

**As Reported by the Senate Energy and Public Utilities Committee**

**134th General Assembly**

**Regular Session**

**2021-2022**

**S. B. No. 44**

**Senators Rulli, Cirino**

**Cosponsor: Senator Brenner**



**A BILL**

To amend sections 3706.40, 3706.41, 3706.43, 1  
3706.45, 3706.46, 3706.49, 3706.55, and 3706.59; 2  
to enact section 3706.551; and to repeal 3  
sections 3706.53, 3706.61, and 5727.231 of the 4  
Revised Code to repeal the nuclear resource 5  
credit payment provisions, and amend, and rename 6  
as solar resource, the renewable resource credit 7  
payment provisions of H.B. 6 of the 133rd 8  
General Assembly. 9

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

**Section 1.** That sections 3706.40, 3706.41, 3706.43, 10  
3706.45, 3706.46, 3706.49, 3706.55, and 3706.59 be amended and 11  
section 3706.551 of the Revised Code be enacted to read as 12  
follows: 13

**Sec. 3706.40.** As used in sections 3706.40 to 3706.65 of 14  
the Revised Code: 15

(A) ~~"Qualifying nuclear resource" means an electric 16  
generating facility in this state fueled by nuclear power. 17~~

~~(B) "Qualifying renewable solar resource" means an 18~~

electric generating facility in this state to which all of the 19  
following apply: 20

(1) The facility uses or will use solar energy as the 21  
primary energy source. 22

(2) The facility obtained a certificate for construction 23  
of a major utility facility from the power siting board prior to 24  
June 1, 2019. 25

(3) The facility is interconnected with the transmission 26  
grid that is subject to the operational control of PJM 27  
interconnection, L.L.C., or its successor organization. 28

~~(C) "Credit price adjustment" means a reduction to the 29  
price for each nuclear resource credit equal to the market price- 30  
index minus the strike price. 31~~

~~(D) "Strike price" means forty six dollars per megawatt- 32  
hour. 33~~

~~(E) "Market price index" means the sum, expressed in 34  
dollars per megawatt hour, of both of the following for the 35  
upcoming twelve month period that begins the first day of June- 36  
and ends the thirty first day of May: 37~~

~~(1) Projected energy prices, determined using futures- 38  
contracts for the PJM AEP Dayton hub; 39~~

~~(2) Projected capacity prices, determined using PJM's- 40  
rest of RTO market clearing price. 41~~

~~(F)~~ (B) "Electric distribution utility" has the same 42  
meaning as in section 4928.01 of the Revised Code. 43

**Sec. 3706.41.** ~~(A)~~ Not later than February 1, 2020, the 44  
owner or operator of a ~~qualifying nuclear resource or~~ qualifying 45

~~renewable solar resource~~ may apply to the Ohio air quality 46  
development authority to receive payments for ~~nuclear resource~~ 47  
~~credits or renewable solar energy credits, as applicable,~~ under 48  
section 3706.55 of the Revised Code. 49

~~(B) An application submitted under division (A) of this~~ 50  
~~section for a qualifying nuclear resource shall include all of~~ 51  
~~the following information pertaining to the resource:~~ 52

~~(1) Financial information;~~ 53

~~(2) Certified cost and revenue projections through~~ 54  
~~December 31, 2026;~~ 55

~~(3) Operation and maintenance expenses;~~ 56

~~(4) Fuel expenses, including spent fuel expenses;~~ 57

~~(5) Nonfuel capital expenses;~~ 58

~~(6) Fully allocated overhead costs;~~ 59

~~(7) The cost of operational risks and market risks that~~ 60  
~~would be avoided by ceasing operation of the resource;~~ 61

~~(8) Any other information, financial or otherwise, that~~ 62  
~~demonstrates that the resource is projected not to continue~~ 63  
~~being operational.~~ 64

~~(C) As used in this section:~~ 65

~~(1) "Operational risks" include the risk that operating~~ 66  
~~costs will be higher than anticipated because of new regulatory~~ 67  
~~mandates or equipment failures and the risk that per megawatt~~ 68  
~~hour costs will be higher than anticipated because of a lower~~ 69  
~~than expected capacity factor.~~ 70

~~(2) "Market risks" include the risk of a forced outage and~~ 71  
~~the associated costs arising from contractual obligations, and~~ 72

~~the risk that output from the resource may not be able to be  
sold at projected levels.~~ 73  
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**Sec. 3706.43.** After receiving an application under section 75  
3706.41 of the Revised Code, the Ohio air quality development 76  
authority shall review and approve the application, not later 77  
than March 31, 2020, if ~~all of the following apply, as~~ 78  
~~applicable:~~ 79

~~(A) The the resource meets the definition of a qualifying  
nuclear resource or qualifying renewable solar resource in 80  
section 3706.40 of the Revised Code. 81  
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~~(B) For a qualifying nuclear resource only, both of the 83  
following apply: 84~~

