

**As Introduced**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**H. B. No. 6**

**Representatives Callender, Wilkin**

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**A BILL**

To amend sections 3706.02, 3706.03, 4928.644, and 1  
4928.66 and to enact sections 3706.40, 3706.42, 2  
3706.44, 3706.45, 3706.46, 3706.47, 3706.471, 3  
3706.48, 3706.481, 3706.482, 3706.49, 3706.50, 4  
4928.46, 4928.47, and 4928.471 of the Revised 5  
Code to create the Ohio Clean Air Program, to 6  
facilitate and encourage electricity production 7  
and use from clean air resources, to facilitate 8  
investment to reduce the emissions from other 9  
generating technologies that can be readily 10  
dispatched to satisfy demand in real time, and 11  
proactively engage the buying power of consumers 12  
in this state for the purpose of improving air 13  
quality in this state. 14

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

**Section 1.** That sections 3706.02, 3706.03, 4928.644, and 15  
4928.66 be amended and sections 3706.40, 3706.42, 3706.44, 16  
3706.45, 3706.46, 3706.47, 3706.471, 3706.48, 3706.481, 17  
3706.482, 3706.49, 3706.50, 4928.46, 4928.47, and 4928.471 of 18  
the Revised Code be enacted to read as follows: 19

**Sec. 3706.02.** (A) There is hereby created the Ohio air 20  
quality development authority. Such authority is a body both 21  
corporate and politic in this state, and the carrying out of its 22  
purposes and the exercise by it of the powers conferred by 23  
Chapter 3706. of the Revised Code shall be held to be, and are 24  
hereby determined to be, essential governmental functions and 25  
public purposes of the state, but the authority shall not be 26  
immune from liability by reason thereof. 27

(B) The authority shall consist of ~~seven~~ eleven members as 28  
follows: ~~five~~ 29

(1) Five members appointed by the governor, with the 30  
advice and consent of the senate, no more than three of whom 31  
shall be members of the same political party, ~~and the~~ 32

(2) The director of environmental protection and the, who 33  
shall be a member ex officio without compensation; 34

(3) The director of health, who shall be ~~members~~ a member 35  
ex officio without compensation; 36

(4) Four legislative members, who shall be members ex 37  
officio without compensation. The speaker of the house of 38  
representatives, the president of the senate, and the minority 39  
leader of each house shall each appoint one of the legislative 40  
members. The legislative members may participate fully in all 41  
the board's deliberations and activities. ~~Each~~ 42

Each appointive member shall be a resident of the state, 43  
and a qualified elector therein. The members of the authority 44  
first appointed shall continue in office for terms expiring on 45  
June 30, 1971, June 30, 1973, June 30, 1975, June 30, 1977, and 46  
June 30, 1978, respectively, the term of each member to be 47  
designated by the governor. Appointed members' terms of office 48

shall be for eight years, commencing on the first day of July 49  
and ending on the thirtieth day of June. Each appointed member 50  
shall hold office from the date of ~~his~~ appointment until the end 51  
of the term for which ~~he was~~ appointed. Any member appointed to 52  
fill a vacancy occurring prior to the expiration of the term for 53  
which ~~his~~ the member's predecessor was appointed shall hold 54  
office for the remainder of such term. Any appointed member 55  
shall continue in office subsequent to the expiration date of 56  
~~his~~ the member's term until ~~his~~ the member's successor takes 57  
office, or until a period of sixty days has elapsed, whichever 58  
occurs first. A member of the authority is eligible for 59  
reappointment. Each appointed member of the authority, before 60  
entering upon ~~his~~ official duties, shall take an oath as 61  
provided by Section 7 of Article XV, Ohio Constitution. The 62  
governor may at any time remove any member of the authority for 63  
misfeasance, nonfeasance, or malfeasance in office. The 64  
authority shall elect one of its appointed members as ~~chairman~~ 65  
chairperson and another as ~~vice-chairman~~ vice-chairperson, and 66  
shall appoint a secretary-treasurer who need not be a member of 67  
the authority. Four members of the authority shall constitute a 68  
quorum, and the affirmative vote of four members shall be 69  
necessary for any action taken by vote of the authority. No 70  
vacancy in the membership of the authority shall impair the 71  
rights of a quorum by such vote to exercise all the rights and 72  
perform all the duties of the authority. 73

~~Before~~ (C) Except as provided in division (D) of this 74  
section, before the issuance of any air quality revenue bonds 75  
under Chapter 3706. of the Revised Code, each appointed member 76  
of the authority shall give a surety bond to the state in the 77  
penal sum of twenty-five thousand dollars and the secretary- 78  
treasurer shall give such a bond in the penal sum of fifty 79

thousand dollars, each such surety bond to be conditioned upon 80  
the faithful performance of the duties of the office, to be 81  
executed by a surety company authorized to transact business in 82  
this state, and to be approved by the governor and filed in the 83  
office of the secretary of state. ~~Each~~ Except as provided in 84  
division (B) (4) of this section, each appointed member of the 85  
authority shall receive an annual salary of five thousand 86  
dollars, payable in monthly installments. Each member shall be 87  
reimbursed for ~~his~~ the actual expenses necessarily incurred in 88  
the performance of ~~his~~ official duties. All expenses incurred in 89  
carrying out Chapter 3706. of the Revised Code shall be payable 90  
solely from funds provided under Chapter 3706. of the Revised 91  
Code, appropriated for such purpose by the general assembly, or 92  
provided by the controlling board. No liability or obligation 93  
shall be incurred by the authority beyond the extent to which 94  
moneys have been so provided or appropriated. 95

