

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**

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 106
industrial customer if the electricity consumed is for 107
nonresidential use and the customer consumes more than seven 108
hundred thousand kilowatt hours per year or is part of a 109
national account involving multiple facilities in one or more 110
states. 111

(20) "Municipal electric utility" means a municipal 112
corporation that owns or operates facilities to generate, 113
transmit, or distribute electricity. 114

(21) "Noncompetitive retail electric service" means a 115
component of retail electric service that is noncompetitive as 116
provided under division (B) of this section. 117

(22) "Nonfirm electric service" means electric service 118
provided pursuant to a schedule filed under section 4905.30 of 119
the Revised Code or pursuant to an arrangement under section 120
4905.31 of the Revised Code, which schedule or arrangement 121
includes conditions that may require the customer to curtail or 122
interrupt electric usage during nonemergency circumstances upon 123
notification by an electric utility. 124

(23) "Percentage of income payment plan arrears" means 125
funds eligible for collection through the percentage of income 126
payment plan rider, but uncollected as of July 1, 2000. 127

(24) "Person" has the same meaning as in section 1.59 of 128
the Revised Code. 129

(25) "Advanced energy project" means any technologies, 130
products, activities, or management practices or strategies that 131
facilitate the generation or use of electricity or energy and 132
that reduce or support the reduction of energy consumption or 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 251
generating facility if the uprated capacity results from the 252
deployment of advanced technology. 253

"Advanced energy resource" does not include a waste energy 254
recovery system that is, or has been, included in an energy 255
efficiency program of an electric distribution utility pursuant 256
to requirements under section 4928.66 of the Revised Code. 257

(35) "Air contaminant source" has the same meaning as in 258
section 3704.01 of the Revised Code. 259

(36) "Cogeneration technology" means technology that 260
produces electricity and useful thermal output simultaneously. 261

(37) (a) "Renewable energy resource" means any of the 262
following: 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, 267
which is a facility that operates, or is rated to operate, at an 268
aggregate capacity of less than six megawatts; 269

(v) Power produced by a run-of-the-river hydroelectric 270
facility placed in service on or after January 1, 1980, that is 271
located within this state, relies upon the Ohio river, and 272
operates, or is rated to operate, at an aggregate capacity of 273
forty or more megawatts; 274

(vi) Geothermal energy; 275

(vii) Fuel derived from solid wastes, as defined in 276
section 3734.01 of the Revised Code, through fractionation, 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 337
regarding fish passage as required by the federal energy 338
regulatory commission license issued for the project, regarding 339
fish protection for riverine, anadromous, and catadromous fish. 340

(iv) The facility complies with the recommendations of the 341
Ohio environmental protection agency and with the terms of its 342
federal energy regulatory commission license regarding watershed 343
protection, mitigation, or enhancement, to the extent of each 344
agency's respective jurisdiction over the facility. 345

(v) The facility complies with provisions of the 346
"Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 347
to 1544, as amended. 348

(vi) The facility does not harm cultural resources of the 349
area. This can be shown through compliance with the terms of its 350
federal energy regulatory commission license or, if the facility 351
is not regulated by that commission, through development of a 352
plan approved by the Ohio historic preservation office, to the 353
extent it has jurisdiction over the facility. 354

(vii) The facility complies with the terms of its federal 355
energy regulatory commission license or exemption that are 356
related to recreational access, accommodation, and facilities 357
or, if the facility is not regulated by that commission, the 358
facility complies with similar requirements as are recommended 359
by resource agencies, to the extent they have jurisdiction over 360
the facility; and the facility provides access to water to the 361
public without fee or charge. 362

(viii) The facility is not recommended for removal by any 363
federal agency or agency of any state, to the extent the 364
particular agency has jurisdiction over the facility. 365

(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