

As Reported by the House Rules and Reference Committee

133rd General Assembly

Regular Session

2019-2020

Sub. H. B. No. 6

Representatives Callender, Wilkin

A BILL

To amend sections 303.213, 519.213, 713.081, 1
1710.06, 3706.02, 3706.03, 4906.10, 4906.13, 2
4906.20, 4906.201, 4928.01, 4928.02, 4928.142, 3
4928.143, 4928.20, 4928.61, 4928.62, 4928.641, 4
4928.645, 4928.66, 4928.6610, 5501.311, 5727.47, 5
and 5727.75; to amend, for the purpose of 6
adopting a new section number as indicated in 7
parentheses, section 519.214 (519.215); and to 8
enact new section 519.214 and sections 3706.40, 9
3706.42, 3706.44, 3706.46, 3706.47, 3706.48, 10
3706.481, 3706.482, 3706.483, 3706.485, 11
3706.486, 3706.49, 3706.50, 4905.311, 4906.101, 12
4906.203, 4928.147, 4928.148, 4928.46, 4928.47, 13
4928.471, 4928.647, 4928.661, 4928.75, and 14
4928.80; to repeal section 4928.6616; and to 15
repeal, effective January 1, 2020, sections 16
1710.061, 4928.64, 4928.643, 4928.644, and 17
4928.65 of the Revised Code to create the Ohio 18
Clean Air Program, to facilitate and encourage 19
electricity production and use from clean air 20
resources, and to proactively engage the buying 21
power of consumers in this state for the purpose 22
of improving air quality in this state. 23

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

Section 1. That sections 303.213, 519.213, 713.081, 24
3706.02, 3706.03, 4906.10, 4906.13, 4906.20, 4906.201, 4928.01, 25
4928.02, 4928.66, 4928.6610, 5727.47, and 5727.75 be amended; 26
section 519.214 (519.215) be amended for the purpose of adopting 27
a new section number as indicated in parentheses; and new 28
section 519.214 and sections 3706.40, 3706.42, 3706.44, 3706.46, 29
3706.47, 3706.48, 3706.481, 3706.482, 3706.483, 3706.485, 30
3706.486, 3706.49, 3706.50, 4905.311, 4906.101, 4906.203, 31
4928.147, 4928.148, 4928.46, 4928.47, 4928.471, 4928.647, 32
4928.661, 4928.75, and 4928.80 of the Revised Code be enacted to 33
read as follows: 34

Sec. 303.213. (A) As used in this section, "small wind 35
farm" means wind turbines and associated facilities ~~with a~~ 36
~~single interconnection to the electrical grid and designed for,~~ 37
~~or capable of, operation at an aggregate capacity of less than~~ 38
~~five megawatts~~ that are not subject to the jurisdiction of the 39
power siting board under sections 4906.20 and 4906.201 of the 40
Revised Code. 41

(B) Notwithstanding division (A) of section 303.211 of the 42
Revised Code, sections 303.01 to 303.25 of the Revised Code 43
confer power on a board of county commissioners or board of 44
zoning appeals to adopt zoning regulations governing the 45
location, erection, construction, reconstruction, change, 46
alteration, maintenance, removal, use, or enlargement of any 47
small wind farm, whether publicly or privately owned, or the use 48
of land for that purpose, which regulations may be more strict 49
than the regulations prescribed in rules adopted under division 50
(B) (2) of section 4906.20 of the Revised Code. 51

(C) The designation under this section of a small wind 52
farm as a public utility for purposes of sections 303.01 to 53
303.25 of the Revised Code shall not affect the classification 54
of a small wind farm for purposes of state or local taxation. 55

(D) Nothing in division (C) of this section shall be 56
construed as affecting the classification of a 57
telecommunications tower as defined in division (B) or (E) of 58
section 303.211 of the Revised Code or any other public utility 59
for purposes of state and local taxation. 60

Sec. 519.213. (A) As used in this section, "small wind 61
farm" means wind turbines and associated facilities ~~with a~~ 62
~~single interconnection to the electrical grid and designed for,~~ 63
~~or capable of, operation at an aggregate capacity of less than~~ 64
~~five megawatts~~ that are not subject to the jurisdiction of the 65
power siting board under sections 4906.20 and 4906.201 of the 66
Revised Code. 67

(B) Notwithstanding division (A) of section 519.211 of the 68
Revised Code, sections 519.02 to 519.25 of the Revised Code 69
confer power on a board of township trustees or board of zoning 70
appeals with respect to the location, erection, construction, 71
reconstruction, change, alteration, maintenance, removal, use, 72
or enlargement of any small wind farm, whether publicly or 73
privately owned, or the use of land for that purpose, which 74
regulations may be more strict than the regulations prescribed 75
in rules adopted under division (B)(2) of section 4906.20 of the 76
Revised Code. 77

(C) The designation under this section of a small wind 78
farm as a public utility for purposes of sections 519.02 to 79
519.25 of the Revised Code shall not affect the classification 80
of a small wind farm or any other public utility for purposes of 81

state or local taxation.

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(D) Nothing in division (C) of this section shall be construed as affecting the classification of a telecommunications tower as defined in division (B) or (E) of section 519.211 of the Revised Code or any other public utility for purposes of state and local taxation.

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Sec. 519.214. (A) If the power siting board issues a certificate to an economically significant wind farm or a large wind farm as those terms are defined in section 4906.13 of the Revised Code, to be located in whole or in part in the unincorporated area of a township, the certificate shall become effective on the ninetieth day after the day it is issued, unless, not later than that day, a referendum petition is filed with the board of elections to require the certificate to be submitted to the electors of the unincorporated area of the township for approval or rejection.

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(B) (1) A referendum petition submitted under division (A) of this section shall be signed by a number of qualified electors residing in the unincorporated area of the township equal to not less than eight per cent of the total votes cast for all candidates for governor in the unincorporated area of the township at the most recent general election at which a governor was elected.

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(2) Each part petition shall contain a brief description of the wind farm the certificate authorizes that is sufficient to identify the certificate. In addition to the requirements of this section, the requirements of section 3501.38 of the Revised Code shall apply to the petition.

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(3) The form of the petition shall be substantially as

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follows: 111

"PETITION FOR REFERENDUM OF WIND FARM CERTIFICATE 112

A proposal to approve or reject the wind farm certificate 113
issued for (description of wind farm) in the 114
unincorporated area of Township, County, 115
Ohio, adopted on (date) by the Board of Township 116
Trustees of Township, County, Ohio. 117

We, the undersigned, being electors residing in the 118
unincorporated area of Township, equal to not less 119
than eight per cent of the total vote cast for all candidates 120
for governor in the area at the preceding general election at 121
which a governor was elected, request the Board of Elections to 122
submit this proposal to the electors of the unincorporated area 123
of Township for approval or rejection at a special 124
election to be held on the day of the primary or general 125
election to be held on (date), pursuant to section 126
519.214 of the Revised Code. 127

..... Signature 128

..... Residence address 129

..... Date of signing 130

STATEMENT OF CIRCULATOR 131

I, (name of circulator), declare under penalty 132
of election falsification that I reside at the address appearing 133
below my signature; that I am the circulator of the foregoing 134
part petition containing (number) signatures; that I 135
have witnessed the affixing of every signature; that all signers 136
were to the best of my knowledge and belief qualified to sign; 137
and that every signature is to the best of my knowledge and 138

belief the signature of the person whose signature it purports 139
to be or of an attorney in fact acting pursuant to section 140
3501.382 of the Revised Code. 141

..... (Signature of circulator) 142

..... (Circulator's residence address) 143

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A 144
FELONY OF THE FIFTH DEGREE." 145

(C) Upon receiving the referendum petition, the board of 146
elections shall notify the board of township trustees that the 147
petition has been filed. If the board of elections determines 148
that the referendum petition is sufficient and valid, the board 149
shall notify the board of township trustees of that fact and 150
shall submit the certificate to the electors of the 151
unincorporated area of the township for approval or rejection at 152
a special election held on the day of the next primary or 153
general election occurring at least ninety days after the board 154
receives the petition. 155

(D) The certificate shall not take effect unless it is 156
approved by a majority of the electors voting on it. If the 157
certificate is approved by a majority of the electors voting on 158
it, the certificate shall take immediate effect. 159

Sec. ~~519.214~~ 519.215. Township zoning commissions, boards 160
of township trustees, and township boards of zoning appeals 161
shall comply with section 5502.031 of the Revised Code. 162

Sec. 713.081. (A) As used in this section, "small wind 163
farm" means wind turbines and associated facilities ~~with a~~ 164
~~single interconnection to the electrical grid and designed for,~~ 165
~~or capable of, operation at an aggregate capacity of less than~~ 166
~~five megawatts~~ that are not subject to the jurisdiction of the 167

power siting board under sections 4906.20 and 4906.201 of the 168
Revised Code. 169

(B) Sections 713.06 to 713.15 of the Revised Code confer 170
power on the legislative authority of a municipal corporation 171
with respect to the location, erection, construction, 172
reconstruction, change, alteration, maintenance, removal, use, 173
or enlargement of any small wind farm as a public utility, 174
whether publicly or privately owned, or the use of land for that 175
purpose, which regulations may be more strict than the 176
regulations prescribed in rules adopted under division (B) (2) of 177
section 4906.20 of the Revised Code. 178

(C) The designation under this section of a small wind 179
farm as a public utility for purposes of sections 713.06 to 180
713.15 of the Revised Code shall not affect the classification 181
of a small wind farm or any other public utility for purposes of 182
state or local taxation. 183