(D) The four legislative members appointed under division 96  
(B) (4) of this section shall be exempt from the requirement 97  
under division (C) of this section to give a surety bond. 98

**Sec. 3706.03.** (A) It is hereby declared to be the public 99  
policy of the state through the operations of the Ohio air 100  
quality development authority under this chapter to contribute 101  
toward one or more of the following: ~~to~~ 102

(1) To provide for the conservation of air as a natural 103  
resource of the state, ~~and to~~ ; 104

(2) To prevent or abate the pollution thereof, ~~to~~ ; 105

(3) To provide for the comfort, health, safety, and 106  
general welfare of all employees, as well as all other 107  
inhabitants of the state, ~~to~~ ; 108

(4) To assist in the financing of air quality facilities 109  
for industry, commerce, distribution, and research, including 110  
public utility companies,~~to~~; 111

(5) To create or preserve jobs and employment 112  
opportunities or improve the economic welfare of the people, or 113  
assist and cooperate with governmental agencies in achieving 114  
such purposes; 115

(6) To maintain operations of certified clean air 116  
resources, as defined in section 3706.40 of the Revised Code, 117  
that, through continued operation, are expected to provide the 118  
greatest quantity of carbon-dioxide-free electric energy 119  
generation, and to encourage the operation and development of 120  
other clean air resources that provide carbon-dioxide-free 121  
electric energy generation; 122

(7) To encourage reduced emissions resources, as defined 123  
in section 3706.40 of the Revised Code, to reduce the resources' 124  
emissions. 125

(B) In furtherance of such public policy the Ohio air 126  
quality development authority may~~initiate~~ do any of the 127  
following: 128

(1) Initiate, acquire, construct, maintain, repair, and 129  
operate air quality projects or cause the same to be operated 130  
pursuant to a lease, sublease, or agreement with any person or 131  
governmental agency;~~may make~~ 132

(2) Make loans and grants to governmental agencies for the 133  
acquisition or construction of air quality facilities by such 134  
governmental agencies;~~may make~~ 135

(3) Make loans to persons for the acquisition or 136  
construction of air quality facilities by such persons;~~may~~ 137

~~enter~~ 138

(4) Enter into commodity contracts with, or make loans for 139  
the purpose of entering into commodity contracts to, any person, 140  
governmental agency, or entity located within or without the 141  
state in connection with the acquisition or construction of air 142  
quality facilities; ~~and may issue~~ 143

(5) Issue air quality revenue bonds of this state payable 144  
solely from revenues, to pay the cost of such projects, 145  
including any related commodity contracts. 146

(C) Any air quality project shall be determined by the 147  
authority to be not inconsistent with any applicable air quality 148  
standards duly established and then required to be met pursuant 149  
to the "Clean Air Act," 84 Stat. 1679 (1970), 42 U.S.C.A. 1857, 150  
as amended. Any resolution of the authority providing for 151  
acquiring or constructing such projects or for making a loan or 152  
grant for such projects shall include a finding by the authority 153  
that such determination has been made. Determinations by 154  
resolution of the authority that a project is an air quality 155  
facility under this chapter and is consistent with the purposes 156  
of section 13 of Article VIII, Ohio Constitution, and this 157  
chapter, shall be conclusive as to the validity and 158  
enforceability of the air quality revenue bonds issued to 159  
finance such project and of the resolutions, trust agreements or 160  
indentures, leases, subleases, sale agreements, loan agreements, 161  
and other agreements made in connection therewith, all in 162  
accordance with their terms. 163

Sec. 3706.40. As used in sections 3706.40 to 3706.50 of 164  
the Revised Code: 165

(A) "Clean air resource" means an electric generating 166

facility that emits zero carbon dioxide and that produces 167  
electricity from the utilization or consumption of any form of 168  
primary energy that satisfies all of the following criteria: 169

(1) The facility does not receive state tax exemptions, 170  
deferrals, exclusions, allowances, payments, credits, 171  
deductions, or reimbursements calculated using a metric that 172  
provides a value for air emissions not produced by the facility 173  
through any program other than the Ohio clean air program 174  
created under section 3706.42 of the Revised Code. 175

(2) The facility is not wholly owned by a municipal or 176  
cooperative corporation or a group, association, or consortium 177  
of those corporations. 178

(3) The facility is not used to supply customers of a 179  
wholly owned municipal or cooperative corporation or a group, 180  
association, or consortium of those corporations. 181

(4) Either of the following: 182

(a) The facility has made a significant historical 183  
contribution to the air quality of the state by minimizing 184  
emissions that result from electricity generated in this state. 185