~~(1) The application meets the requirements of section 85  
3706.41 of the Revised Code. 86~~

~~(2) The resource's operator maintains both a principal  
place of business in this state and a substantial presence in 87  
this state with regard to its business operations, offices, and 88  
transactions. 89  
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**Sec. 3706.45.** (A) An owner or operator of a ~~qualifying~~ 91  
~~nuclear resource~~ or qualifying renewable solar resource whose 92  
application was approved under section 3706.43 of the Revised 93  
Code shall report to the Ohio air quality development authority, 94  
not later than seven days after the close of each quarter, the 95  
number of megawatt hours the resource produced, if any, in the 96  
previous quarter. The first report shall be made not later than 97  
April 7, 2020, and the last report shall be made not later than 98  
January 7, 2027. The information reported shall be in accordance 99  
with data from the generation attribute tracking designated by 100  
the authority. 101

~~(B) The authority shall issue one nuclear resource credit to a qualifying nuclear resource for each megawatt hour of electricity that is both reported under division (A) of this section and approved by the authority.~~ The authority shall issue one renewable solar energy credit to a qualifying renewable solar resource for each megawatt hour of electricity that is both reported under division (A) of this section and approved by the authority.

~~(C) Except as provided in section 3706.61 of the Revised Code, the price for a nuclear resource credit paid under section 3706.55 of the Revised Code shall be nine dollars.~~

~~(D) The price for a renewable solar energy credit paid under section 3706.55 of the Revised Code shall be nine dollars.~~

**Sec. 3706.46.** (A) (1) Beginning for all bills rendered on or after January 1, 2021, by an electric distribution utility in this state, such electric distribution utility shall collect from all of its retail electric customers in this state, each month, a charge ~~or charges~~ which, in the aggregate, ~~are~~ is sufficient to produce ~~the following a revenue requirements:~~

~~(a) One hundred fifty million dollars annually for total disbursements required under section 3706.55 of the Revised Code from the nuclear generation fund;~~

~~(b) Twenty requirement of twenty million dollars annually for total disbursements required under section 3706.55 of the Revised Code from the renewable solar generation fund.~~

(2) The public utilities commission shall determine the method by which the revenue is allocated or assigned to each electric distribution utility for billing and collection, provided that the method of allocation shall be based on the

relative number of customers, relative quantity of kilowatt hour 131  
sales, or a combination of the two. The level and structure of 132  
the charge shall be authorized by the commission through a 133  
process that the commission shall determine is not for an 134  
increase in any rate, joint rate, toll, classification, charge, 135  
or rental, notwithstanding anything to the contrary in Title 136  
XLIX of the Revised Code. 137

(B) In authorizing the level and structure of any charge 138  
~~or charges~~ to be billed and collected by each electric 139  
distribution utility, the commission shall ensure that the per- 140  
customer monthly charge for residential customers does not 141  
exceed ~~eighty-five~~ ten cents and that the per-customer monthly 142  
charge for industrial customers eligible to become self- 143  
assessing purchasers pursuant to division (C) of section 5727.81 144  
of the Revised Code does not exceed two ~~thousand four~~ 145  
forty-two dollars. For nonresidential customers that are not 146  
self-assessing purchasers, the level and design of the charge ~~or~~ 147  
~~charges~~ shall be established in a manner that avoids abrupt or 148  
excessive total net electric bill impacts for typical customers. 149

(C) Each charge authorized by the commission under this 150  
section shall be subject to adjustment so as to reconcile actual 151  
revenue collected with the revenue needed to meet the revenue 152  
~~requirements~~ requirement under division (A) (1) of this section. 153  
The commission shall authorize each electric distribution 154  
utility to adopt accounting practices to facilitate such 155  
reconciliation. Notwithstanding any other provisions of the 156  
Revised Code, the charge ~~or charges~~ authorized by the commission 157  
may continue beyond December 31, 2027, only if it is necessary 158  
to reconcile actual revenue collected under this section during 159  
the period ending on December 31, 2027, with the actual revenue 160  
needed to meet the revenue ~~requirements~~ requirement under 161

division (A) (1) of this section for required disbursements under 162  
section 3706.55 of the Revised Code that may be due and owing 163  
during the same period. Such continuation shall be authorized 164  
only for such period of time beyond December 31, 2027, as may be 165  
reasonably necessary to complete the reconciliation. 166

**Sec. 3706.49.** (A) There is hereby created ~~the nuclear-~~ 167  
~~generation fund and the renewable solar generation fund. Each-~~ 168  
The fund shall be in the custody of the treasurer of state but 169  
shall not be part of the state treasury. ~~Each-~~The fund shall 170  
consist of the charges collected under section 3706.46 of the 171  
Revised Code and deposited ~~in accordance with section 3706.53 of~~ 172  
~~the Revised Code~~ by the Ohio air quality development authority, 173  
in consultation with the public utilities commission. The 174  
interest generated by ~~each-~~the fund shall be retained ~~by each-~~ 175  
~~respective-~~in the fund and used for the purposes set forth in 176  
sections 3706.40 to 3706.65 of the Revised Code. 177