Sec. 3706.02. (A) There is hereby created the Ohio air 184
quality development authority. Such authority is a body both 185
corporate and politic in this state, and the carrying out of its 186
purposes and the exercise by it of the powers conferred by 187
Chapter 3706. of the Revised Code shall be held to be, and are 188
hereby determined to be, essential governmental functions and 189
public purposes of the state, but the authority shall not be 190
immune from liability by reason thereof. 191

(B) The authority shall consist of ~~seven~~ thirteen members 192
as follows: ~~five~~ 193

(1) Five members appointed by the governor, with the 194
advice and consent of the senate, no more than three of whom 195
shall be members of the same political party, ~~and the~~ 196

(2) The director of environmental protection and the, who 197
shall be a member ex officio without compensation; 198

(3) The director of health, who shall be members-a member 199
ex officio without compensation; 200

(4) Four legislative members, who shall be nonvoting 201
members ex officio without compensation. The speaker of the 202
house of representatives, the president of the senate, and the 203
minority leader of each house shall each appoint one of the 204
legislative members. The legislative members may not vote but 205
may otherwise participate fully in all the board's deliberations 206
and activities.-Each appointive 207

(5) Two members of the general public, who shall be voting 208
members without compensation. The speaker of the house of 209
representatives and the president of the senate shall each 210
appoint one member. These members' terms of office shall be for 211
four years. 212

Each appointed member shall be a resident of the state, 213
and a qualified elector therein. The members of the authority 214
first appointed shall continue in office for terms expiring on 215
June 30, 1971, June 30, 1973, June 30, 1975, June 30, 1977, and 216
June 30, 1978, respectively, the term of each member to be 217
designated by the governor. Appointed-Except as provided in 218
division (B) (5) of this section, appointed members' terms of 219
office shall be for eight years, commencing on the first day of 220
July and ending on the thirtieth day of June. Each appointed 221
member shall hold office from the date of-his appointment until 222
the end of the term for which he-was appointed. Any member 223
appointed to fill a vacancy occurring prior to the expiration of 224
the term for which-his the member's predecessor was appointed 225
shall hold office for the remainder of such term. Any appointed 226

member shall continue in office subsequent to the expiration 227
date of ~~his~~ the member's term until ~~his~~ the member's successor 228
takes office, or until a period of sixty days has elapsed, 229
whichever occurs first. A member of the authority is eligible 230
for reappointment. Each appointed member of the authority, 231
before entering upon ~~his~~ official duties, shall take an oath as 232
provided by Section 7 of Article XV, Ohio Constitution. The 233
governor may at any time remove any member of the authority for 234
misfeasance, nonfeasance, or malfeasance in office. The 235
authority shall elect one of its appointed members as ~~chairman~~ 236
chairperson and another as ~~vice-chairman~~ vice-chairperson, and 237
shall appoint a secretary-treasurer who need not be a member of 238
the authority. Four members of the authority shall constitute a 239
quorum, and the affirmative vote of four members shall be 240
necessary for any action taken by vote of the authority. No 241
vacancy in the membership of the authority shall impair the 242
rights of a quorum by such vote to exercise all the rights and 243
perform all the duties of the authority. 244

~~Before~~ (C) Except as provided in division (D) of this 245
section, before the issuance of any air quality revenue bonds 246
under Chapter 3706. of the Revised Code, each appointed member 247
of the authority shall give a surety bond to the state in the 248
penal sum of twenty-five thousand dollars and the secretary- 249
treasurer shall give such a bond in the penal sum of fifty 250
thousand dollars, each such surety bond to be conditioned upon 251
the faithful performance of the duties of the office, to be 252
executed by a surety company authorized to transact business in 253
this state, and to be approved by the governor and filed in the 254
office of the secretary of state. ~~Each~~ Except as provided in 255
division (B) (4) of this section, each appointed member of the 256
authority shall receive an annual salary of five thousand 257

dollars, payable in monthly installments. Each member shall be 258
reimbursed for ~~his~~ the actual expenses necessarily incurred in 259
the performance of ~~his~~ official duties. All expenses incurred in 260
carrying out Chapter 3706. of the Revised Code shall be payable 261
solely from funds provided under Chapter 3706. of the Revised 262
Code, appropriated for such purpose by the general assembly, or 263
provided by the controlling board. No liability or obligation 264
shall be incurred by the authority beyond the extent to which 265
moneys have been so provided or appropriated. 266

(D) The six members appointed under divisions (B) (4) and 267
(5) of this section shall be exempt from the requirement under 268
division (C) of this section to give a surety bond. 269

Sec. 3706.03. (A) It is hereby declared to be the public 270
policy of the state through the operations of the Ohio air 271
quality development authority under this chapter to contribute 272
toward one or more of the following: ~~to~~ 273

(1) To provide for the conservation of air as a natural 274
resource of the state, ~~and to~~ ; 275

(2) To prevent or abate the pollution thereof, ~~to~~ ; 276

(3) To provide for the comfort, health, safety, and 277
general welfare of all employees, as well as all other 278
inhabitants of the state, ~~to~~ ; 279

(4) To assist in the financing of air quality facilities 280
for industry, commerce, distribution, and research, including 281
public utility companies, ~~to~~ ; 282

(5) To create or preserve jobs and employment 283
opportunities or improve the economic welfare of the people, or 284
assist and cooperate with governmental agencies in achieving 285
such purposes; 286

(6) To maintain operations of certified clean air 287
resources, as defined in section 3706.40 of the Revised Code, 288
that, through continued operation, are expected to provide the 289
greatest quantity of carbon-dioxide-free electric energy 290
generation. 291

(B) In furtherance of such public policy the Ohio air 292
quality development authority may~~initiate~~do any of the 293
following: 294

(1) Initiate, acquire, construct, maintain, repair, and 295
operate air quality projects or cause the same to be operated 296
pursuant to a lease, sublease, or agreement with any person or 297
governmental agency;~~may make~~ 298

(2) Make loans and grants to governmental agencies for the 299
acquisition or construction of air quality facilities by such 300
governmental agencies;~~may make~~ 301

(3) Make loans to persons for the acquisition or 302
construction of air quality facilities by such persons;~~may~~ 303
~~enter~~ 304

(4) Enter into commodity contracts with, or make loans for 305
the purpose of entering into commodity contracts to, any person, 306
governmental agency, or entity located within or without the 307
state in connection with the acquisition or construction of air 308
quality facilities;~~and may issue~~ 309

(5) Issue air quality revenue bonds of this state payable 310
solely from revenues, to pay the cost of such projects, 311
including any related commodity contracts. 312

(C) Any air quality project shall be determined by the 313
authority to be not inconsistent with any applicable air quality 314
standards duly established and then required to be met pursuant 315

to the "Clean Air Act," 84 Stat. 1679 (1970), 42 U.S.C.A. 1857, 316
as amended. Any resolution of the authority providing for 317
acquiring or constructing such projects or for making a loan or 318
grant for such projects shall include a finding by the authority 319
that such determination has been made. Determinations by 320
resolution of the authority that a project is an air quality 321
facility under this chapter and is consistent with the purposes 322
of section 13 of Article VIII, Ohio Constitution, and this 323
chapter, shall be conclusive as to the validity and 324
enforceability of the air quality revenue bonds issued to 325
finance such project and of the resolutions, trust agreements or 326
indentures, leases, subleases, sale agreements, loan agreements, 327
and other agreements made in connection therewith, all in 328
accordance with their terms. 329

Sec. 3706.40. As used in sections 3706.40 to 3706.50 of 330
the Revised Code: 331

(A) "Clean air resource" means both of the following: 332

(1) An electric generating facility in this state fueled 333
by nuclear power that satisfies all of the following criteria: 334

(a) The facility is not wholly or partially owned by a 335
municipal or cooperative corporation or a group, association, or 336
consortium of those corporations. 337

(b) The facility is not used to supply customers of a 338
wholly owned municipal or cooperative corporation or a group, 339
association, or consortium of those corporations. 340

(c) Either of the following: 341

(i) The facility has made a significant historical 342
contribution to the air quality of the state by minimizing 343
emissions that result from electricity generated in this state. 344

(ii) The facility will make a significant contribution 345
toward minimizing emissions that result from electric generation 346
in this state. 347

(d) The facility is interconnected with the transmission 348
grid that is subject to the operational control of PJM 349
interconnection, L.L.C., or its successor organization. 350

(e) The facility is a major utility facility in this state 351
as defined in section 4906.01 of the Revised Code. 352

(f) The facility's owner maintains operations in this 353
state. 354

(2) An electric generating facility in this state that 355
uses or will use solar energy as the primary energy source that 356
satisfies all of the criteria in divisions (A)(1)(a) to (e) of 357
this section and that has obtained a certificate from the power 358
siting board prior to June 1, 2019. 359

(B) "Program year" means the twelve-month period beginning 360
the first day of June of a given year of the Ohio clean air 361
program and ending the thirty-first day of May of the following 362
year. 363

(C) "Electric distribution utility" and "renewable energy 364
resource" have the same meanings as in section 4928.01 of the 365
Revised Code. 366

(D) "Annual capacity factor" means the actual energy 367
produced in a year divided by the energy that would have been 368
produced if the facility was operating continuously at the 369
maximum rating. 370

(E) "Clean air credit" means a credit that represents the 371
clean air attributes of one megawatt hour of electric energy 372

produced from a certified clean air resource. 373

(F) "Credit price adjustment" means a reduction to the 374
price for each clean air credit equal to the market price index 375
minus the strike price. 376