(b) The facility will make a significant contribution 186  
toward minimizing emissions that result from electric generation 187  
in this state. 188

(5) The facility is interconnected with PJM 189  
interconnection, L.L.C., or its successor organization. 190

(6) The facility is either of the following: 191

(a) A major utility facility as defined in section 4906.01 192  
of the Revised Code; 193

(b) An economically significant wind farm as defined in 194  
section 4906.13 of the Revised Code. 195

(B) "Reduced emissions resource" means an electric 196  
generating facility that emits a reduced amount of carbon 197  
dioxide in the production of electricity from the utilization or 198  
consumption of any form of primary energy that satisfies all of 199  
the following criteria: 200

(1) The facility does not receive state tax exemptions, 201  
deferrals, exclusions, allowances, payments, credits, 202  
deductions, or reimbursements calculated using a metric that 203  
provides a value for air emissions not produced by the facility 204  
through any program other than the Ohio clean air program 205  
created under section 3706.42 of the Revised Code. 206

(2) The facility is not wholly owned by a municipal or 207  
cooperative corporation or a group, association, or consortium 208  
of those corporations. 209

(3) The facility is not used to supply customers of a 210  
wholly owned municipal or cooperative corporation or a group, 211  
association, or consortium of those corporations. 212

(4) Either of the following: 213

(a) The facility has made a significant historical 214  
contribution to the air quality of the state by minimizing 215  
emissions that result from electricity generated in this state. 216

(b) The facility will make a significant contribution 217  
toward minimizing emissions that result from electric generation 218  
in this state. 219

(5) The facility is interconnected with PJM 220  
interconnection, L.L.C., or its successor organization. 221



(6) The facility is a major utility facility as defined in 222  
section 4906.01 of the Revised Code. 223

(C) "Program year" means the twelve-month period beginning 224  
the first day of June of a given year of the Ohio clean air 225  
program and ending the thirty-first day of May of the following 226  
year. 227

(D) "Electric distribution utility" and "renewable energy 228  
resource" have the same meanings as in section 4928.01 of the 229  
Revised Code. 230

(E) "Annual capacity factor" means the actual energy 231  
produced in a year divided by the energy that would have been 232  
produced if the facility was operating continuously at the 233  
maximum rating. 234

(F) "Clean air credit" means a credit that represents the 235  
clean air attributes of one megawatt hour of electric energy 236  
produced from a certified clean air resource. 237

**Sec. 3706.42.** (A) There is hereby created the Ohio clean 238  
air program. 239

(B) Any person owning or controlling an electric 240  
generating facility that meets the definition of a clean air 241  
resource or reduced emissions resource in section 3706.40 of the 242  
Revised Code may submit a written application with the Ohio air 243  
quality development authority for certification as a clean air 244  
resource or reduced emissions resource to be eligible to 245  
participate in the Ohio clean air program. Applications shall be 246  
submitted by the first day of February for any program year 247  
beginning the first day of June of the same calendar year. 248

(C) Applications shall include all of the following 249  
information: 250

<u>(1) The in-service date and estimated remaining useful</u>	251
<u>life of the resource;</u>	252
<u>(2) For existing resources, the quantity of megawatt hours</u>	253
<u>generated by the resource annually and the annual capacity</u>	254
<u>factor for each of the previous five calendar years;</u>	255
<u>(3) A forecast estimate of the annual quantity of megawatt</u>	256
<u>hours to be generated by the resource and the projected annual</u>	257
<u>capacity factor over the remaining useful life of the resource;</u>	258
<u>(4) A forecast estimate of the emissions that would occur</u>	259
<u>in this state during the remaining useful life of the resource</u>	260
<u>if the resource discontinued operations prior to the end of the</u>	261
<u>resource's useful life;</u>	262
<u>(5) Verified documentation demonstrating all of the</u>	263
<u>following:</u>	264
<u>(a) That certification as a clean air resource or reduced</u>	265
<u>emissions resource and participation in the Ohio clean air</u>	266
<u>program will permit the resource to reduce future emissions per</u>	267
<u>unit of electrical energy generated in this state;</u>	268
<u>(b) That without certification as a clean air resource or</u>	269
<u>reduced emissions resource, the positive contributions to the</u>	270
<u>air quality of this state that the resource has made and is</u>	271
<u>capable of making in the future may be diminished or eliminated;</u>	272
<u>(c) That the clean air resource or reduced emissions</u>	273
<u>resource meets the definition of a clean air resource or reduced</u>	274
<u>emissions resource, as applicable, in section 3706.40 of the</u>	275
<u>Revised Code;</u>	276
<u>(d) That the person seeking certification owns or controls</u>	277
<u>the resource.</u>	278

