01.** (A) As used in this chapter: 8

(1) "Ancillary service" means any function necessary to 9  
the provision of electric transmission or distribution service 10  
to a retail customer and includes, but is not limited to, 11  
scheduling, system control, and dispatch services; reactive 12  
supply from generation resources and voltage control service; 13  
reactive supply from transmission resources service; regulation 14  
service; frequency response service; energy imbalance service; 15  
operating reserve-spinning reserve service; operating reserve- 16  
supplemental reserve service; load following; back-up supply 17

service; real-power loss replacement service; dynamic 18  
scheduling; system black start capability; and network stability 19  
service. 20

(2) "Billing and collection agent" means a fully 21  
independent agent, not affiliated with or otherwise controlled 22  
by an electric utility, electric services company, electric 23  
cooperative, or governmental aggregator subject to certification 24  
under section 4928.08 of the Revised Code, to the extent that 25  
the agent is under contract with such utility, company, 26  
cooperative, or aggregator solely to provide billing and 27  
collection for retail electric service on behalf of the utility 28  
company, cooperative, or aggregator. 29

(3) "Certified territory" means the certified territory 30  
established for an electric supplier under sections 4933.81 to 31  
4933.90 of the Revised Code. 32

(4) "Competitive retail electric service" means a 33  
component of retail electric service that is competitive as 34  
provided under division (B) of this section. 35

(5) "Electric cooperative" means a not-for-profit electric 36  
light company that both is or has been financed in whole or in 37  
part under the "Rural Electrification Act of 1936," 49 Stat. 38  
1363, 7 U.S.C. 901, and owns or operates facilities in this 39  
state to generate, transmit, or distribute electricity, or a 40  
not-for-profit successor of such company. 41

(6) "Electric distribution utility" means an electric 42  
utility that supplies at least retail electric distribution 43  
service. 44

(7) "Electric light company" has the same meaning as in 45  
section 4905.03 of the Revised Code and includes an electric 46

services company, but excludes any self-generator to the extent 47  
that it consumes electricity it so produces, sells that 48  
electricity for resale, or obtains electricity from a generating 49  
facility it hosts on its premises. 50

(8) "Electric load center" has the same meaning as in 51  
section 4933.81 of the Revised Code. 52

(9) "Electric services company" means an electric light 53  
company that is engaged on a for-profit or not-for-profit basis 54  
in the business of supplying or arranging for the supply of only 55  
a competitive retail electric service in this state. "Electric 56  
services company" includes a power marketer, power broker, 57  
aggregator, or independent power producer but excludes an 58  
electric cooperative, municipal electric utility, governmental 59  
aggregator, or billing and collection agent. 60

(10) "Electric supplier" has the same meaning as in 61  
section 4933.81 of the Revised Code. 62

(11) "Electric utility" means an electric light company 63  
that has a certified territory and is engaged on a for-profit 64  
basis either in the business of supplying a noncompetitive 65  
retail electric service in this state or in the businesses of 66  
supplying both a noncompetitive and a competitive retail 67  
electric service in this state. "Electric utility" excludes a 68  
municipal electric utility or a billing and collection agent. 69

(12) "Firm electric service" means electric service other 70  
than nonfirm electric service. 71

(13) "Governmental aggregator" means a legislative 72  
authority of a municipal corporation, a board of township 73  
trustees, or a board of county commissioners acting as an 74  
aggregator for the provision of a competitive retail electric 75

service under authority conferred under section 4928.20 of the Revised Code. 76  
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(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. 78  
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(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. 83  
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(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. 93  
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(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. 97  
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(18) "Market power" means the ability to impose on customers a sustained price for a product or service above the 103  
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price that would prevail in a competitive market.	105
(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.	106 107 108 109 110 111
(20) "Municipal electric utility" means a municipal corporation that owns or operates facilities to generate, transmit, or distribute electricity.	112 113 114
(21) "Noncompetitive retail electric service" means a component of retail electric service that is noncompetitive as provided under division (B) of this section.	115 116 117
(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.	118 119 120 121 122 123 124
(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.	125 126 127
(24) "Person" has the same meaning as in section 1.59 of the Revised Code.	128 129
(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	130 131 132 133

support the production of clean, renewable energy for 134  
industrial, distribution, commercial, institutional, 135  
governmental, research, not-for-profit, or residential energy 136  
users, including, but not limited to, advanced energy resources 137  
and renewable energy resources. "Advanced energy project" also 138  
includes any project described in division (A), (B), or (C) of 139  
section 4928.621 of the Revised Code. 140

