

**As Passed by the House**

**135th General Assembly**

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**2023-2024**

**Sub. H. B. No. 79**

**Representatives Seitz, Sweeney**

**Cosponsors: Representatives Weinstein, Isaacsohn, Hoops, Klopfenstein,  
Upchurch, McNally, Brennan, Carruthers, Dell'Aquila, Skindell, Miller, A.,  
Abdullahi, Brent, Brewer, Brown, Cross, Dobos, Jarrells, Liston, Robb Blasdel,  
Russo, Somani, Troy, Whitted**

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**A BILL**

To amend section 4928.02 and to enact sections 1  
4928.6630, 4928.6631, 4928.6633, 4928.6634, 2  
4928.6635, 4928.6636, 4928.6637, 4928.6639, 3  
4928.6641, 4928.6642, 4928.6644, 4928.6645, 4  
4928.6646, 4928.6647, 4928.6650, 4928.6653, 5  
4928.6655, 4928.6657, 4928.6660, and 4928.6665 6  
of the Revised Code to permit electric 7  
distribution utilities to establish energy 8  
efficiency and demand reduction portfolios. 9

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

**Section 1.** That section 4928.02 be amended and sections 10  
4928.6630, 4928.6631, 4928.6633, 4928.6634, 4928.6635, 11  
4928.6636, 4928.6637, 4928.6639, 4928.6641, 4928.6642, 12  
4928.6644, 4928.6645, 4928.6646, 4928.6647, 4928.6650, 13  
4928.6653, 4928.6655, 4928.6657, 4928.6660, and 4928.6665 of the 14  
Revised Code be enacted to read as follows: 15

**Sec. 4928.02.** It is the policy of this state to do the 16

following throughout this state:	17
(A) Ensure the availability to consumers of adequate,	18
reliable, safe, efficient, nondiscriminatory, and reasonably	19
priced retail electric service;	20
(B) Ensure the availability of unbundled and comparable	21
retail electric service that provides consumers with the	22
supplier, price, terms, conditions, and quality options they	23
elect to meet their respective needs;	24
(C) Ensure diversity of electricity supplies and	25
suppliers, by giving consumers effective choices over the	26
selection of those supplies and suppliers and by encouraging the	27
development of distributed and small generation facilities;	28
(D) Encourage innovation and market access for cost-	29
effective supply- and demand-side retail electric service	30
including, but not limited to, demand-side management, time-	31
differentiated pricing, waste energy recovery systems, smart	32
grid programs, and implementation of advanced metering	33
infrastructure;	34
(E) Encourage cost-effective and efficient access to	35
information regarding the operation of the transmission and	36
distribution systems of electric utilities in order to promote	37
both effective customer choice of retail electric service and	38
the development of performance standards and targets for service	39
quality for all consumers, including annual achievement reports	40
written in plain language;	41
(F) Ensure that an electric utility's transmission and	42
distribution systems are available to a customer-generator or	43
owner of distributed generation, so that the customer-generator	44
or owner can market and deliver the electricity it produces;	45

(G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;	46 47 48
(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;	49 50 51 52 53 54 55
(I) Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power;	56 57 58
(J) Provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates;	59 60 61
(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;	62 63 64 65 66
(L) Protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource;	67 68 69
(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;	70 71 72 73
(N) <u>Encourage electric distribution utilities to develop</u>	74

voluntary portfolios of energy savings programs to help their 75  
customers to save energy; 76

(O) Facilitate the state's effectiveness in the global 77  
economy. 78

~~(O)~~ (P) Encourage cost-effective, timely, and efficient 79  
access to and sharing of customer usage data with customers and 80  
competitive suppliers to promote customer choice and grid 81  
modernization. 82

~~(P)~~ (Q) Ensure that a customer's data is provided in a 83  
standard format and provided to third parties in as close to 84  
real time as is economically justifiable in order to spur 85  
economic investment and improve the energy options of individual 86  
customers. 87