<u>(6) The resource's nameplate capacity;</u>	279
<u>(7) The level of funding requested from the Ohio clean air</u>	280
<u>program;</u>	281
<u>(8) Any other data or information that the authority</u>	282
<u>requests and determines is necessary to evaluate an application</u>	283
<u>for certification as a clean air resource or reduced emissions</u>	284
<u>resource or to demonstrate that certification would be in the</u>	285
<u>public interest.</u>	286
<u>(D) The authority shall post on the authority's web site</u>	287
<u>all applications and nonconfidential supporting materials</u>	288
<u>submitted under this section.</u>	289
<u>(E) Interested persons may file comments not later than</u>	290
<u>twenty days after the date that an application is posted on the</u>	291
<u>authority's web site. All comments shall be posted on the</u>	292
<u>authority's web site. An applicant may respond to those comments</u>	293
<u>not later than ten days thereafter.</u>	294
<u>Sec. 3706.44. (A) On or before the thirty-first day of</u>	295
<u>March, the Ohio air quality development authority shall review</u>	296
<u>all applications timely submitted under section 3706.42 of the</u>	297
<u>Revised Code and issue an order certifying a clean air resource</u>	298
<u>or reduced emissions resource for one or more program years as</u>	299
<u>determined by the authority in its sole discretion. A certified</u>	300
<u>clean air resource or certified reduced emissions resource shall</u>	301
<u>be eligible to participate in the Ohio clean air program,</u>	302
<u>provided that the resource continues to meet the definition of a</u>	303
<u>clean air resource or reduced emissions resource, as applicable,</u>	304
<u>in section 3706.40 of the Revised Code and any additional</u>	305
<u>requirements set by the authority.</u>	306
<u>(B) In the event the authority does not issue an order</u>	307

under division (A) of this section by the thirty-first day of 308  
March, each electric generating facility included in a timely 309  
and properly filed application shall be deemed a clean air 310  
resource or reduced emissions resource, as applicable, that is 311  
eligible for participation in the Ohio clean air program. 312

(C)(1) The authority, in its sole discretion, may 313  
decertify a clean air resource or reduced emissions resource at 314  
any time if it determines that certification is not in the 315  
public interest. 316

(2) Before decertifying a clean air resource or reduced 317  
emissions resource, the authority shall hold a public hearing 318  
and allow for public comment. 319

**Sec. 3706.45.** (A) During the last year in which 320  
certification as a clean air resource or reduced emissions 321  
resource is effective under section 3706.44 of the Revised Code, 322  
the Ohio air quality development authority shall reevaluate the 323  
eligibility of the clean air resource or reduced emissions 324  
resource for participation in the Ohio clean air program. At the 325  
time of reevaluation, if the clean air resource or reduced 326  
emissions resource still meets the definition of a clean air 327  
resource or reduced emissions resource, as applicable, in 328  
section 3706.40 of the Revised Code and any additional 329  
requirements that were imposed by the authority when the 330  
resource was last certified, the authority shall recertify the 331  
resource for one or more program years. 332

(B)(1) If the authority recertifies the clean air resource 333  
or reduced emissions resource under division (A) of this 334  
section, the authority may impose requirements on the clean air 335  
resource or reduced emissions resource that are in addition to 336  
any requirements that were imposed when the resource was last 337

certified. If additional requirements are imposed at the time of 338  
recertification, the resource shall comply with both the old 339  
requirements and the new requirements. 340

(2) The authority shall adopt rules in accordance with 341  
Chapter 119. of the Revised Code to determine the amount of time 342  
during which a clean air resource or reduced emissions resource 343  
must come into compliance with the new requirements. 344

**Sec. 3706.46.** (A) For the purpose of funding benefits 345  
provided by the Ohio clean air program, there is hereby created 346  
the Ohio clean air program fund. The fund shall be in the 347  
custody of the state treasurer but shall not be part of the 348  
state treasury. The fund shall consist of the charges under 349  
section 3706.47 of the Revised Code. All interest generated by 350  
the fund shall be retained in the fund and used for the purpose 351  
of funding the Ohio clean air program. 352

(B) The treasurer shall distribute the moneys in the Ohio 353  
clean air program fund in accordance with the directions 354  
provided by the Ohio air quality development authority. 355

**Sec. 3706.47.** (A) Each retail electric customer of an 356  
electric distribution utility in this state shall pay a per- 357  
account monthly charge, which shall be billed and collected by 358  
each electric distribution utility and remitted to the state 359  
treasurer for deposit into the Ohio clean air program fund, 360  
created under section 3706.46 of the Revised Code. 361

(B) The monthly charges established under division (A) of 362  
this section shall be: 363

(1) For customers classified by the utility as 364  
residential, two dollars and fifty cents; 365

(2) For customers classified by the utility as commercial, 366

twenty dollars, except as provided in division (B) (4) of this 367  
section; 368

(3) For customers classified by the utility as industrial, 369  
two hundred fifty dollars, except as provided in division (B) (4) 370  
of this section; 371

(4) For customers classified by the utility as commercial 372  
or industrial that exceeded forty-five million kilowatt hours of 373  
electricity at a single location in the preceding year, two 374  
thousand five hundred dollars. 375

(C) Except as provided in division (D) of this section, a 376  
customer required to pay the monthly charge under divisions (A) 377  
and (B) of this section shall be exempt from paying costs 378  
associated with the requirements under sections 4928.64 and 379  
4928.66 of the Revised Code, unless the customer opts, in 380  
accordance with section 3706.471 of the Revised Code, to pay 381  
those costs in addition to the charge imposed under this 382  
section. 383