(G) "Strike price" means forty-six dollars per megawatt 377
hour. 378

(H) "Market price index" means the sum, expressed in 379
dollars per megawatt hour, of both of the following for the 380
upcoming program year: 381

(1) Projected energy prices, determined using futures 382
contracts for the PJM AEP-Dayton hub; 383

(2) Projected capacity prices, determined using PJM's 384
rest-of-RTO market clearing price. 385

Sec. 3706.42. (A) There is hereby created the Ohio clean 386
air program, which shall terminate on December 31, 2026. 387

(B) Any person owning or controlling an electric 388
generating facility that meets the definition of a clean air 389
resource in section 3706.40 of the Revised Code may submit a 390
written application with the Ohio air quality development 391
authority for certification as a clean air resource to be 392
eligible to participate in the Ohio clean air program. 393
Applications shall be submitted by the first day of February for 394
any program year beginning the first day of June of the same 395
calendar year. 396

(C) Applications shall include all of the following 397
information: 398

(1) The in-service date and estimated remaining useful 399
life of the resource; 400

(2) For an existing resource, the quantity of megawatt 401
hours generated by the resource annually during each of the 402
previous five calendar years during which the resource was 403
generating, and the annual capacity factor for each of those 404
calendar years; 405

(3) A forecast estimate of the annual quantity of megawatt 406
hours to be generated by the resource and the projected annual 407
capacity factor over the remaining useful life of the resource; 408

(4) A forecast estimate of the emissions that would occur 409
in this state during the remaining useful life of the resource 410
if the resource discontinued operations prior to the end of the 411
resource's useful life; 412

(5) Verified documentation demonstrating all of the 413
following: 414

(a) That certification as a clean air resource and 415
participation in the Ohio clean air program will permit the 416
resource to reduce future emissions per unit of electrical 417
energy generated in this state; 418

(b) That without certification as a clean air resource, 419
the positive contributions to the air quality of this state that 420
the resource has made and is capable of making in the future may 421
be diminished or eliminated; 422

(c) That the clean air resource meets the definition of a 423
clean air resource in section 3706.40 of the Revised Code; 424

(d) That the person seeking certification owns or controls 425
the resource. 426

(6) The resource's nameplate capacity; 427

(7) Any other data or information that the authority 428

requests and determines is necessary to evaluate an application 429
for certification as a clean air resource or to demonstrate that 430
certification would be in the public interest. 431

(D) The authority shall post on the authority's web site 432
all applications and nonconfidential supporting materials 433
submitted under this section. 434

(E) Interested persons may file comments not later than 435
twenty days after the date that an application is posted on the 436
authority's web site. All comments shall be posted on the 437
authority's web site. An applicant may respond to those comments 438
not later than ten days thereafter. 439

Sec. 3706.44. (A) (1) On or before the thirty-first day of 440
March, the Ohio air quality development authority shall review 441
all applications timely submitted under section 3706.42 of the 442
Revised Code and issue an order certifying a clean air resource 443
that meets the definition of a clean air resource in section 444
3706.40 of the Revised Code. 445

(2) A clean air resource shall remain certified as a clean 446
air resource as long as the resource continues to meet the 447
definition of a clean air resource in section 3706.40 of the 448
Revised Code. 449

(B) In the event the authority does not issue an order 450
under division (A) of this section by the thirty-first day of 451
March, each electric generating facility included in a timely 452
and properly filed application shall be deemed a clean air 453
resource. 454

(C) (1) The authority may decertify a clean air resource at 455
any time if it determines that certification is not in the 456
public interest. 457

(2) Before decertifying a clean air resource, the 458
authority shall do both of the following: 459

(a) Allow the resource to provide additional information 460
in support of remaining certified; 461

(b) Hold a public hearing and allow for public comment. 462

Sec. 3706.46. (A) For the purpose of funding benefits 463
provided by the Ohio clean air program, there is hereby created 464
the Ohio clean air program fund. The fund shall be in the 465
custody of the state treasurer but shall not be part of the 466
state treasury. The fund shall consist of the charges under 467
section 3706.47 of the Revised Code. All interest generated by 468
the fund shall be retained in the fund and used for the purpose 469
of funding the Ohio clean air program. 470

(B) The treasurer shall distribute the moneys in the Ohio 471
clean air program fund in accordance with the directions 472
provided by the Ohio air quality development authority. 473

Sec. 3706.47. (A) Beginning January 1, 2020, and ending on 474
December 31, 2026, each retail electric customer of an electric 475
distribution utility in this state shall pay a per-account 476
monthly charge, which shall be billed and collected by each 477
electric distribution utility and remitted to the state 478
treasurer for deposit into the Ohio clean air program fund, 479
created under section 3706.46 of the Revised Code. 480

(B) The monthly charges established under division (A) of 481
this section shall be in accordance with the following: 482

(1) For customers classified by the utility as 483
residential: 484

(a) For the year 2020, fifty cents; 485

(b) For the years 2021, 2022, 2023, 2024, 2025, and 2026, 486
one dollar. 487

(2) For customers classified by the utility as commercial, 488
except as provided in division (B) (4) of this section, a charge 489
that is determined by a structure and design that the public 490
utilities commission shall, not later than October 1, 2019, 491
establish. The commission shall establish the structure and 492
design of the charge such that the average charge across all 493
customers subject to the charge under division (B) (2) of this 494
section is: 495

(a) For the year 2020, ten dollars; and 496

(b) For the years 2021, 2022, 2023, 2024, 2025, and 2026, 497
fifteen dollars. 498

(3) For customers classified by the utility as industrial, 499
except as provided in division (B) (4) of this section, a charge 500
that is determined by a structure and design that the commission 501
shall, not later than October 1, 2019, establish. The commission 502
shall establish the structure and design of the charge such that 503
the average charge across all customers subject to the charge 504
under division (B) (3) of this section is two hundred fifty 505
dollars; 506

(4) For customers classified by the utility as commercial 507
or industrial that exceeded forty-five million kilowatt hours of 508
electricity at a single location in the preceding year, two 509
thousand five hundred dollars. 510

(C) The commission shall comply with divisions (B) (2) and 511
(3) of this section in a manner that avoids abrupt or excessive 512
total electric bill impacts for typical customers with a 513
classification of commercial or industrial. 514

(D) For purposes of division (B) of this section, the 515
classification of residential, commercial, and industrial 516
customers shall be consistent with the utility's reporting under 517
its approved rate schedules. 518

Sec. 3706.48. Each owner of a certified clean air resource 519
shall report to the Ohio air quality development authority, not 520
later than seven days after the close of each month during a 521
program year, the number of megawatt hours the resource produced 522
in the previous month. 523

Sec. 3706.481. A certified clean air resource shall earn a 524
clean air credit for each megawatt hour of electricity it 525
produces. 526

Sec. 3706.482. (A) Not later than fourteen days after the 527
close of each month during a program year, the Ohio air quality 528
development authority shall direct the treasurer of state to 529
remit money from the Ohio clean air program fund, subject to 530
section 3706.486 of the Revised Code, to each owner of a 531
certified clean air resource in the amount equivalent to the 532
number of credits earned by the resource during the previous 533
month multiplied by the credit price. 534

(B) The price for each clean air credit shall be nine 535
dollars, except as provided in division (C) of this section. 536

(C) To ensure that the purchase of clean air credits 537
remains affordable to retail customers if electricity prices 538
increase, on the first day of April during the first program 539
year and annually on that date in subsequent program years, the 540
authority shall apply the credit price adjustment for the 541
upcoming program year if the market price index exceeds the 542
strike price on that date. This division shall apply only to 543

clean air resources fueled by nuclear power. 544

Sec. 3706.483. The Ohio air quality development authority 545
shall adopt rules to provide for this state a system of 546
registering clean air credits by specifying that the generation 547
attribute tracking system may be used for that purpose and not 548
by creating a registry. 549

Sec. 3706.485. (A) An electric distribution utility shall 550
submit an application to the Ohio air quality development 551
authority for reimbursement from the Ohio clean air program fund 552
of the net costs that are recoverable under section 4928.641 of 553
the Revised Code. The public utilities commission shall certify 554
the utility's net costs to be recovered in accordance with 555
division (F) of section 4928.641 of the Revised Code. 556

(B) Not later than ninety days after the receipt of an 557
application under division (A) of this section, the authority 558
shall direct the treasurer of state to remit money from the Ohio 559
clean air program fund to the electric distribution utility as 560
reimbursement for those costs. 561

Sec. 3706.486. (A) If the money in the Ohio clean air 562
program fund is insufficient in a particular month to make the 563
remittances in the amount required under division (A) of section 564
3706.482 of the Revised Code, the Ohio air quality development 565
authority shall, not later than fourteen days after the close of 566
that month, direct the treasurer of state to remit money from 567
the Ohio clean air program fund to pay for the unpaid credits 568
before any other remittances are made. Remittances made under 569
division (A) of this section shall be made in the following 570
order of priority: 571

(1) To the owners of clean air resources fueled by nuclear 572

power; 573

(2) To the owners of clean air resources that use or will 574
use solar energy. 575

(B) After any remittances are made under division (A) of 576
this section, the remittances under sections 3706.482 and 577
3706.485 of the Revised Code shall be made in the following 578
order of priority: 579

(1) Under section 3706.482 of the Revised Code, to the 580
owners of clean air resources fueled by nuclear power; 581

(2) Under section 3706.482 of the Revised Code, to the 582
owners of clean air resources that use or will use solar energy; 583

(3) Under section 3706.485 of the Revised Code, to 584
electric distribution utilities as reimbursement for costs as 585
described in that section. 586