In carrying out this policy, the commission shall consider 88  
rules as they apply to the costs of electric distribution 89  
infrastructure, including, but not limited to, line extensions, 90  
for the purpose of development in this state. 91

Sec. 4928.6630. As used in sections 4928.6630 to 4928.6665 92  
of the Revised Code: 93

"Behavioral energy savings" means energy savings that 94  
occurs as a result of a change in a residential retail electric 95  
customer's pattern of electricity use. 96

"Nonresidential retail customer" means a customer that is 97  
not a residential customer or a mercantile customer. 98

"Energy savings" includes energy efficiency savings and 99  
peak demand reduction savings. 100

Sec. 4928.6631. An electric distribution utility may 101  
submit an application to the public utilities commission for 102

<u>approval of a portfolio of energy savings programs to assist</u>	103
<u>retail electric customers in achieving energy savings.</u>	104
<u>Sec. 4928.6633. An electric distribution utility's</u>	105
<u>application for a portfolio shall include the following</u>	106
<u>information about the energy savings programs proposed for the</u>	107
<u>portfolio:</u>	108
<u>(A) Descriptions of the size and scope of the programs;</u>	109
<u>(B) The programs' costs, planned energy savings, and cost-</u>	110
<u>effectiveness;</u>	111
<u>(C) The utility's projection of the expected number of</u>	112
<u>customers opting out of the programs under section 4928.6657 of</u>	113
<u>the Revised Code;</u>	114
<u>(D) The program costs, availability, and planned energy</u>	115
<u>savings listed by programs for residential customer and</u>	116
<u>nonresidential retail customer classes and any programs that</u>	117
<u>could impact all customer classes;</u>	118
<u>(E) (1) Proposed mechanisms for:</u>	119
<u>(a) The recovery of program costs, excluding internal</u>	120
<u>utility employee labor costs already being recovered in the</u>	121
<u>utility's rates established under its most recent rate case</u>	122
<u>under section 4909.18 of the Revised Code;</u>	123
<u>(b) Utility incentives;</u>	124
<u>(c) One of the following mechanisms, which the public</u>	125
<u>utilities commission shall determine pursuant to section</u>	126
<u>4928.6634 of the Revised Code:</u>	127
<u>(i) A mechanism for the recovery of lost distribution</u>	128
<u>revenues, if applicable;</u>	129

<u>(ii) Any mechanism under division (D) of section 4928.66</u>	130
<u>of the Revised Code.</u>	131
<u>A mechanism described in division (E) (1) (c) of this</u>	132
<u>section collected for a particular year may only be collected</u>	133
<u>for a period that shall not exceed the length of the term of the</u>	134
<u>portfolio approved by the public utilities commission.</u>	135
<u>(2) If applicable, any lost distribution revenue mechanism</u>	136
<u>approved under division (E) (1) (c) of this section shall be</u>	137
<u>normalized for weather. No mechanism approved under this section</u>	138
<u>may result in any double recovery.</u>	139
<u>(F) A plan to improve the following:</u>	140
<u>(1) Customers' smart technology capability for demand side</u>	141
<u>management;</u>	142
<u>(2) Utility control to reduce demand or impacts of</u>	143
<u>intermittent resources on the grid, which plan shall require</u>	144
<u>working in coordination with electric services companies.</u>	145
<u>(G) A description of how the portfolio will meet the</u>	146
<u>requirements under section 4928.6636 of the Revised Code;</u>	147
<u>(H) If the financial parameters described in section</u>	148
<u>4928.6647 of the Revised Code do not allow the portfolio design</u>	149
<u>to be consistent with the energy savings measures under section</u>	150
<u>4928.6639 of the Revised Code, an explanation of why consistency</u>	151
<u>is not possible;</u>	152
<u>(I) Any other information that the utility determines is</u>	153
<u>appropriate for commission review.</u>	154
<b><u>Sec. 4928.6634. (A) The public utilities commission shall</u></b>	155
<b><u>conduct hearings on a portfolio application.</u></b>	156