(D) A customer required to pay the monthly charge under 384  
divisions (A) and (B) of this section shall continue to pay the 385  
following costs associated with the requirements under sections 386  
4928.64 and 4928.66 of the Revised Code: 387

(1) Costs prudently incurred for contractual obligations 388  
that existed prior to the effective date of this section by an 389  
electric distribution utility in reliance on the requirements 390  
under sections 4928.64 and 4928.66 of the Revised Code; 391

(2) Costs prudently incurred by an electric distribution 392  
utility associated with programs approved by the public 393  
utilities commission under section 4928.64 or 4928.66 of the 394  
Revised Code that are modified or eliminated as a result of 395

...B... of the 133rd general assembly, including any costs to 396  
discontinue those programs. 397

**Sec. 3706.471.** Any customer opting to pay costs associated 398  
with the requirements under sections 4928.64 and 4928.66 of the 399  
Revised Code shall do so by providing a written notice of intent 400  
to opt in to pay either or both the renewable energy monthly 401  
charge or the energy efficiency and peak demand reduction 402  
monthly charge to the electric distribution utility from which 403  
it receives service. The customer shall submit a complete copy 404  
of the opt-in notice to the secretary of the public utilities 405  
commission. The notice shall include all of the following: 406

(A) A statement indicating that the customer has elected 407  
to opt in; 408

(B) An indication of whether the customer is opting to pay 409  
both charges or which charge the customer is opting to pay; 410

(C) The effective date of the election to opt in; 411

(D) The account number for each customer account to which 412  
the opt in shall apply; 413

(E) The physical location of the customer's load center. 414

**Sec. 3706.48.** Each owner of a certified clean air resource 415  
or certified reduced emissions resource shall report to the Ohio 416  
air quality development authority, not later than seven days 417  
after the close of each month during a program year, the number 418  
of megawatt hours the resource produced in the previous month. 419

**Sec. 3706.481.** A certified clean air resource shall earn a 420  
clean air credit for each megawatt hour of electricity it 421  
produces. 422

**Sec. 3706.482.** (A) Not later than fourteen days after the 423

close of each month during a program year, the Ohio air quality 424  
development authority shall direct the treasurer of state to 425  
remit money from the Ohio clean air program fund, as long as 426  
there is sufficient money in the fund, to each owner of a 427  
certified clean air resource in the amount equivalent to the 428  
number of credits earned by the resource during the previous 429  
month multiplied by the credit price. 430

(B) (1) The price for each clean air credit in the first 431  
program year shall be nine dollars and twenty-five cents. 432

(2) In subsequent program years, the price may be adjusted 433  
for inflation using the gross domestic product implicit price 434  
deflator as published by the United States department of 435  
commerce, bureau of economic analysis. 436

**Sec. 3706.49.** (A) To facilitate air quality development 437  
related capital formation and investment by or in a certified 438  
reduced emissions resource, the Ohio air quality development 439  
authority may pledge a portion of moneys that may, in the 440  
future, be accumulated in the Ohio clean air program fund for 441  
the benefit of any certified reduced emissions resource, 442  
provided the resource agrees to be bound by the conditions the 443  
authority, in its sole discretion, may attach to the pledge. 444

(B) The authority shall not be required to direct 445  
distribution of moneys in the Ohio clean air program fund unless 446  
or until there are adequate moneys available in the Ohio clean 447  
air program fund. Nothing herein shall cause any such pledge to 448  
be construed or applied to create, directly or indirectly, a 449  
general obligation of or for this state. 450

**Sec. 3706.50.** (A) Not later than ninety days after the 451  
effective date of this section, the Ohio air quality development 452



authority shall adopt rules under Chapter 119. of the Revised 453  
Code that are necessary to begin implementation of the Ohio 454  
clean air program. The rules adopted under this division shall 455  
include provisions for tracking the number of clean air credits 456  
earned by each certified clean air resource during each month of 457  
a program year, based on the information reported under section 458  
3706.48 of the Revised Code. 459

(B) Not later than two hundred seventy-five days after the 460  
effective date of this section, the authority shall adopt rules 461  
under Chapter 119. of the Revised Code that are necessary for 462  
the further implementation and administration of the Ohio clean 463  
air program. 464

**Sec. 4928.46.** (A) In the event that the federal energy 465  
regulatory commission authorizes a program by which this state 466  
may take action to satisfy any portion of the capacity resource 467  
obligation associated with the organized wholesale market that 468  
functions to meet the capacity, energy services, and ancillary 469  
services needs of consumers in this state, the public utilities 470  
commission shall promptly review the program and submit a report 471  
of its findings to the general assembly. 472

(B) The report shall include any recommendations for 473  
legislation that may be necessary to permit this state to 474  
beneficially participate in any such program. 475

**Sec. 4928.47.** (A) As used in this section, "clean air 476  
resource" means any of the following: 477

(1) A clean air resource as defined in section 3706.40 of 478  
the Revised Code; 479