Sec. 3706.49. (A) To facilitate air quality development 587
related capital formation and investment by or in a certified 588
clean air resource, the Ohio air quality development authority 589
may pledge a portion of moneys that may, in the future, be 590
accumulated in the Ohio clean air program fund for the benefit 591
of any certified clean air resource, provided the resource 592
agrees to be bound by the conditions the authority may attach to 593
the pledge. 594

(B) The authority shall not be required to direct 595
distribution of moneys in the Ohio clean air program fund unless 596
or until there are adequate moneys available in the Ohio clean 597
air program fund. Nothing herein shall cause any such pledge to 598
be construed or applied to create, directly or indirectly, a 599
general obligation of or for this state. 600

Sec. 3706.50. (A) In the years 2021, 2022, 2023, 2024, 601
2025, 2026, and 2027, an unaffiliated and independent third 602
party shall conduct an annual audit of the Ohio clean air 603
program. 604

(B) Not later than ninety days after the effective date of 605
this section, the authority shall adopt rules that are necessary 606
to begin implementation of the Ohio clean air program. The rules 607
adopted under this division shall include provisions for both of 608
the following: 609

(1) Tracking the number of clean air credits earned by 610
each certified clean air resource during each month of a program 611
year, based on the information reported under section 3706.48 of 612
the Revised Code; 613

(2) The annual audit required under division (A) of this 614
section. 615

(C) Not later than two hundred seventy-five days after the 616
effective date of this section, the authority shall adopt rules 617
that are necessary for the further implementation and 618
administration of the Ohio clean air program. 619

Sec. 4905.311. In order to promote job growth and 620
retention in this state, the public utilities commission, when 621
ruling on a reasonable arrangement application under section 622
4905.31 of the Revised Code, shall attempt to minimize electric 623
rates to the maximum amount possible on trade-exposed industrial 624
manufacturers. 625

Sec. 4906.10. (A) The power siting board shall render a 626
decision upon the record either granting or denying the 627
application as filed, or granting it upon such terms, 628
conditions, or modifications of the construction, operation, or 629

maintenance of the major utility facility as the board considers 630
appropriate. The certificate shall be subject to section 631
4906.101 of the Revised Code and conditioned upon the facility 632
being in compliance with standards and rules adopted under 633
sections 1501.33, 1501.34, and 4561.32 and Chapters 3704., 634
3734., and 6111. of the Revised Code. An applicant may withdraw 635
an application if the board grants a certificate on terms, 636
conditions, or modifications other than those proposed by the 637
applicant in the application. 638

The board shall not grant a certificate for the 639
construction, operation, and maintenance of a major utility 640
facility, either as proposed or as modified by the board, unless 641
it finds and determines all of the following: 642

(1) The basis of the need for the facility if the facility 643
is an electric transmission line or gas pipeline; 644

(2) The nature of the probable environmental impact; 645

(3) That the facility represents the minimum adverse 646
environmental impact, considering the state of available 647
technology and the nature and economics of the various 648
alternatives, and other pertinent considerations; 649

(4) In the case of an electric transmission line or 650
generating facility, that the facility is consistent with 651
regional plans for expansion of the electric power grid of the 652
electric systems serving this state and interconnected utility 653
systems and that the facility will serve the interests of 654
electric system economy and reliability; 655

(5) That the facility will comply with Chapters 3704., 656
3734., and 6111. of the Revised Code and all rules and standards 657
adopted under those chapters and under sections 1501.33, 658

1501.34, and 4561.32 of the Revised Code. In determining whether 659
the facility will comply with all rules and standards adopted 660
under section 4561.32 of the Revised Code, the board shall 661
consult with the office of aviation of the division of multi- 662
modal planning and programs of the department of transportation 663
under section 4561.341 of the Revised Code. 664

(6) That the facility will serve the public interest, 665
convenience, and necessity; 666

(7) In addition to the provisions contained in divisions 667
(A) (1) to (6) of this section and rules adopted under those 668
divisions, what its impact will be on the viability as 669
agricultural land of any land in an existing agricultural 670
district established under Chapter 929. of the Revised Code that 671
is located within the site and alternative site of the proposed 672
major utility facility. Rules adopted to evaluate impact under 673
division (A) (7) of this section shall not require the 674
compilation, creation, submission, or production of any 675
information, document, or other data pertaining to land not 676
located within the site and alternative site. 677

(8) That the facility incorporates maximum feasible water 678
conservation practices as determined by the board, considering 679
available technology and the nature and economics of the various 680
alternatives. 681

(B) If the board determines that the location of all or a 682
part of the proposed facility should be modified, it may 683
condition its certificate upon that modification, provided that 684
the municipal corporations and counties, and persons residing 685
therein, affected by the modification shall have been given 686
reasonable notice thereof. 687

(C) A copy of the decision and any opinion issued 688
therewith shall be served upon each party. 689

Sec. 4906.101. (A) If the power siting board issues a 690
certificate to a large wind farm as defined in section 4906.13 691
of the Revised Code and the large wind farm is to be located in 692
the unincorporated area of a township, the certificate shall be 693
conditioned upon the right of referendum as provided in section 694
519.214 of the Revised Code. 695

(B) If the certificate is rejected in a referendum under 696
section 519.214 of the Revised Code, one of the following 697
applies: 698

(1) If the large wind farm is to be located in the 699
unincorporated area of a single township, the certificate shall 700
be invalid; 701

(2) If the large wind farm is to be located in the 702
unincorporated area of more than one township, one of the 703
following applies: 704

(a) If less than all of the townships with electors voting 705
on the referendum reject the certificate, the power siting board 706
shall modify the certificate to exclude the area of each 707
township whose electors rejected the certificate. 708

(b) If all the townships with electors voting on the 709
referendum reject the certificate, the certificate is invalid. 710

Sec. 4906.13. (A) As used in this section and sections 711
4906.20, 4906.201, 4906.203, and 4906.98 of the Revised Code, ~~7~~ 712
"economically: 713

"Economically significant wind farm" means wind turbines 714
and associated facilities with a single interconnection to the 715

electrical grid and designed for, or capable of, operation at an 716
aggregate capacity of five or more megawatts but less than fifty 717
megawatts. The term excludes any such wind farm in operation on 718
June 24, 2008. The term also excludes one or more wind turbines 719
and associated facilities that are primarily dedicated to 720
providing electricity to a single customer at a single location 721
and that are designed for, or capable of, operation at an 722
aggregate capacity of less than twenty megawatts, as measured at 723
the customer's point of interconnection to the electrical grid. 724

"Large wind farm" means an electric generating plant that 725
consists of wind turbines and associated facilities with a 726
single interconnection to the electrical grid that is a major 727
utility facility as defined in section 4906.01 of the Revised 728
Code. 729

(B) No public agency or political subdivision of this 730
state may require any approval, consent, permit, certificate, or 731
other condition for the construction or operation of a major 732
utility facility or economically significant wind farm 733
authorized by a certificate issued pursuant to Chapter 4906. of 734
the Revised Code. Nothing herein shall prevent the application 735
of state laws for the protection of employees engaged in the 736
construction of such facility or wind farm nor of municipal 737
regulations that do not pertain to the location or design of, or 738
pollution control and abatement standards for, a major utility 739
facility or economically significant wind farm for which a 740
certificate has been granted under this chapter. 741

Sec. 4906.20. (A) No Subject to section 4906.203 of the 742
Revised Code, no person shall commence to construct an 743
economically significant wind farm in this state without first 744
having obtained a certificate from the power siting board. An 745

economically significant wind farm with respect to which such a 746
certificate is required shall be constructed, operated, and 747
maintained in conformity with that certificate and any terms, 748
conditions, and modifications it contains. A certificate shall 749
be issued only pursuant to this section. The certificate may be 750
transferred, subject to the approval of the board, to a person 751
that agrees to comply with those terms, conditions, and 752
modifications. 753

(B) The board shall adopt rules governing the 754
certificating of economically significant wind farms under this 755
section. Initial rules shall be adopted within one hundred 756
twenty days after June 24, 2008. 757

(1) The rules shall provide for an application process for 758
certificating economically significant wind farms that is 759
identical to the extent practicable to the process applicable to 760
certificating major utility facilities under sections 4906.06, 761
4906.07, 4906.08, 4906.09, 4906.10, 4906.11, and 4906.12 of the 762
Revised Code and shall prescribe a reasonable schedule of 763
application filing fees structured in the manner of the schedule 764
of filing fees required for major utility facilities. 765

(2) Additionally, the rules shall prescribe reasonable 766
regulations regarding any wind turbines and associated 767
facilities of an economically significant wind farm, including, 768
but not limited to, their location, erection, construction, 769
reconstruction, change, alteration, maintenance, removal, use, 770
or enlargement and including erosion control, aesthetics, 771
recreational land use, wildlife protection, interconnection with 772
power lines and with regional transmission organizations, 773
independent transmission system operators, or similar 774
organizations, ice throw, sound and noise levels, blade shear, 775

shadow flicker, decommissioning, and necessary cooperation for 776
site visits and enforcement investigations. 777

(a) The rules also shall prescribe a minimum setback for a 778
wind turbine of an economically significant wind farm. That 779
minimum shall be equal to a horizontal distance, from the 780
turbine's base to the property line of the wind farm property, 781
equal to one and one-tenth times the total height of the turbine 782
structure as measured from its base to the tip of its highest 783
blade and be at least one thousand one hundred twenty-five feet 784
in horizontal distance from the tip of the turbine's nearest 785
blade at ninety degrees to the property line of the nearest 786
adjacent property at the time of the certification application. 787

(b) (i) For any existing certificates and amendments 788
thereto, and existing certification applications that have been 789
found by the chairperson to be in compliance with division (A) 790
of section 4906.06 of the Revised Code before the effective date 791
of the amendment of this section by H.B. 59 of the 130th general 792
assembly, September 29, 2013, the distance shall be seven 793
hundred fifty feet instead of one thousand one hundred twenty- 794
five feet. 795

(ii) Any amendment made to an existing certificate after 796
the effective date of the amendment of this section by H.B. 483 797
of the 130th general assembly, September 15, 2014, shall be 798
subject to the setback provision of this section as amended by 799
that act. The amendments to this section by that act shall not 800
be construed to limit or abridge any rights or remedies in 801
equity or under the common law. 802

(c) The setback shall apply in all cases except those in 803
which all owners of property adjacent to the wind farm property 804
waive application of the setback to that property pursuant to a 805

procedure the board shall establish by rule and except in which,
in a particular case, the board determines that a setback
greater than the minimum is necessary.