(B) Not later than one hundred eighty days after receiving 157  
an application under section 4928.6631 of the Revised Code, the 158  
commission shall issue an order to approve or modify and approve 159  
the application, if the commission finds that the application 160  
meets the requirements under section 4928.6633 of the Revised 161  
Code and includes the program required under section 4928.6636 162  
of the Revised Code, and shall deny the application if these 163  
requirements are not met. The commission may modify an 164  
application only as necessary for the application to comply with 165  
sections 4928.6633, 4928.6639, 4928.6641, 4928.6642, 4928.6644, 166  
4928.6647, and 4928.6653 of the Revised Code. In its approval of 167  
an application filed pursuant to section 4928.6631 of the 168  
Revised Code, the commission shall specify according to 169  
established rate classes the use of either lost distribution 170  
revenue recovery or recovery under division (D) of section 171  
4928.66 of the Revised Code. 172

An order by the commission approving or modifying and 173  
approving an application shall authorize accounting mechanisms 174  
under which the utility may defer and recover only those 175  
commission-approved program costs that would cause the utility 176  
to recover in excess of the rate caps under section 4928.6650 of 177  
the Revised Code due to a level of customer participation in the 178  
program that exceeded the utility's expectations. 179

(C) Not later than ninety days after the date of the 180  
commission's final order, the utility shall accept the modified 181  
application or withdraw the application if either or both of the 182  
following occurs: 183

(1) The commission modifies and approves the application. 184

(2) A higher than expected number of customers opt out of 185  
the portfolio. 186

(D) A portfolio approved by the commission shall be for a 187  
term of not more than five years. To replace or extend a 188  
portfolio that is terminating, a utility shall file a new 189  
portfolio application with the commission. 190

**Sec. 4928.6635.** (A) As used in this section, "proceeding" 191  
means a proceeding relating to a portfolio application under 192  
section 4928.6634 of the Revised Code. 193

(B) No electric distribution utility or its affiliate may 194  
do either of the following to induce any party to a proceeding 195  
to enter into a settlement of a proceeding pending before the 196  
commission: 197

(1) Make a cash payment to that party that is not 198  
specifically tied to the provision of services related to the 199  
utility offering energy efficiency programs; 200

(2) Enter into any agreement or any financial or private 201  
arrangement with that party that is not made part of the public 202  
case record. 203

**Sec. 4928.6636.** An electric distribution utility portfolio 204  
approved under section 4928.6634 of the Revised Code shall 205  
include at least one program planned to benefit low-income 206  
residential customers with an annual income at or below two 207  
hundred per cent of the federal poverty level. Total proposed 208  
residential program costs for programs projected to reach low- 209  
income residential customers pursuant to this section shall be 210  
not less than fifteen per cent of the total program costs 211  
proposed for all residential programs in the portfolio. 212

**Sec. 4928.6637.** (A) As used in this section, "trade 213  
allies" means entities that, on behalf of a customer 214  
participating in an electric distribution utility's energy 215



efficiency program, install equipment or measures that qualify 216  
for an incentive included in a portfolio approved under section 217  
4928.6634 of the Revised Code. 218

(B) An electric distribution utility portfolio approved 219  
under section 4928.6634 of the Revised Code shall include 220  
provisions intended to reasonably accommodate the participation 221  
of small businesses as trade allies in all the counties within 222  
the electric distribution utility's service area under the 223  
utility's proposed energy efficiency programs. 224

**Sec. 4928.6639.** An electric distribution utility portfolio 225  
shall be designed to do the following: 226

(A) Achieve gross annual energy savings of at least one- 227  
half of one per cent of the gross annual energy savings of the 228  
prior year's retail electric sales to participating customers, 229  
except as limited by the requirement under section 4928.6647 of 230  
the Revised Code; 231

(B) Achieve not more than thirty per cent of the planned 232  
annual gross energy savings through residential programs 233  
designed to deliver only behavioral energy savings; 234