(2) A customer-sited renewable energy resource; 480

(3) A renewable energy resource that is a self-generator. 481

(B) (1) Through its general supervision, ratemaking, cost 482  
assignment, allocation, rate schedule approval, and rulemaking 483  
authority, as well as its authority under section 4905.31 of the 484  
Revised Code, the public utilities commission shall facilitate 485  
and encourage the establishment of retail purchased power 486  
agreements having a term of three years or more through which 487  
consumers commit to satisfy a portion of their electricity 488  
requirements from the output of a clean air resource. 489

(2) The commission's application and administration of 490  
this section shall be the same for all clean air resources 491  
regardless of whether the resource is certified or eligible for 492  
certification under the Ohio clean air program created under 493  
section 3706.42 of the Revised Code. 494

(3) In addition to any other benefits that may be 495  
available as a result of the commission's application of its 496  
authority under this section, on the effective date of a retail 497  
purchased power agreement, the commission may exempt such 498  
purchasing consumer from all of the following, provided the 499  
customer agrees to forgo the benefits from compliance with the 500  
programs established in sections 3706.42, 4928.64, and 4928.66 501  
of the Revised Code: 502

(a) The Ohio clean air program charge established in 503  
section 3706.47 of the Revised Code; 504

(b) The renewable energy charge for compliance with 505  
section 4928.64 of the Revised Code; 506

(c) The energy efficiency and peak demand reduction charge 507  
for compliance with section 4928.66 of the Revised Code. 508

(C) (1) Not later than ninety days after the effective date 509  
of this section, the commission shall promulgate rules under 510

Chapter 119. of the Revised Code as necessary to begin the 511  
implementation of this section. 512

(2) Not later than two hundred seventy-five days after the 513  
effective date of this section, the commission shall promulgate 514  
rules for further implementation and administration of this 515  
section. 516

**Sec. 4928.471.** (A) Not earlier than thirty days after the 517  
effective date of this section, an electric distribution utility 518  
may file an application to implement a decoupling mechanism for 519  
the 2019 calendar year and each calendar year thereafter. For an 520  
electric distribution utility that applies for a decoupling 521  
mechanism under this section, the base distribution rates for 522  
residential and commercial customers shall be decoupled to the 523  
base distribution revenue and revenue resulting from 524  
implementation of section 4928.66 of the Revised Code and 525  
recovered pursuant to an approved electric security plan under 526  
section 4928.143 of the Revised Code, as of the twelve-month 527  
period ending on December 31, 2018. An application under this 528  
division shall not be considered an application under section 529  
4909.18 of the Revised Code. 530

(B) The commission shall issue an order approving an 531  
application for a decoupling mechanism filed under division (A) 532  
of this section not later than sixty days after the application 533  
is filed. Before approving the application, the commission shall 534  
verify that the rate schedule or schedules are designed to 535  
recover the electric distribution utility's 2018 annual revenues 536  
as described in division (A) of this section and that the 537  
decoupling rate design is aligned with the rate design of the 538  
electric distribution utility's existing base distribution 539  
rates. The decoupling mechanism shall recover an amount equal to 540

the base distribution revenue and revenue resulting from 541  
implementation of section 4928.66 of the Revised Code and 542  
recovered pursuant to an approved electric security plan under 543  
section 4928.143 of the Revised Code, as of the twelve-month 544  
period ending on December 31, 2018. The decoupling mechanism 545  
shall be adjusted annually thereafter to reconcile any over 546  
recovery or under recovery from the prior year and to enable an 547  
electric distribution utility to recover the same level of 548  
revenues described in division (A) of this section in each year. 549

(C) The commission's approval of a decoupling mechanism 550  
under this section shall not affect any other rates, riders, 551  
charges, schedules, classifications, or services previously 552  
approved by the commission. The decoupling mechanism shall 553  
remain in effect until the next time that the electric 554  
distribution utility applies for and the commission approves 555  
base distribution rates for the utility under section 4909.18 of 556  
the Revised Code. 557

**Sec. 4928.644.** (A) The public utilities commission may 558  
reduce either baseline described in section 4928.643 of the 559  
Revised Code to adjust for new economic growth in the electric 560  
distribution utility's certified territory or in the electric 561  
services company's service area in this state. 562

(B) For an electric distribution utility, neither baseline 563  
shall include the load and usage of a customer who is subject to 564  
the monthly charge established under section 3706.47 of the 565  
Revised Code unless or until the customer opts to pay the charge 566  
associated with compliance with section 4928.64 of the Revised 567  
Code. 568