Sec. 4906.201. (A) ~~An electric generating plant that~~
~~consists of wind turbines and associated facilities with a~~
~~single interconnection to the electrical grid that is designed~~
~~for, or capable of, operation at an aggregate capacity of fifty~~
~~megawatts or more.~~ A large wind farm is subject to the minimum
setback requirements established in rules adopted by the power
siting board under division (B) (2) of section 4906.20 of the
Revised Code.

(B) (1) For any existing certificates and amendments
thereto, and existing certification applications that have been
found by the chairperson to be in compliance with division (A)
of section 4906.06 of the Revised Code before the effective date
of the amendment of this section by H.B. 59 of the 130th general
assembly, September 29, 2013, the distance shall be seven
hundred fifty feet instead of one thousand one hundred twenty-
five feet.

(2) Any amendment made to an existing certificate after
the effective date of the amendment of this section by H.B. 483
of the 130th general assembly, September 15, 2014, shall be
subject to the setback provision of this section as amended by
that act. The amendments to this section by that act shall not
be construed to limit or abridge any rights or remedies in
equity or under the common law.

Sec. 4906.203. (A) If the power siting board issues a
certificate under section 4906.20 of the Revised Code to an
economically significant wind farm to be located in the
unincorporated area of a township, the certificate shall be

conditioned upon the right of referendum as provided in section 836
519.214 of the Revised Code. 837

(B) If the certificate is rejected in a referendum under 838
section 519.214 of the Revised Code, one of the following 839
applies: 840

(1) If the economically significant wind farm is to be 841
located in the unincorporated area of a single township, the 842
certificate is invalid; 843

(2) If the economically significant wind farm is to be 844
located in the unincorporated area of more than one township, 845
one of the following applies: 846

(a) If less than all of the townships with electors voting 847
on the referendum reject the certificate, the power siting board 848
shall modify the certificate to exclude the area of each 849
township whose electors rejected the certificate. 850

(b) If all the townships with electors voting on the 851
referendum reject the certificate, the certificate is invalid. 852

Sec. 4928.01. (A) As used in this chapter: 853

(1) "Ancillary service" means any function necessary to 854
the provision of electric transmission or distribution service 855
to a retail customer and includes, but is not limited to, 856
scheduling, system control, and dispatch services; reactive 857
supply from generation resources and voltage control service; 858
reactive supply from transmission resources service; regulation 859
service; frequency response service; energy imbalance service; 860
operating reserve-spinning reserve service; operating reserve- 861
supplemental reserve service; load following; back-up supply 862
service; real-power loss replacement service; dynamic 863
scheduling; system black start capability; and network stability 864

service. 865

(2) "Billing and collection agent" means a fully 866
independent agent, not affiliated with or otherwise controlled 867
by an electric utility, electric services company, electric 868
cooperative, or governmental aggregator subject to certification 869
under section 4928.08 of the Revised Code, to the extent that 870
the agent is under contract with such utility, company, 871
cooperative, or aggregator solely to provide billing and 872
collection for retail electric service on behalf of the utility 873
company, cooperative, or aggregator. 874

(3) "Certified territory" means the certified territory 875
established for an electric supplier under sections 4933.81 to 876
4933.90 of the Revised Code. 877

(4) "Competitive retail electric service" means a 878
component of retail electric service that is competitive as 879
provided under division (B) of this section. 880

(5) "Electric cooperative" means a not-for-profit electric 881
light company that both is or has been financed in whole or in 882
part under the "Rural Electrification Act of 1936," 49 Stat. 883
1363, 7 U.S.C. 901, and owns or operates facilities in this 884
state to generate, transmit, or distribute electricity, or a 885
not-for-profit successor of such company. 886

(6) "Electric distribution utility" means an electric 887
utility that supplies at least retail electric distribution 888
service. 889

(7) "Electric light company" has the same meaning as in 890
section 4905.03 of the Revised Code and includes an electric 891
services company, but excludes any self-generator to the extent 892
that it consumes electricity it so produces, sells that 893

electricity for resale, or obtains electricity from a generating 894
facility it hosts on its premises. 895

(8) "Electric load center" has the same meaning as in 896
section 4933.81 of the Revised Code. 897

(9) "Electric services company" means an electric light 898
company that is engaged on a for-profit or not-for-profit basis 899
in the business of supplying or arranging for the supply of only 900
a competitive retail electric service in this state. "Electric 901
services company" includes a power marketer, power broker, 902
aggregator, or independent power producer but excludes an 903
electric cooperative, municipal electric utility, governmental 904
aggregator, or billing and collection agent. 905

(10) "Electric supplier" has the same meaning as in 906
section 4933.81 of the Revised Code. 907

(11) "Electric utility" means an electric light company 908
that has a certified territory and is engaged on a for-profit 909
basis either in the business of supplying a noncompetitive 910
retail electric service in this state or in the businesses of 911
supplying both a noncompetitive and a competitive retail 912
electric service in this state. "Electric utility" excludes a 913
municipal electric utility or a billing and collection agent. 914

(12) "Firm electric service" means electric service other 915
than nonfirm electric service. 916

(13) "Governmental aggregator" means a legislative 917
authority of a municipal corporation, a board of township 918
trustees, or a board of county commissioners acting as an 919
aggregator for the provision of a competitive retail electric 920
service under authority conferred under section 4928.20 of the 921
Revised Code. 922

(14) A person acts "knowingly," regardless of the person's 923
purpose, when the person is aware that the person's conduct will 924
probably cause a certain result or will probably be of a certain 925
nature. A person has knowledge of circumstances when the person 926
is aware that such circumstances probably exist. 927

(15) "Level of funding for low-income customer energy 928
efficiency programs provided through electric utility rates" 929
means the level of funds specifically included in an electric 930
utility's rates on October 5, 1999, pursuant to an order of the 931
public utilities commission issued under Chapter 4905. or 4909. 932
of the Revised Code and in effect on October 4, 1999, for the 933
purpose of improving the energy efficiency of housing for the 934
utility's low-income customers. The term excludes the level of 935
any such funds committed to a specific nonprofit organization or 936
organizations pursuant to a stipulation or contract. 937

(16) "Low-income customer assistance programs" means the 938
percentage of income payment plan program, the home energy 939
assistance program, the home weatherization assistance program, 940
and the targeted energy efficiency and weatherization program. 941

(17) "Market development period" for an electric utility 942
means the period of time beginning on the starting date of 943
competitive retail electric service and ending on the applicable 944
date for that utility as specified in section 4928.40 of the 945
Revised Code, irrespective of whether the utility applies to 946
receive transition revenues under this chapter. 947

(18) "Market power" means the ability to impose on 948
customers a sustained price for a product or service above the 949
price that would prevail in a competitive market. 950

(19) "Mercantile customer" means a commercial or 951

industrial customer if the electricity consumed is for 952
nonresidential use and the customer consumes more than seven 953
hundred thousand kilowatt hours per year or is part of a 954
national account involving multiple facilities in one or more 955
states. 956

(20) "Municipal electric utility" means a municipal 957
corporation that owns or operates facilities to generate, 958
transmit, or distribute electricity. 959

(21) "Noncompetitive retail electric service" means a 960
component of retail electric service that is noncompetitive as 961
provided under division (B) of this section. 962

(22) "Nonfirm electric service" means electric service 963
provided pursuant to a schedule filed under section 4905.30 of 964
the Revised Code or pursuant to an arrangement under section 965
4905.31 of the Revised Code, which schedule or arrangement 966
includes conditions that may require the customer to curtail or 967
interrupt electric usage during nonemergency circumstances upon 968
notification by an electric utility. 969

(23) "Percentage of income payment plan arrears" means 970
funds eligible for collection through the percentage of income 971
payment plan rider, but uncollected as of July 1, 2000. 972

(24) "Person" has the same meaning as in section 1.59 of 973
the Revised Code. 974

(25) "Advanced energy project" means any technologies, 975
products, activities, or management practices or strategies that 976
facilitate the generation or use of electricity or energy and 977
that reduce or support the reduction of energy consumption or 978
support the production of clean, renewable energy for 979
industrial, distribution, commercial, institutional, 980

governmental, research, not-for-profit, or residential energy 981
users, including, but not limited to, advanced energy resources 982
and renewable energy resources. "Advanced energy project" also 983
includes any project described in division (A), (B), or (C) of 984
section 4928.621 of the Revised Code. 985