(26) "Regulatory assets" means the unamortized net 141  
regulatory assets that are capitalized or deferred on the 142  
regulatory books of the electric utility, pursuant to an order 143  
or practice of the public utilities commission or pursuant to 144  
generally accepted accounting principles as a result of a prior 145  
commission rate-making decision, and that would otherwise have 146  
been charged to expense as incurred or would not have been 147  
capitalized or otherwise deferred for future regulatory 148  
consideration absent commission action. "Regulatory assets" 149  
includes, but is not limited to, all deferred demand-side 150  
management costs; all deferred percentage of income payment plan 151  
arrears; post-in-service capitalized charges and assets 152  
recognized in connection with statement of financial accounting 153  
standards no. 109 (receivables from customers for income taxes); 154  
future nuclear decommissioning costs and fuel disposal costs as 155  
those costs have been determined by the commission in the 156  
electric utility's most recent rate or accounting application 157  
proceeding addressing such costs; the undepreciated costs of 158  
safety and radiation control equipment on nuclear generating 159  
plants owned or leased by an electric utility; and fuel costs 160  
currently deferred pursuant to the terms of one or more 161  
settlement agreements approved by the commission. 162

(27) "Retail electric service" means any service involved 163  
in supplying or arranging for the supply of electricity to 164

ultimate consumers in this state, from the point of generation 165  
to the point of consumption. For the purposes of this chapter, 166  
retail electric service includes one or more of the following 167  
"service components": generation service, aggregation service, 168  
power marketing service, power brokerage service, transmission 169  
service, distribution service, ancillary service, metering 170  
service, and billing and collection service. 171

(28) "Starting date of competitive retail electric 172  
service" means January 1, 2001. 173

(29) "Customer-generator" means a user of a net metering 174  
system. 175

(30) "Net metering" means measuring the difference in an 176  
applicable billing period between the electricity supplied by an 177  
electric service provider and the electricity generated by a 178  
customer-generator that is fed back to the electric service 179  
provider. 180

(31) "Net metering system" means a facility for the 181  
production of electrical energy that does all of the following: 182

(a) Uses as its fuel either solar, wind, biomass, landfill 183  
gas, or hydropower, or uses a microturbine or a fuel cell; 184

(b) Is located on a customer-generator's premises; 185

(c) Operates in parallel with the electric utility's 186  
transmission and distribution facilities; 187

(d) Is intended primarily to offset part or all of the 188  
customer-generator's requirements for electricity. For an 189  
industrial customer-generator with a net metering system that 190  
has a capacity of less than twenty megawatts and uses wind as 191  
energy, this means the net metering system was sized so as to 192

not exceed one hundred per cent of the customer-generator's 193  
annual requirements for electric energy at the time of 194  
interconnection. 195

(32) "Self-generator" means an entity in this state that 196  
owns or hosts on its premises an electric generation facility 197  
that produces electricity primarily for the owner's consumption 198  
and that may provide any such excess electricity to another 199  
entity, whether the facility is installed or operated by the 200  
owner or by an agent under a contract. 201

(33) "Rate plan" means the standard service offer in 202  
effect on the effective date of the amendment of this section by 203  
S.B. 221 of the 127th general assembly, July 31, 2008. 204

(34) "Advanced energy resource" means any of the 205  
following: 206

(a) Any method or any modification or replacement of any 207  
property, process, device, structure, or equipment that 208  
increases the generation output of an electric generating 209  
facility to the extent such efficiency is achieved without 210  
additional carbon dioxide emissions by that facility; 211

(b) Any distributed generation system consisting of 212  
customer cogeneration technology; 213

(c) Clean coal technology that includes a carbon-based 214  
product that is chemically altered before combustion to 215  
demonstrate a reduction, as expressed as ash, in emissions of 216  
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 217  
sulfur trioxide in accordance with the American society of 218  
testing and materials standard D1757A or a reduction of metal 219  
oxide emissions in accordance with standard D5142 of that 220  
society, or clean coal technology that includes the design 221



capability to control or prevent the emission of carbon dioxide,	222
which design capability the commission shall adopt by rule and	223
shall be based on economically feasible best available	224
technology or, in the absence of a determined best available	225
technology, shall be of the highest level of economically	226
feasible design capability for which there exists generally	227
accepted scientific opinion;	228
(d) Advanced nuclear energy technology consisting of	229
generation III technology as defined by the nuclear regulatory	230
commission; other, later technology; or significant improvements	231
to existing facilities;	232
(e) Any fuel cell used in the generation of electricity,	233
including, but not limited to, a proton exchange membrane fuel	234
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or	235
solid oxide fuel cell;	236
(f) Advanced solid waste or construction and demolition	237
debris conversion technology, including, but not limited to,	238
advanced stoker technology, and advanced fluidized bed	239
gasification technology, that results in measurable greenhouse	240
gas emissions reductions as calculated pursuant to the United	241
States environmental protection agency's waste reduction model	242
(WARM);	243
(g) Demand-side management and any energy efficiency	244
improvement;	245
(h) Any new, retrofitted, refueled, or repowered	246
generating facility located in Ohio, including a simple or	247
combined-cycle natural gas generating facility or a generating	248
facility that uses biomass, coal, modular nuclear, or any other	249
fuel as its input;	250