**Sec. 4928.66.** (A) (1) (a) Beginning in 2009, an electric 569  
distribution utility shall implement energy efficiency programs 570

that achieve energy savings equivalent to at least three-tenths 571  
of one per cent of the total, annual average, and normalized 572  
kilowatt-hour sales of the electric distribution utility during 573  
the preceding three calendar years to customers in this state. 574  
An energy efficiency program may include a combined heat and 575  
power system placed into service or retrofitted on or after the 576  
effective date of the amendment of this section by S.B. 315 of 577  
the 129th general assembly, September 10, 2012, or a waste 578  
energy recovery system placed into service or retrofitted on or 579  
after September 10, 2012, except that a waste energy recovery 580  
system described in division (A)(38)(b) of section 4928.01 of 581  
the Revised Code may be included only if it was placed into 582  
service between January 1, 2002, and December 31, 2004. For a 583  
waste energy recovery or combined heat and power system, the 584  
savings shall be as estimated by the public utilities 585  
commission. The savings requirement, using such a three-year 586  
average, shall increase to an additional five-tenths of one per 587  
cent in 2010, seven-tenths of one per cent in 2011, eight-tenths 588  
of one per cent in 2012, nine-tenths of one per cent in 2013, 589  
and one per cent in 2014. In 2015 and 2016, an electric 590  
distribution utility shall achieve energy savings equal to the 591  
result of subtracting the cumulative energy savings achieved 592  
since 2009 from the product of multiplying the baseline for 593  
energy savings, described in division (A)(2)(a) of this section, 594  
by four and two-tenths of one per cent. If the result is zero or 595  
less for the year for which the calculation is being made, the 596  
utility shall not be required to achieve additional energy 597  
savings for that year, but may achieve additional energy savings 598  
for that year. Thereafter, the annual savings requirements shall 599  
be, for years 2017, 2018, 2019, and 2020, one per cent of the 600  
baseline, and two per cent each year thereafter, achieving 601  
cumulative energy savings in excess of twenty-two per cent by 602

the end of 2027. For purposes of a waste energy recovery or 603  
combined heat and power system, an electric distribution utility 604  
shall not apply more than the total annual percentage of the 605  
electric distribution utility's industrial-customer load, 606  
relative to the electric distribution utility's total load, to 607  
the annual energy savings requirement. 608

(b) Beginning in 2009, an electric distribution utility 609  
shall implement peak demand reduction programs designed to 610  
achieve a one per cent reduction in peak demand in 2009 and an 611  
additional seventy-five hundredths of one per cent reduction 612  
each year through 2014. In 2015 and 2016, an electric 613  
distribution utility shall achieve a reduction in peak demand 614  
equal to the result of subtracting the cumulative peak demand 615  
reductions achieved since 2009 from the product of multiplying 616  
the baseline for peak demand reduction, described in division 617  
(A) (2) (a) of this section, by four and seventy-five hundredths 618  
of one per cent. If the result is zero or less for the year for 619  
which the calculation is being made, the utility shall not be 620  
required to achieve an additional reduction in peak demand for 621  
that year, but may achieve an additional reduction in peak 622  
demand for that year. In 2017 and each year thereafter through 623  
2020, the utility shall achieve an additional seventy-five 624  
hundredths of one per cent reduction in peak demand. 625

(2) For the purposes of divisions (A) (1) (a) and (b) of 626  
this section: 627

(a) The baseline for energy savings under division (A) (1) 628  
(a) of this section shall be the average of the total kilowatt 629  
hours the electric distribution utility sold in the preceding 630  
three calendar years. The baseline for a peak demand reduction 631  
under division (A) (1) (b) of this section shall be the average 632

peak demand on the utility in the preceding three calendar 633  
years, except that the commission may reduce either baseline to 634  
adjust for new economic growth in the utility's certified 635  
territory. Neither baseline shall include the load and usage of 636  
any of the following customers: 637

(i) Beginning January 1, 2017, a customer for which a 638  
reasonable arrangement has been approved under section 4905.31 639  
of the Revised Code; 640

(ii) A customer that has opted out of the utility's 641  
portfolio plan under section 4928.6611 of the Revised Code; 642

(iii) A customer that has opted out of the utility's 643  
portfolio plan under Section 8 of S.B. 310 of the 130th general 644  
assembly; 645

(iv) A customer who is subject to the monthly charge 646  
established by section 3706.47 of the Revised Code until or 647  
unless the customer opts to pay the costs associated with 648  
compliance with this section. 649

(b) The commission may amend the benchmarks set forth in 650  
division (A)(1)(a) or (b) of this section if, after application 651  
by the electric distribution utility, the commission determines 652  
that the amendment is necessary because the utility cannot 653  
reasonably achieve the benchmarks due to regulatory, economic, 654  
or technological reasons beyond its reasonable control. 655

(c) Compliance with divisions (A)(1)(a) and (b) of this 656  
section shall be measured by including the effects of all 657  
demand-response programs for mercantile customers of the subject 658  
electric distribution utility, all waste energy recovery systems 659  
and all combined heat and power systems, and all such mercantile 660  
customer-sited energy efficiency, including waste energy 661