(26) "Regulatory assets" means the unamortized net 986
regulatory assets that are capitalized or deferred on the 987
regulatory books of the electric utility, pursuant to an order 988
or practice of the public utilities commission or pursuant to 989
generally accepted accounting principles as a result of a prior 990
commission rate-making decision, and that would otherwise have 991
been charged to expense as incurred or would not have been 992
capitalized or otherwise deferred for future regulatory 993
consideration absent commission action. "Regulatory assets" 994
includes, but is not limited to, all deferred demand-side 995
management costs; all deferred percentage of income payment plan 996
arrears; post-in-service capitalized charges and assets 997
recognized in connection with statement of financial accounting 998
standards no. 109 (receivables from customers for income taxes); 999
future nuclear decommissioning costs and fuel disposal costs as 1000
those costs have been determined by the commission in the 1001
electric utility's most recent rate or accounting application 1002
proceeding addressing such costs; the undepreciated costs of 1003
safety and radiation control equipment on nuclear generating 1004
plants owned or leased by an electric utility; and fuel costs 1005
currently deferred pursuant to the terms of one or more 1006
settlement agreements approved by the commission. 1007

(27) "Retail electric service" means any service involved 1008
in supplying or arranging for the supply of electricity to 1009
ultimate consumers in this state, from the point of generation 1010
to the point of consumption. For the purposes of this chapter, 1011

retail electric service includes one or more of the following 1012
"service components": generation service, aggregation service, 1013
power marketing service, power brokerage service, transmission 1014
service, distribution service, ancillary service, metering 1015
service, and billing and collection service. 1016

(28) "Starting date of competitive retail electric 1017
service" means January 1, 2001. 1018

(29) "Customer-generator" means a user of a net metering 1019
system. 1020

(30) "Net metering" means measuring the difference in an 1021
applicable billing period between the electricity supplied by an 1022
electric service provider and the electricity generated by a 1023
customer-generator that is fed back to the electric service 1024
provider. 1025

(31) "Net metering system" means a facility for the 1026
production of electrical energy that does all of the following: 1027

(a) Uses as its fuel either solar, wind, biomass, landfill 1028
gas, or hydropower, or uses a microturbine or a fuel cell; 1029

(b) Is located on a customer-generator's premises; 1030

(c) Operates in parallel with the electric utility's 1031
transmission and distribution facilities; 1032

(d) Is intended primarily to offset part or all of the 1033
customer-generator's requirements for electricity. For an 1034
industrial customer-generator with a net metering system that 1035
has a capacity of less than twenty megawatts and uses wind as 1036
energy, this means the net metering system was sized so as to 1037
not exceed one hundred per cent of the customer-generator's 1038
annual requirements for electric energy at the time of 1039

interconnection. 1040

(32) "Self-generator" means an entity in this state that 1041
owns or hosts on its premises an electric generation facility 1042
that produces electricity primarily for the owner's consumption 1043
and that may provide any such excess electricity to another 1044
entity, whether the facility is installed or operated by the 1045
owner or by an agent under a contract. 1046

(33) "Rate plan" means the standard service offer in 1047
effect on the effective date of the amendment of this section by 1048
S.B. 221 of the 127th general assembly, July 31, 2008. 1049

(34) "Advanced energy resource" means any of the 1050
following: 1051

(a) Any method or any modification or replacement of any 1052
property, process, device, structure, or equipment that 1053
increases the generation output of an electric generating 1054
facility to the extent such efficiency is achieved without 1055
additional carbon dioxide emissions by that facility; 1056

(b) Any distributed generation system consisting of 1057
customer cogeneration technology; 1058

(c) Clean coal technology that includes a carbon-based 1059
product that is chemically altered before combustion to 1060
demonstrate a reduction, as expressed as ash, in emissions of 1061
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 1062
sulfur trioxide in accordance with the American society of 1063
testing and materials standard D1757A or a reduction of metal 1064
oxide emissions in accordance with standard D5142 of that 1065
society, or clean coal technology that includes the design 1066
capability to control or prevent the emission of carbon dioxide, 1067
which design capability the commission shall adopt by rule and 1068

shall be based on economically feasible best available 1069
technology or, in the absence of a determined best available 1070
technology, shall be of the highest level of economically 1071
feasible design capability for which there exists generally 1072
accepted scientific opinion; 1073

(d) Advanced nuclear energy technology consisting of 1074
generation III technology as defined by the nuclear regulatory 1075
commission; other, later technology; or significant improvements 1076
to existing facilities; 1077

(e) Any fuel cell used in the generation of electricity, 1078
including, but not limited to, a proton exchange membrane fuel 1079
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 1080
solid oxide fuel cell; 1081

(f) Advanced solid waste or construction and demolition 1082
debris conversion technology, including, but not limited to, 1083
advanced stoker technology, and advanced fluidized bed 1084
gasification technology, that results in measurable greenhouse 1085
gas emissions reductions as calculated pursuant to the United 1086
States environmental protection agency's waste reduction model 1087
(WARM); 1088

(g) Demand-side management and any energy efficiency 1089
improvement; 1090

(h) Any new, retrofitted, refueled, or repowered 1091
generating facility located in Ohio, including a simple or 1092
combined-cycle natural gas generating facility or a generating 1093
facility that uses biomass, coal, modular nuclear, or any other 1094
fuel as its input; 1095

(i) Any uprated capacity of an existing electric 1096
generating facility if the uprated capacity results from the 1097

deployment of advanced technology. 1098

~~"Advanced energy resource" does not include a waste energy~~ 1099
~~recovery system that is, or has been, included in an energy~~ 1100
~~efficiency program of an electric distribution utility pursuant~~ 1101
~~to requirements under section 4928.66 of the Revised Code.~~ 1102

(35) "Air contaminant source" has the same meaning as in 1103
section 3704.01 of the Revised Code. 1104

(36) "Cogeneration technology" means technology that 1105
produces electricity and useful thermal output simultaneously. 1106

(37) (a) "Renewable energy resource" means any of the 1107
following: 1108

(i) Solar photovoltaic or solar thermal energy; 1109

(ii) Wind energy; 1110

(iii) Power produced by a hydroelectric facility; 1111

(iv) Power produced by a small hydroelectric facility, 1112
which is a facility that operates, or is rated to operate, at an 1113
aggregate capacity of less than six megawatts; 1114

(v) Power produced by a run-of-the-river hydroelectric 1115
facility placed in service on or after January 1, 1980, that is 1116
located within this state, relies upon the Ohio river, and 1117
operates, or is rated to operate, at an aggregate capacity of 1118
forty or more megawatts; 1119

(vi) Geothermal energy; 1120

(vii) Fuel derived from solid wastes, as defined in 1121
section 3734.01 of the Revised Code, through fractionation, 1122
biological decomposition, or other process that does not 1123
principally involve combustion; 1124

(viii) Biomass energy;	1125
(ix) Energy produced by cogeneration technology that is	1126
placed into service on or before December 31, 2015, and for	1127
which more than ninety per cent of the total annual energy input	1128
is from combustion of a waste or byproduct gas from an air	1129
contaminant source in this state, which source has been in	1130
operation since on or before January 1, 1985, provided that the	1131
cogeneration technology is a part of a facility located in a	1132
county having a population of more than three hundred sixty-five	1133
thousand but less than three hundred seventy thousand according	1134
to the most recent federal decennial census;	1135
(x) Biologically derived methane gas;	1136
(xi) Heat captured from a generator of electricity,	1137
boiler, or heat exchanger fueled by biologically derived methane	1138
gas;	1139
(xii) Energy derived from nontreated by-products of the	1140
pulping process or wood manufacturing process, including bark,	1141
wood chips, sawdust, and lignin in spent pulping liquors.	1142
"Renewable energy resource" includes, but is not limited	1143
to, any fuel cell used in the generation of electricity,	1144
including, but not limited to, a proton exchange membrane fuel	1145
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or	1146
solid oxide fuel cell; wind turbine located in the state's	1147
territorial waters of Lake Erie; methane gas emitted from an	1148
abandoned coal mine; waste energy recovery system placed into	1149
service or retrofitted on or after the effective date of the	1150
amendment of this section by S.B. 315 of the 129th general	1151
assembly, September 10, 2012, except that a waste energy	1152
recovery system described in division (A) (38) (b) of this section	1153

may be included only if it was placed into service between 1154
January 1, 2002, and December 31, 2004; storage facility that 1155
will promote the better utilization of a renewable energy 1156
resource; or distributed generation system used by a customer to 1157
generate electricity from any such energy. 1158

~~"Renewable energy resource" does not include a waste 1159
energy recovery system that is, or was, on or after January 1, 1160
2012, included in an energy efficiency program of an electric 1161
distribution utility pursuant to requirements under section 1162
4928.66 of the Revised Code. 1163~~

(b) As used in division (A) (37) of this section, 1164
"hydroelectric facility" means a hydroelectric generating 1165
facility that is located at a dam on a river, or on any water 1166
discharged to a river, that is within or bordering this state or 1167
within or bordering an adjoining state and meets all of the 1168
following standards: 1169

(i) The facility provides for river flows that are not 1170
detrimental for fish, wildlife, and water quality, including 1171
seasonal flow fluctuations as defined by the applicable 1172
licensing agency for the facility. 1173

(ii) The facility demonstrates that it complies with the 1174
water quality standards of this state, which compliance may 1175
consist of certification under Section 401 of the "Clean Water 1176
Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and 1177
demonstrates that it has not contributed to a finding by this 1178
state that the river has impaired water quality under Section 1179
303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 1180
U.S.C. 1313. 1181