(C) Emphasize smart technology measures, including, but 235  
not limited to, appliance controllers and energy star qualified 236  
smart thermostats; 237

(D) Determine gross energy savings as follows: 238

(1) Directly through standard evaluation, measurement, and 239  
verification protocols, such as a bill savings analysis, or, if 240  
available, through metering that has the capability to measure 241  
demand in kilowatts; 242

(2) For gross energy savings not determined directly 243

pursuant to division (D)(1) of this section, with a baseline 244  
established for federal energy standards for appliances and 245  
other equipment or standards under the Ohio building code under 246  
Chapter 3781. of the Revised Code; 247

(3) For demand savings when residential advanced metering 248  
is not available, the amount of kilowatt hours shifted to 249  
periods other than periods of high demand, if this method of 250  
determining gross energy savings is included in the approved 251  
portfolio. 252

(E) For gross energy savings determined under division (D) 253  
(2) of this section, only permit customer incentives on 254  
equipment that exceeds federal energy standards or Ohio building 255  
code standards; 256

(F) Exclude gross energy savings from any physical device 257  
or equipment that has not been enrolled in the program with the 258  
permission or at the request of a participating customer. 259

(G) For gross energy savings determined under division (D) 260  
(2) of this section, the utility shall only claim savings for 261  
equipment in cases in which it has paid a customer incentive. 262

**Sec. 4928.6641.** An electric distribution utility's 263  
portfolio under sections 4928.6630 to 4928.6665 of the Revised 264  
Code shall be cost-effective based on a utility cost test that 265  
compares the total cost of the portfolio's measurable programs 266  
to any of the following: 267

(A) Avoided electric generation, transmission, and 268  
distribution costs; 269

(B) Reductions in market prices for energy and capacity; 270

(C) Reductions in utility credit and collection costs; 271

<u>(D) Any other quantifiable utility system benefits.</u>	272
<u>Sec. 4928.6642. An electric distribution utility's</u>	273
<u>portfolio under sections 4928.6630 to 4928.6665 of the Revised</u>	274
<u>Code shall ensure that any savings on a customer's monthly bill</u>	275
<u>or reduction in energy usage that are the result of the</u>	276
<u>customer's participation in any federal energy efficiency</u>	277
<u>program or use of a federal tax rebate or credit shall not be</u>	278
<u>attributed to the utility's programs.</u>	279
<u>Sec. 4928.6644. Customer incentives offered by an electric</u>	280
<u>distribution utility through a portfolio under sections</u>	281
<u>4928.6630 to 4928.6665 of the Revised Code shall provide a</u>	282
<u>meaningful inducement for customers to participate in the cost-</u>	283
<u>effective delivery of projected energy savings. Utility</u>	284
<u>incentives through such a portfolio shall not exceed ten per</u>	285
<u>cent of actual program costs, on an after-tax basis and</u>	286
<u>excluding any advertising or marketing dollars, and shall not</u>	287
<u>count toward the net cost of the portfolio under section</u>	288
<u>4928.6647 of the Revised Code or the rate caps under section</u>	289
<u>4928.6650 of the Revised Code. The public utilities commission</u>	290
<u>may adopt rules to implement this section.</u>	291
<u>Sec. 4928.6645. If an electric distribution utility with a</u>	292
<u>portfolio approved by the public utilities commission under</u>	293
<u>sections 4928.6630 to 4928.6665 of the Revised Code produces or</u>	294
<u>pays for any advertisement or marketing material to promote</u>	295
<u>energy savings programs established under the portfolio, the</u>	296
<u>advertisement or marketing material shall include a description</u>	297
<u>of the specific energy savings programs that the utility is</u>	298
<u>promoting and offering to its customers.</u>	299
<u>Sec. 4928.6646. The recovery of any revenue through either</u>	300
<u>mechanism described in division (E) (1) (c) of section 4928.6633</u>	301

of the Revised Code under an electric distribution utility 302  
portfolio approved under section 4928.6634 of the Revised Code 303  
shall not count toward the net cost of the portfolio under 304  
section 4928.6647 of the Revised Code or the rate caps under 305  
section 4928.6650 of the Revised Code. The recovery of any 306  
revenue through any such mechanism is not subject to sections 307  
4928.6655 and 4928.6657 of the Revised Code. 308

