

As Reported by the House Public Utilities Committee

135th General Assembly

Regular Session

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**

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, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;

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

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

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

(E) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language;

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

(G) Recognize the continuing emergence of competitive

electricity markets through the development and implementation	47
of flexible regulatory treatment;	48
(H) Ensure effective competition in the provision of	49
retail electric service by avoiding anticompetitive subsidies	50
flowing from a noncompetitive retail electric service to a	51
competitive retail electric service or to a product or service	52
other than retail electric service, and vice versa, including by	53
prohibiting the recovery of any generation-related costs through	54
distribution or transmission rates;	55
(I) Ensure retail electric service consumers protection	56
against unreasonable sales practices, market deficiencies, and	57
market power;	58
(J) Provide coherent, transparent means of giving	59
appropriate incentives to technologies that can adapt	60
successfully to potential environmental mandates;	61
(K) Encourage implementation of distributed generation	62
across customer classes through regular review and updating of	63
administrative rules governing critical issues such as, but not	64
limited to, interconnection standards, standby charges, and net	65
metering;	66
(L) Protect at-risk populations, including, but not	67
limited to, when considering the implementation of any new	68
advanced energy or renewable energy resource;	69
(M) Encourage the education of small business owners in	70
this state regarding the use of, and encourage the use of,	71
energy efficiency programs and alternative energy resources in	72
their businesses;	73
(N) <u>Encourage electric distribution utilities to develop</u>	74
<u>voluntary portfolios of energy savings programs to help their</u>	75

<u>customers to save energy;</u>	76
<u>(O) Facilitate the state's effectiveness in the global economy;</u>	77
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<u>(P) Encourage cost-effective, timely, and efficient access to and sharing of customer usage data with customers and competitive suppliers to promote customer choice and grid modernization;</u>	79
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<u>(P) Ensure that a customer's data is provided in a standard format and provided to third parties in as close to real time as is economically justifiable in order to spur economic investment and improve the energy options of individual customers.</u>	83
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<u>In carrying out this policy, the commission shall consider rules as they apply to the costs of electric distribution infrastructure, including, but not limited to, line extensions, for the purpose of development in this state.</u>	88
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<u>Sec. 4928.6630. As used in sections 4928.6630 to 4928.6665 of the Revised Code:</u>	92
<u>Sec. 4928.6630. As used in sections 4928.6630 to 4928.6665 of the Revised Code:</u>	93
<u>"Behavioral energy savings" means energy savings that occurs as a result of a change in a residential retail electric customer's pattern of electricity use.</u>	94
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<u>"Nonresidential retail customer" means a customer that is not a residential customer or a mercantile customer.</u>	97
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<u>"Energy savings" includes energy efficiency savings and peak demand reduction savings.</u>	99
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<u>Sec. 4928.6631. An electric distribution utility may submit an application to the public utilities commission for approval of a portfolio of energy savings programs to assist</u>	101
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<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
Sec. 4928.6634. <u>(A) The public utilities commission shall</u>	155
<u>conduct hearings on a portfolio application.</u>	156
<u>(B) Not later than one hundred eighty days after receiving</u>	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

<u>month.</u>	333
<u>(B) If a higher than expected number of residential</u>	334
<u>customers opt out of the portfolio under section 4928.6657 of</u>	335
<u>the Revised Code, the utility automatically is authorized to</u>	336
<u>reduce spending under its approved portfolio to ensure that the</u>	337
<u>utility complies with division (A) of this section.</u>	338
<u>Sec. 4928.6653.</u> <u>The following applies to gross annual</u>	339
<u>energy savings from transmission and distribution system</u>	340
<u>investments that result in measurable energy savings:</u>	341
<u>(A) The investments shall not be considered to be a</u>	342
<u>program within an electric distribution utility portfolio under</u>	343
<u>sections 4928.6630 to 4928.6665 of the Revised Code for cost</u>	344
<u>recovery and incentive purposes under the portfolio.</u>	345
<u>(B) The energy savings shall count toward determining</u>	346
<u>whether the utility achieved its annual gross energy savings</u>	347
<u>required under division (A) of section 4928.6639 of the Revised</u>	348
<u>Code.</u>	349
<u>Sec. 4928.6655.</u> <u>(A) Mercantile customers shall be</u>	350
<u>automatically opted out of any opportunities to participate in</u>	351
<u>an electric distribution utility's portfolio and any portfolio</u>	352
<u>cost recovery unless they affirmatively choose to opt in to the</u>	353
<u>utility's portfolio in writing.</u>	354
<u>(B) After the public utilities commission approves a</u>	355
<u>utility's portfolio under section 4928.6634 of the Revised Code,</u>	356
<u>the utility shall send, to all mercantile customers in its</u>	357
<u>certified territory, a written notice describing the option for</u>	358
<u>such customers to affirmatively opt in to portfolio</u>	359
<u>participation.</u>	360
<u>(1) The opt-in notice shall provide the cost of</u>	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