recovery and combined heat and power, and peak demand reduction 662  
programs, adjusted upward by the appropriate loss factors. Any 663  
mechanism designed to recover the cost of energy efficiency, 664  
including waste energy recovery and combined heat and power, and 665  
peak demand reduction programs under divisions (A) (1) (a) and (b) 666  
of this section may exempt mercantile customers that commit 667  
their demand-response or other customer-sited capabilities, 668  
whether existing or new, for integration into the electric 669  
distribution utility's demand-response, energy efficiency, 670  
including waste energy recovery and combined heat and power, or 671  
peak demand reduction programs, if the commission determines 672  
that that exemption reasonably encourages such customers to 673  
commit those capabilities to those programs. If a mercantile 674  
customer makes such existing or new demand-response, energy 675  
efficiency, including waste energy recovery and combined heat 676  
and power, or peak demand reduction capability available to an 677  
electric distribution utility pursuant to division (A) (2) (c) of 678  
this section, the electric utility's baseline under division (A) 679  
(2) (a) of this section shall be adjusted to exclude the effects 680  
of all such demand-response, energy efficiency, including waste 681  
energy recovery and combined heat and power, or peak demand 682  
reduction programs that may have existed during the period used 683  
to establish the baseline. The baseline also shall be normalized 684  
for changes in numbers of customers, sales, weather, peak 685  
demand, and other appropriate factors so that the compliance 686  
measurement is not unduly influenced by factors outside the 687  
control of the electric distribution utility. 688

(d) (i) Programs implemented by a utility may include the 689  
following: 690

(I) Demand-response programs; 691



(II) Smart grid investment programs, provided that such programs are demonstrated to be cost-beneficial;

(III) Customer-sited programs, including waste energy recovery and combined heat and power systems;

(IV) Transmission and distribution infrastructure improvements that reduce line losses;

(V) Energy efficiency savings and peak demand reduction that are achieved, in whole or in part, as a result of funding provided from the universal service fund established by section 4928.51 of the Revised Code to benefit low-income customers through programs that include, but are not limited to, energy audits, the installation of energy efficiency insulation, appliances, and windows, and other weatherization measures.

(ii) No energy efficiency or peak demand reduction achieved under divisions (A) (2) (d) (i) (IV) and (V) of this section shall qualify for shared savings.

(iii) Division (A) (2) (c) of this section shall be applied to include facilitating efforts by a mercantile customer or group of those customers to offer customer-sited demand-response, energy efficiency, including waste energy recovery and combined heat and power, or peak demand reduction capabilities to the electric distribution utility as part of a reasonable arrangement submitted to the commission pursuant to section 4905.31 of the Revised Code.

(e) No programs or improvements described in division (A) (2) (d) of this section shall conflict with any statewide building code adopted by the board of building standards.

(B) In accordance with rules it shall adopt, the public utilities commission shall produce and docket at the commission

an annual report containing the results of its verification of 721  
the annual levels of energy efficiency and of peak demand 722  
reductions achieved by each electric distribution utility 723  
pursuant to division (A) of this section. A copy of the report 724  
shall be provided to the consumers' counsel. 725

(C) If the commission determines, after notice and 726  
opportunity for hearing and based upon its report under division 727  
(B) of this section, that an electric distribution utility has 728  
failed to comply with an energy efficiency or peak demand 729  
reduction requirement of division (A) of this section, the 730  
commission shall assess a forfeiture on the utility as provided 731  
under sections 4905.55 to 4905.60 and 4905.64 of the Revised 732  
Code, either in the amount, per day per undercompliance or 733  
noncompliance, relative to the period of the report, equal to 734  
that prescribed for noncompliances under section 4905.54 of the 735  
Revised Code, or in an amount equal to the then existing market 736  
value of one renewable energy credit per megawatt hour of 737  
undercompliance or noncompliance. Revenue from any forfeiture 738  
assessed under this division shall be deposited to the credit of 739  
the advanced energy fund created under section 4928.61 of the 740  
Revised Code. 741

(D) The commission may establish rules regarding the 742  
content of an application by an electric distribution utility 743  
for commission approval of a revenue decoupling mechanism under 744  
this division. Such an application shall not be considered an 745  
application to increase rates and may be included as part of a 746  
proposal to establish, continue, or expand energy efficiency or 747  
conservation programs. The commission by order may approve an 748  
application under this division if it determines both that the 749  
revenue decoupling mechanism provides for the recovery of 750  
revenue that otherwise may be forgone by the utility as a result 751

of or in connection with the implementation by the electric 752  
distribution utility of any energy efficiency or energy 753  
conservation programs and reasonably aligns the interests of the 754  
utility and of its customers in favor of those programs. 755

(E) The commission additionally shall adopt rules that 756  
require an electric distribution utility to provide a customer 757  
upon request with two years' consumption data in an accessible 758  
form. 759

**Section 2.** That existing sections 3706.02, 3706.03, 760  
4928.644, and 4928.66 of the Revised Code are hereby repealed. 761

**Section 3.** (A) Not earlier than two years after the 762  
effective date of this section, the Director of Environmental 763  
Protection may apply to the Administrator of the United States 764  
Environmental Protection Agency for an exemption from the 765  
requirement to implement the decentralized motor vehicle 766  
inspection and maintenance program established under section 767  
3704.14 of the Revised Code. In making the application and for 768  
purposes of complying with the "Federal Clean Air Act," the 769  
Director shall request the Administrator to authorize the 770  
implementation of the Ohio Clean Air Program established by this 771  
act as an alternative to the decentralized program in those 772  
areas of the state where the program is currently operating. 773

(B) As used in this section, "Federal Clean Air Act" has 774  
the same meaning as in section 3704.01 of the Revised Code. 775