(iii) The facility complies with mandatory prescriptions 1182

regarding fish passage as required by the federal energy 1183
regulatory commission license issued for the project, regarding 1184
fish protection for riverine, anadromous, and catadromous fish. 1185

(iv) The facility complies with the recommendations of the 1186
Ohio environmental protection agency and with the terms of its 1187
federal energy regulatory commission license regarding watershed 1188
protection, mitigation, or enhancement, to the extent of each 1189
agency's respective jurisdiction over the facility. 1190

(v) The facility complies with provisions of the 1191
"Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 1192
to 1544, as amended. 1193

(vi) The facility does not harm cultural resources of the 1194
area. This can be shown through compliance with the terms of its 1195
federal energy regulatory commission license or, if the facility 1196
is not regulated by that commission, through development of a 1197
plan approved by the Ohio historic preservation office, to the 1198
extent it has jurisdiction over the facility. 1199

(vii) The facility complies with the terms of its federal 1200
energy regulatory commission license or exemption that are 1201
related to recreational access, accommodation, and facilities 1202
or, if the facility is not regulated by that commission, the 1203
facility complies with similar requirements as are recommended 1204
by resource agencies, to the extent they have jurisdiction over 1205
the facility; and the facility provides access to water to the 1206
public without fee or charge. 1207

(viii) The facility is not recommended for removal by any 1208
federal agency or agency of any state, to the extent the 1209
particular agency has jurisdiction over the facility. 1210

(c) The standards in divisions (A) (37) (b) (i) to (viii) of 1211

this section do not apply to a small hydroelectric facility 1212
under division (A) (37) (a) (iv) of this section. 1213

(38) "Waste energy recovery system" means either of the 1214
following: 1215

(a) A facility that generates electricity through the 1216
conversion of energy from either of the following: 1217

(i) Exhaust heat from engines or manufacturing, 1218
industrial, commercial, or institutional sites, except for 1219
exhaust heat from a facility whose primary purpose is the 1220
generation of electricity; 1221

(ii) Reduction of pressure in gas pipelines before gas is 1222
distributed through the pipeline, provided that the conversion 1223
of energy to electricity is achieved without using additional 1224
fossil fuels. 1225

(b) A facility at a state institution of higher education 1226
as defined in section 3345.011 of the Revised Code that recovers 1227
waste heat from electricity-producing engines or combustion 1228
turbines and that simultaneously uses the recovered heat to 1229
produce steam, provided that the facility was placed into 1230
service between January 1, 2002, and December 31, 2004. 1231

(39) "Smart grid" means capital improvements to an 1232
electric distribution utility's distribution infrastructure that 1233
improve reliability, efficiency, resiliency, or reduce energy 1234
demand or use, including, but not limited to, advanced metering 1235
and automation of system functions. 1236

(40) "Combined heat and power system" means the 1237
coproduction of electricity and useful thermal energy from the 1238
same fuel source designed to achieve thermal-efficiency levels 1239
of at least sixty per cent, with at least twenty per cent of the 1240

system's total useful energy in the form of thermal energy. 1241

(41) "National security generation resource" means all 1242
generating facilities owned directly or indirectly by a 1243
corporation that was formed prior to 1960 by investor-owned 1244
utilities for the original purpose of providing capacity and 1245
electricity to the federal government for use in the nation's 1246
defense or in furtherance of national interests. The term 1247
includes the Ohio valley electric corporation. 1248

(42) "Prudently incurred costs related to a national 1249
security generation resource" means, subject to section 4928.148 1250
of the Revised Code, costs, including deferred costs, allocated 1251
pursuant to a power agreement approved by the federal energy 1252
regulatory commission that relates to a national security 1253
generation resource. Such costs shall exclude any return on 1254
investment in common equity and, in the event of a premature 1255
retirement of a national security generation resource, shall 1256
exclude any recovery of remaining debt. Such costs shall include 1257
any incremental costs resulting from the bankruptcy of a current 1258
or former co-owner of the national security generation resource 1259
if not otherwise recovered through a utility rate cost recovery 1260
mechanism. 1261

(43) "National security generation resource net impact" 1262
means retail recovery of prudently incurred costs related to a 1263
national security generation resource, less any revenues 1264
realized from offering the contractual commitment related to a 1265
national security generation resource into the wholesale 1266
markets, provided that where the net revenues exceed net costs, 1267
those excess revenues shall be credited to customers. 1268

(B) For the purposes of this chapter, a retail electric 1269
service component shall be deemed a competitive retail electric 1270

service if the service component is competitive pursuant to a 1271
declaration by a provision of the Revised Code or pursuant to an 1272
order of the public utilities commission authorized under 1273
division (A) of section 4928.04 of the Revised Code. Otherwise, 1274
the service component shall be deemed a noncompetitive retail 1275
electric service. 1276

Sec. 4928.02. It is the policy of this state to do the 1277
following throughout this state: 1278

(A) Ensure the availability to consumers of adequate, 1279
reliable, safe, efficient, nondiscriminatory, and reasonably 1280
priced retail electric service; 1281

(B) Ensure the availability of unbundled and comparable 1282
retail electric service that provides consumers with the 1283
supplier, price, terms, conditions, and quality options they 1284
elect to meet their respective needs; 1285

(C) Ensure diversity of electricity supplies and 1286
suppliers, by giving consumers effective choices over the 1287
selection of those supplies and suppliers and by encouraging the 1288
development of distributed and small generation facilities; 1289

(D) Encourage innovation and market access for cost- 1290
effective supply- and demand-side retail electric service 1291
including, but not limited to, demand-side management, time- 1292
differentiated pricing, waste energy recovery systems, smart 1293
grid programs, and implementation of advanced metering 1294
infrastructure; 1295

(E) Encourage cost-effective and efficient access to 1296
information regarding the operation of the transmission and 1297
distribution systems of electric utilities in order to promote 1298
both effective customer choice of retail electric service and 1299

the development of performance standards and targets for service 1300
quality for all consumers, including annual achievement reports 1301
written in plain language; 1302

(F) Ensure that an electric utility's transmission and 1303
distribution systems are available to a customer-generator or 1304
owner of distributed generation, so that the customer-generator 1305
or owner can market and deliver the electricity it produces; 1306

(G) Recognize the continuing emergence of competitive 1307
electricity markets through the development and implementation 1308
of flexible regulatory treatment; 1309

(H) Ensure effective competition in the provision of 1310
retail electric service by avoiding anticompetitive subsidies 1311
flowing from a noncompetitive retail electric service to a 1312
competitive retail electric service or to a product or service 1313
other than retail electric service, and vice versa, including by 1314
prohibiting the recovery of any generation-related costs through 1315
distribution or transmission rates; 1316

(I) Ensure retail electric service consumers protection 1317
against unreasonable sales practices, market deficiencies, and 1318
market power; 1319

(J) Provide coherent, transparent means of giving 1320
appropriate incentives to technologies that can adapt 1321
successfully to potential environmental mandates; 1322

(K) Encourage implementation of distributed generation 1323
across customer classes through regular review and updating of 1324
administrative rules governing critical issues such as, but not 1325
limited to, interconnection standards, standby charges, and net 1326
metering; 1327

(L) Protect at-risk populations, including, but not 1328

limited to, when considering the implementation of any new 1329
advanced energy or renewable energy resource; 1330

(M) Encourage the education of small business owners in 1331
this state regarding the use of, and encourage the use of, 1332
energy efficiency programs and alternative energy resources in 1333
their businesses; 1334

(N) Facilitate the state's effectiveness in the global 1335
economy; 1336

(O) Provide clarity in cost recovery for Ohio-based 1337
electric distribution utilities in conjunction with national 1338
security generation resources and support electric distribution 1339
utility and affiliate divestiture of ownership interests in any 1340
national security generation resource if divestiture efforts 1341
result in no adverse consequences to the utility. 1342

In carrying out this policy, the commission shall consider 1343
rules as they apply to the costs of electric distribution 1344
infrastructure, including, but not limited to, line extensions, 1345
for the purpose of development in this state. 1346

Sec. 4928.147. (A) Upon the expiration of any mechanism 1347
authorized by the public utilities commission to recover an 1348
electric distribution utility's national security generation 1349
resource net impact, an electric distribution utility may 1350
recover, subject to an audit, reconciliation, and prudence 1351
review under section 4928.148 of the Revised Code, the national 1352
security generation resource net impact that remains unrecovered 1353
at the time of expiration. 1354

(B) An electric distribution utility, including all 1355
electric distribution utilities in the same holding company, 1356
shall bid all output from the national security generation 1357

resource into the wholesale market and shall not use the output 1358
in supplying its standard service offer provided under section 1359
4928.142 or 4928.143 of the Revised Code. 1360

Sec. 4928.148. (A) In establishing a nonbypassable rate 1361
mechanism for recovery of a national security generation 1362
resource net impact under section 4928.147 of the Revised Code, 1363
the public utilities commission shall do all of the following: 1364

(1) Determine, every three years, the prudence and 1365
reasonableness of the electric distribution utility's actions 1366
related to the national security generation resource, including 1367
its decisions related to offering the contractual commitment 1368
into the wholesale markets, and exclude from recovery those 1369
costs that it determines imprudent and unreasonable. 1370

(2) Determine the proper rate design for recovering or 1371
remitting the national security generation resource net impact, 1372
provided, however, that the monthly charge or credit recovering 1373
that impact, including any deferrals or credits, shall not 1374
exceed two dollars and fifty cents per customer per month for 1375
residential customers. For all other customer classes, the 1376
commission shall establish comparable monthly caps for each at 1377
or below two thousand five hundred dollars per customer per 1378
month. Insofar as the national security generation resource net 1379
impact exceeds these monthly limits, the electric distribution 1380
utility shall defer the remaining net impact as a regulatory 1381
asset or liability that shall be recovered as determined by the 1382
commission subject to the monthly rate caps set forth in this 1383
division. 1384