(i) Any uprated capacity of an existing electric generating facility if the uprated capacity results from the deployment of advanced technology.	251 252 253
"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.	254 255 256 257
(35) "Air contaminant source" has the same meaning as in section 3704.01 of the Revised Code.	258 259
(36) "Cogeneration technology" means technology that produces electricity and useful thermal output simultaneously.	260 261
(37) (a) "Renewable energy resource" means any of the following:	262 263
(i) Solar photovoltaic or solar thermal energy;	264
(ii) Wind energy;	265
(iii) Power produced by a hydroelectric facility;	266
(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;	267 268 269
(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;	270 271 272 273 274
(vi) Geothermal energy;	275
(vii) Fuel derived from solid wastes, as defined in section 3734.01 of the Revised Code, through fractionation,	276 277

biological decomposition, or other process that does not	278
principally involve combustion;	279
(viii) Biomass energy;	280
(ix) Energy produced by cogeneration technology that is	281
placed into service on or before December 31, 2015, and for	282
which more than ninety per cent of the total annual energy input	283
is from combustion of a waste or byproduct gas from an air	284
contaminant source in this state, which source has been in	285
operation since on or before January 1, 1985, provided that the	286
cogeneration technology is a part of a facility located in a	287
county having a population of more than three hundred sixty-five	288
thousand but less than three hundred seventy thousand according	289
to the most recent federal decennial census;	290
(x) Biologically derived methane gas;	291
(xi) Heat captured from a generator of electricity,	292
boiler, or heat exchanger fueled by biologically derived methane	293
gas;	294
(xii) Energy derived from nontreated by-products of the	295
pulping process or wood manufacturing process, including bark,	296
wood chips, sawdust, and lignin in spent pulping liquors.	297
"Renewable energy resource" includes, but is not limited	298
to, any fuel cell used in the generation of electricity,	299
including, but not limited to, a proton exchange membrane fuel	300
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or	301
solid oxide fuel cell; wind turbine located in the state's	302
territorial waters of Lake Erie; methane gas emitted from an	303
abandoned coal mine; waste energy recovery system placed into	304
service or retrofitted on or after the effective date of the	305
amendment of this section by S.B. 315 of the 129th general	306

assembly, September 10, 2012, except that a waste energy 307  
recovery system described in division (A) (38) (b) of this section 308  
may be included only if it was placed into service between 309  
January 1, 2002, and December 31, 2004; storage facility that 310  
will promote the better utilization of a renewable energy 311  
resource; or distributed generation system used by a customer to 312  
generate electricity from any such energy. 313

"Renewable energy resource" does not include a waste 314  
energy recovery system that is, or was, on or after January 1, 315  
2012, included in an energy efficiency program of an electric 316  
distribution utility pursuant to requirements under section 317  
4928.66 of the Revised Code. 318

(b) As used in division (A) (37) of this section, 319  
"hydroelectric facility" means a hydroelectric generating 320  
facility that is located at a dam on a river, or on any water 321  
discharged to a river, that is within or bordering this state or 322  
within or bordering an adjoining state and meets all of the 323  
following standards: 324

(i) The facility provides for river flows that are not 325  
detrimental for fish, wildlife, and water quality, including 326  
seasonal flow fluctuations as defined by the applicable 327  
licensing agency for the facility. 328

(ii) The facility demonstrates that it complies with the 329  
water quality standards of this state, which compliance may 330  
consist of certification under Section 401 of the "Clean Water 331  
Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and 332  
demonstrates that it has not contributed to a finding by this 333  
state that the river has impaired water quality under Section 334  
303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33  
U.S.C. 1313. 336

- (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 366  
this section do not apply to a small hydroelectric facility 367  
under division (A) (37) (a) (iv) of this section. 368

(38) "Waste energy recovery system" means either of the 369  
following: 370

(a) A facility that generates electricity through the 371  
conversion of energy from either of the following: 372