**Sec. 4928.6647.** The net cost of an electric distribution 309  
utility's portfolio under sections 4928.6630 to 4928.6665 of the 310  
Revised Code shall not exceed two and one-quarter per cent of 311  
the difference between the utility's annual total electric 312  
operating revenues for the previous year as reported in the 313  
utility's FERC financial report, FERC form 1, account 400, 314  
required by the federal energy regulatory commission less the 315  
purchased power expense, account 555, for the same year. The 316  
utility's net cost equals the utility's total program costs for 317  
a portfolio approved by the public utilities commission minus 318  
eighty per cent of any revenues the utility collects during the 319  
same program year from capacity, environmental, and other 320  
attributes of the utility's energy savings programs, including 321  
bidding efficiency into the wholesale market operated by PJM 322  
interconnection, L.L.C. The utility shall retain twenty per cent 323  
of revenues received from program energy savings that are bid 324  
into the wholesale market, which revenues shall be separate from 325  
utility incentives described in section 4928.6644 of the Revised 326  
Code. 327

**Sec. 4928.6650.** (A) A utility's portfolio costs shall not 328  
result in a rate that produces a monthly charge for residential 329  
customers that is greater than one dollar and fifty cents per 330  
customer per month or for nonresidential retail customers that 331  
is greater than seven dollars and fifty cents per customer per 332

month. 333

(B) If a higher than expected number of residential 334  
customers opt out of the portfolio under section 4928.6657 of 335  
the Revised Code, the utility automatically is authorized to 336  
reduce spending under its approved portfolio to ensure that the 337  
utility complies with division (A) of this section. 338

**Sec. 4928.6653.** The following applies to gross annual 339  
energy savings from transmission and distribution system 340  
investments that result in measurable energy savings: 341

(A) The investments shall not be considered to be a 342  
program within an electric distribution utility portfolio under 343  
sections 4928.6630 to 4928.6665 of the Revised Code for cost 344  
recovery and incentive purposes under the portfolio. 345

(B) The energy savings shall count toward determining 346  
whether the utility achieved its annual gross energy savings 347  
required under division (A) of section 4928.6639 of the Revised 348  
Code. 349

**Sec. 4928.6655.** (A) Mercantile customers shall be 350  
automatically opted out of any opportunities to participate in 351  
an electric distribution utility's portfolio and any portfolio 352  
cost recovery unless they affirmatively choose to opt in to the 353  
utility's portfolio in writing. 354

(B) After the public utilities commission approves a 355  
utility's portfolio under section 4928.6634 of the Revised Code, 356  
the utility shall send, to all mercantile customers in its 357  
certified territory, a written notice describing the option for 358  
such customers to affirmatively opt in to portfolio 359  
participation. 360

(1) The opt-in notice shall provide the cost of 361

participating in the portfolio to the mercantile customer. 362

(2) A mercantile customer submitting a written opt-in 363  
application, as prescribed by the utility, shall be deemed to 364  
have opted in. 365

(C) Mercantile customers that opt in shall remain as an 366  
opt-in customer for a period of not less than twelve months from 367  
the date the customer first receives the benefit of 368  
participation. 369