(B) The fund shall be administered by the Ohio air quality 178  
development authority, and the authority shall request the 179  
treasurer of state to create the account for the fund. The 180  
treasurer of state shall distribute the moneys in the ~~funds-~~fund 181  
in accordance with directions provided by the ~~Ohio air quality-~~ 182  
~~development~~ authority. Before giving directions under this 183  
division, the authority shall consult with the public utilities 184  
commission. 185

**Sec. 3706.55.** (A) For the period beginning with April of 186  
2021 and ending with January of 2028, the Ohio air quality 187  
development authority shall, in April of 2021 and every three 188  
months thereafter through the end of the period, and not later 189  
than the twenty-first day of the month, direct the treasurer of 190  
state to remit money from the ~~funds-~~solar generation fund 191

created under section 3706.49 of the Revised Code ~~as follows:~~ 192

~~(1) Subject to sections 3706.59 and 3706.61 of the Revised Code, from the nuclear generation fund to the owner or operator of a qualifying nuclear resource, in the amount equivalent to the number of credits earned by the resource during the quarter that ended twelve months prior to the last day of the previous quarter multiplied by the credit price, and as directed by the authority in accordance with section 3706.61 of the Revised Code;~~ 193  
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~~(2) Subject to section 3706.59 of the Revised Code, from the renewable generation fund the moneys from the fund shall be remitted to the owners or operators of qualifying renewable solar resources, in the amount equivalent to the number of credits earned by the resources during the quarter that ended twelve months prior to the last day of the previous quarter multiplied by the credit price.~~ 201  
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(B) Notwithstanding section 4905.32 of the Revised Code, any amounts remaining in the ~~nuclear generation fund and the renewable generation fund~~ as of December 31, 2027, minus the remittances that are required to be made between that date and January 21, 2028, shall be refunded to customers in a manner that shall be determined by the authority in consultation with the public utilities commission. 208  
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**Sec. 3706.551.** (A) Notwithstanding the solar energy credit application deadlines for qualifying solar resources under sections 3706.41 and 3706.43 of the Revised Code, the Ohio air quality development authority shall rereview and approve an application from a qualifying solar resource if the resource submitted the application before March 1, 2020. 215  
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(B) The deadlines for the quarterly reports required under 221  
section 3706.45 of the Revised Code that have passed before the 222  
effective date of this section do not apply to a qualifying 223  
solar resource whose application for solar energy credits is 224  
approved under division (A) of this section. 225

~~Sec. 3706.59. (A) If the money in the nuclear generation-~~ 226  
~~fund is insufficient in a particular quarter to make the~~ 227  
~~payments in the amount required under division (A) (1) of section-~~ 228  
~~3706.55 of the Revised Code, then the Ohio air quality-~~ 229  
~~development authority shall, not later than twenty one days-~~ 230  
~~after the close of any quarter in which the owner or operator-~~ 231  
~~was not fully compensated, direct the treasurer of state to~~ 232  
~~remit money from the nuclear generation fund to pay for the~~ 233  
~~unpaid credits.~~ 234

~~(B) If the money in the renewable solar generation fund is~~ 235  
~~insufficient to make the payments in the amounts required under~~ 236  
~~division (A) (2) of section 3706.55 of the Revised Code for all~~ 237  
~~owners and operators of qualifying renewable solar resources,~~ 238  
~~then the authority shall do both of the following:~~ 239

~~(1) (A) Not later than twenty-one days after the close of~~ 240  
~~the quarter in which the charges collected were insufficient,~~ 241  
~~direct the treasurer to prorate payments from the total amount~~ 242  
~~available in the renewable solar generation fund, based on the~~ 243  
~~number of each resource's credits earned during the quarter that~~ 244  
~~ended twelve months prior to the last day of the previous~~ 245  
~~quarter;~~ 246

~~(2) (B) Not later than twenty-one days after the close of~~ 247  
~~any quarter in which the owners or operators received prorated~~ 248  
~~payments under division ~~(B) (1) (A)~~ of this section, direct the~~ 249  
~~treasurer of state to remit money from the renewable solar~~ 250

generation fund to pay for the unpaid credits. Unpaid credits 251  
paid for under division (B)~~(2)~~ of this section shall be paid 252  
before any other remittances are made under ~~division (A) (2) of~~ 253  
section 3706.55 of the Revised Code. 254

**Section 2.** That existing sections 3706.40, 3706.41, 255  
3706.43, 3706.45, 3706.46, 3706.49, 3706.55, and 3706.59 of the 256  
Revised Code are hereby repealed. 257

**Section 3.** That sections 3706.53, 3706.61, and 5727.231 of 258  
the Revised Code are hereby repealed. 259