(i) Exhaust heat from engines or manufacturing, 373  
industrial, commercial, or institutional sites, except for 374  
exhaust heat from a facility whose primary purpose is the 375  
generation of electricity; 376

(ii) Reduction of pressure in gas pipelines before gas is 377  
distributed through the pipeline, provided that the conversion 378  
of energy to electricity is achieved without using additional 379  
fossil fuels. 380

(b) A facility at a state institution of higher education 381  
as defined in section 3345.011 of the Revised Code that recovers 382  
waste heat from electricity-producing engines or combustion 383  
turbines and that simultaneously uses the recovered heat to 384  
produce steam, provided that the facility was placed into 385  
service between January 1, 2002, and December 31, 2004. 386

(39) "Smart grid" means capital improvements to an 387  
electric distribution utility's distribution infrastructure that 388  
improve reliability, efficiency, resiliency, or reduce energy 389  
demand or use, including, but not limited to, advanced metering 390  
and automation of system functions. 391

(40) "Combined heat and power system" means the 392  
coproduction of electricity and useful thermal energy from the 393  
same fuel source designed to achieve thermal-efficiency levels 394

of at least sixty per cent, with at least twenty per cent of the 395  
system's total useful energy in the form of thermal energy. 396

~~(41) "Legacy generation resource" means all generating 397  
facilities owned directly or indirectly by a corporation that 398  
was formed prior to 1960 by investor-owned utilities for the 399  
original purpose of providing power to the federal government 400  
for use in the nation's defense or in furtherance of national 401  
interests, including the Ohio valley electric corporation. 402~~

~~(42) "Prudently incurred costs related to a legacy 403  
generation resource" means costs, including deferred costs, 404  
allocated pursuant to a power agreement approved by the federal 405  
energy regulatory commission that relates to a legacy generation 406  
resource, less any revenues realized from offering the 407  
contractual commitment for the power agreement into the 408  
wholesale markets, provided that where the net revenues exceed 409  
net costs, those excess revenues shall be credited to customers. 410  
Such costs shall exclude any return on investment in common 411  
equity and, in the event of a premature retirement of a legacy 412  
generation resource, shall exclude any recovery of remaining 413  
debt. Such costs shall include any incremental costs resulting 414  
from the bankruptcy of a current or former sponsor under such 415  
power agreement or co-owner of the legacy generation resource if 416  
not otherwise recovered through a utility rate cost recovery 417  
mechanism. 418~~

(B) For the purposes of this chapter, a retail electric 419  
service component shall be deemed a competitive retail electric 420  
service if the service component is competitive pursuant to a 421  
declaration by a provision of the Revised Code or pursuant to an 422  
order of the public utilities commission authorized under 423  
division (A) of section 4928.04 of the Revised Code. Otherwise, 424

the service component shall be deemed a noncompetitive retail 425  
electric service. 426

**Section 2.** That existing section 4928.01 of the Revised 427  
Code is hereby repealed. 428

**Section 3.** That section 4928.148 of the Revised Code is 429  
hereby repealed. 430

**Section 4.** (A) Any mechanism for retail recovery of 431  
prudently incurred costs authorized and established pursuant to 432  
division (A) of section 4928.148 of the Revised Code as that 433  
section existed prior to the effective date of this act is 434  
hereby terminated. 435

(B) Any mechanism for retail recovery of costs for all 436  
generating facilities owned directly or indirectly by a 437  
corporation that was formed prior to 1960 by investor-owned 438  
utilities for the original purpose of providing power to the 439  
federal government for use in the nation's defense or in 440  
furtherance of national interests, including the Ohio Valley 441  
Electric Corporation, that was authorized under section 4928.143 442  
of the Revised Code, or any other section of the Revised Code, 443  
and that was in effect on or before the effective date of H.B. 6 444  
of the 133rd General Assembly shall not be revived, reimposed, 445  
reestablished, or in any way reinstated as a result of this 446  
act, or Public Utilities Commission order, decision, or rule, 447  
and no amount, charge, mechanism, or rider related to such 448  
mechanism may be assessed or collected from customers. 449

**Section 5.** Upon the effective date of this section, and 450  
notwithstanding section 4905.32 of the Revised Code and any 451  
other provision in Title XLIX of the Revised Code to the 452  
contrary, the full amount of revenues collected from customers 453



through an amount, charge, mechanism, or rider established under	454
section 4928.148 of the Revised Code, as that section existed	455
prior to the effective date of this section, shall be promptly	456
refunded to customers from whom the revenues were collected.	457
Refunds paid to customers shall be allocated to customer classes	458
in the same proportion as originally collected.	459