**Sec. 4928.6657.** (A) At the start of a new portfolio, an 370  
electric distribution utility that has a portfolio approved 371  
under section 4928.6634 of the Revised Code shall provide 372  
residential customers and nonresidential retail customers with 373  
the option to opt out of portfolio participation and cost 374  
recovery for the portfolio or, for customers that have 375  
previously opted out, to opt in to such participation. Within 376  
five business days after a portfolio is approved by the public 377  
utilities commission, the utility shall send, to all residential 378  
customers and nonresidential retail customers in its certified 379  
territory, a written notice describing the options to opt out of 380  
and opt back in to participation in the portfolio. Within thirty 381  
days after the portfolio's approval, the utility shall send, to 382  
the residential customers and nonresidential retail customers, a 383  
second written notice with the same content as the first notice. 384  
The time period during which a customer may opt out of, or opt 385  
in to, participation shall extend at least forty-five days from 386  
the date of the postmark on the first written notice. If a 387  
customer, as prescribed by the utility, indicates the customer's 388  
intent to opt out or opt in before the deadline has elapsed, the 389  
customer shall be deemed to have opted out or opted in, as 390  
applicable. 391

(B) The opt-out and opt-in process shall permit customers 392  
to express the intent to opt out or to opt in by returning a 393  
postcard or similar notice to the utility. The process also 394  
shall include alternative methods, such as a telephonic or an 395  
internet method, provided that these alternative methods allow 396  
for a verification of the customer's election to opt out or opt 397  
in. 398

(C) If, upon the expiration of its term, a portfolio is 399  
renewed or if a new portfolio is approved by the commission, a 400  
customer's election to opt out of participation in a previous 401  
portfolio pursuant to division (A) of this section remains in 402  
effect until the customer elects to opt in as prescribed in the 403  
notices required under division (A) of this section. 404

**Sec. 4928.6660. An electric services company that promotes** 405  
**energy savings and the use of electric distribution utility** 406  
**energy savings programs shall be eligible to be considered a** 407  
**third party to whom the customer may convey an energy savings** 408  
**incentive associated with participation in a utility energy** 409  
**savings program if all of the following are true:** 410

(A) The electric services company has obtained the 411  
customer's written consent. 412

(B) The electric services company has verified the 413  
customer's identity by providing the customer's electric 414  
distribution utility account number or service delivery 415  
identifier number. 416

(C) The electric services company has explained how the 417  
incentive being conveyed meets the energy savings program 418  
eligibility requirements. 419

(D) The electric services company produces evidence that 420

the customer completed the program. This evidence may be in the 421  
form of a product identification code, product serial number, or 422  
similar evidence that proves installation or delivery of an 423  
eligible product under the energy savings program. 424

**Sec. 4928.6665.** (A) An electric distribution utility's 425  
portfolio approved by the public utilities commission under 426  
section 4928.6634 of the Revised Code shall be subject to an 427  
annual cost-effectiveness and compliance review over the term of 428  
the portfolio. As part of the annual review, the utility shall 429  
review the cost-effectiveness of its portfolio according to the 430  
utility cost test and inputs described in section 4928.6641 of 431  
the Revised Code and ensure the requirements of section 432  
4928.6642 of the Revised Code are met. Based on the cost- 433  
effectiveness review, the utility may update its portfolio as 434  
needed. 435

(B) Not later than the fifteenth day of April each year, 436  
the utility shall file with the commission a report of its 437  
annual review for the preceding year. 438

(C) Not later than July 1, 2026, and every three years 439  
thereafter, the commission shall review each report received 440  
pursuant to division (B) of this section and, in accordance with 441  
section 101.68 of the Revised Code, submit a report to the 442  
general assembly that includes a compilation of utility reports 443  
received and an overview of utility compliance and energy 444  
savings. 445

(D) Based on the results of the commission's review of a 446  
utility's report, reasonable costs for evaluation, measurement, 447  
and verification for each utility's program shall be recovered 448  
through the affected utility's portfolio cost recovery 449  
mechanism. Such costs shall not be considered as portfolio costs 450



or included in any calculations required under section 4928.6647 451  
of the Revised Code or the rate caps under section 4928.6650 of 452  
the Revised Code. 453

(E) During the review under this section and subject to 454  
the general assembly's findings regarding the utility's 455  
performance and compliance described in the commission's report, 456  
the utility shall continue to offer customers a portfolio of 457  
energy savings programs. 458

**Section 2.** That existing section 4928.02 of the Revised 459  
Code is hereby repealed. 460