(3) Provide for discontinuation, subject to final 1385
reconciliation, of the nonbypassable rate mechanism on December 1386
31, 2030, unless the mechanism is extended by the general 1387

assembly under division (B) of this section. 1388

(B) The commission shall conduct an inquiry in 2029 to 1389
determine whether it is in the public interest to continue 1390
recovery of a national security generation resource net impact 1391
after 2030, and report its findings to the general assembly. 1392

Sec. 4928.46. (A) In the event that the federal energy 1393
regulatory commission authorizes a program by which this state 1394
may take action to satisfy any portion of the capacity resource 1395
obligation associated with the organized wholesale market that 1396
functions to meet the capacity, energy services, and ancillary 1397
services needs of consumers in this state, the public utilities 1398
commission shall promptly review the program and submit a report 1399
of its findings to the general assembly. 1400

(B) The report shall include any recommendations for both 1401
of the following: 1402

(1) Legislation that may be necessary to permit this state 1403
to beneficially participate in any such program; 1404

(2) How to maintain participation by end-use customers in 1405
this state in the demand response program offered by PJM 1406
Interconnection, L.L.C., or its successor organization, 1407
including how the state may consider structuring procurement for 1408
demand response that would allow demand response to satisfy a 1409
portion of the state's capacity resource obligation. 1410

(C) The report shall incorporate the policy of 1411
facilitating the state's effectiveness in the global economy by 1412
minimizing any adverse impact on trade-exposed industrial 1413
manufacturers. 1414

Sec. 4928.47. (A) As used in this section, "clean air 1415
resource" means any of the following: 1416

- (1) A clean air resource as defined in section 3706.40 of 1417
the Revised Code; 1418
- (2) A customer-sited renewable energy resource; 1419
- (3) A renewable energy resource that is a self-generator. 1420
- (B)(1) Through its general supervision, ratemaking, cost 1421
assignment, allocation, rate schedule approval, and rulemaking 1422
authority, as well as its authority under section 4905.31 of the 1423
Revised Code, the public utilities commission shall facilitate 1424
and encourage the establishment of retail purchased power 1425
agreements having a term of three years or more through which 1426
mercantile customers of an electric distribution utility commit 1427
to satisfy a material portion of their electricity requirements 1428
from the output of a clean air resource. 1429
- (2) The commission's application and administration of 1430
this section shall be the same for all clean air resources 1431
regardless of whether the resource is certified or eligible for 1432
certification under the Ohio clean air program created under 1433
section 3706.42 of the Revised Code. 1434
- (3) In addition to any other benefits that may be 1435
available as a result of the commission's application of its 1436
authority under this section, on the effective date of a retail 1437
purchased power agreement, the commission may exempt such 1438
purchasing mercantile customer from the Ohio clean air program 1439
per-account monthly charge established in section 3706.47 of the 1440
Revised Code. 1441
- (C)(1) Not later than ninety days after the effective date 1442
of this section, the commission shall promulgate rules as 1443
necessary to begin the implementation of this section. 1444
- (2) Not later than two hundred seventy-five days after the 1445

effective date of this section, the commission shall promulgate 1446
rules for further implementation and administration of this 1447
section. 1448

Sec. 4928.471. (A) Except as provided in division (E) of 1449
this section, not earlier than thirty days after the effective 1450
date of this section, an electric distribution utility may file 1451
an application to implement a decoupling mechanism for the 2019 1452
calendar year and each calendar year thereafter. For an electric 1453
distribution utility that applies for a decoupling mechanism 1454
under this section, the base distribution rates for residential 1455
and commercial customers shall be decoupled to the base 1456
distribution revenue and revenue resulting from implementation 1457
of section 4928.66 of the Revised Code, excluding program costs 1458
and shared savings, and recovered pursuant to an approved 1459
electric security plan under section 4928.143 of the Revised 1460
Code, as of the twelve-month period ending on December 31, 2018. 1461
An application under this division shall not be considered an 1462
application under section 4909.18 of the Revised Code. 1463

(B) The commission shall issue an order approving an 1464
application for a decoupling mechanism filed under division (A) 1465
of this section not later than sixty days after the application 1466
is filed. In determining that an application is not unjust and 1467
unreasonable, the commission shall verify that the rate schedule 1468
or schedules are designed to recover the electric distribution 1469
utility's 2018 annual revenues as described in division (A) of 1470
this section and that the decoupling rate design is aligned with 1471
the rate design of the electric distribution utility's existing 1472
base distribution rates. The decoupling mechanism shall recover 1473
an amount equal to the base distribution revenue and revenue 1474
resulting from implementation of section 4928.66 of the Revised 1475
Code, excluding program costs and shared savings, and recovered 1476

pursuant to an approved electric security plan under section 1477
4928.143 of the Revised Code, as of the twelve-month period 1478
ending on December 31, 2018. The decoupling mechanism shall be 1479
adjusted annually thereafter to reconcile any over recovery or 1480
under recovery from the prior year and to enable an electric 1481
distribution utility to recover the same level of revenues 1482
described in division (A) of this section in each year. 1483

(C) The commission's approval of a decoupling mechanism 1484
under this section shall not affect any other rates, riders, 1485
charges, schedules, classifications, or services previously 1486
approved by the commission. The decoupling mechanism shall 1487
remain in effect until the next time that the electric 1488
distribution utility applies for and the commission approves 1489
base distribution rates for the utility under section 4909.18 of 1490
the Revised Code. 1491

(D) If the commission determines that approving a 1492
decoupling mechanism will result in a double recovery by the 1493
electric distribution utility, the commission shall not approve 1494
the application unless the utility cures the double recovery. 1495

(E) Divisions (A), (B), and (C) of this section shall not 1496
apply to an electric distribution utility that has base 1497
distribution rates that became effective between December 31, 1498
2018, and the effective date of this section pursuant to an 1499
application for an increase in base distribution rates filed 1500
under section 4909.18 of the Revised Code. 1501

Sec. 4928.647. Subject to approval by the public utilities 1502
commission and regardless of any limitations set forth in any 1503
other section of Chapter 4928. of the Revised Code, an electric 1504
distribution utility may offer a customer the opportunity to 1505
purchase renewable energy services on a nondiscriminatory basis, 1506

by doing either of the following: 1507

(A) (1) An electric distribution utility may seek approval 1508
from the commission to establish a schedule or schedules 1509
applicable to residential, commercial, industrial, or other 1510
customers and provide a customer the opportunity to purchase 1511
renewable energy credits for any purpose the customer elects. 1512

(2) The commission shall not approve any schedule unless 1513
it determines both of the following: 1514

(a) The proposed schedule or schedules do not create an 1515
undue burden or unreasonable preference or disadvantage to 1516
nonparticipating customers. 1517

(b) The electric distribution utility seeking approval 1518
commits to comply with any conditions the commission may impose 1519
to ensure that the electric distribution utility and any 1520
participating customers are solely responsible for the risks, 1521
costs, and benefits of any schedule or schedules. 1522

(B) (1) Consistent with section 4905.31 of the Revised 1523
Code, an electric distribution utility, a customer, or a group 1524
of customers may seek approval of a nondiscriminatory schedule 1525
or reasonable arrangement involving the production and supply of 1526
renewable energy, including long-term renewable energy purchase 1527
agreements through which an electric distribution utility may 1528
construct, lease, finance, or operate renewable energy resources 1529
dedicated to that customer or customers. 1530

(2) The commission shall not approve any schedule or 1531
arrangement unless it determines both of the following: 1532

(a) The proposed schedule or arrangement does not create 1533
an undue burden or unreasonable preference or disadvantage to 1534
nonparticipating customers. 1535

(b) The electric distribution utility seeking approval 1536
commits to comply with any conditions the commission may impose 1537
to ensure that the electric distribution utility and any 1538
participating customers are solely responsible for the risks, 1539
costs, and benefits of any schedule or reasonable arrangement. 1540

Sec. 4928.66. (A) (1) (a) Beginning in 2009, an electric 1541
distribution utility shall implement energy efficiency programs 1542
that achieve energy savings equivalent to at least three-tenths 1543
of one per cent of the total, annual average, and normalized 1544
kilowatt-hour sales of the electric distribution utility during 1545
the preceding three calendar years to customers in this state. 1546
An energy efficiency program may include a combined heat and 1547
power system placed into service or retrofitted on or after the 1548
effective date of the amendment of this section by S.B. 315 of 1549
the 129th general assembly, September 10, 2012, or a waste 1550
energy recovery system placed into service or retrofitted on or 1551
after September 10, 2012, except that a waste energy recovery 1552
system described in division (A) (38) (b) of section 4928.01 of 1553
the Revised Code may be included only if it was placed into 1554
service between January 1, 2002, and December 31, 2004. For a 1555
waste energy recovery or combined heat and power system, the 1556
savings shall be as estimated by the public utilities 1557
commission. The savings requirement, using such a three-year 1558
average, shall increase to an additional five-tenths of one per 1559
cent in 2010, seven-tenths of one per cent in 2011, eight-tenths 1560
of one per cent in 2012, nine-tenths of one per cent in 2013, 1561
and one per cent in 2014. In 2015 and 2016, an electric 1562
distribution utility shall achieve energy savings equal to the 1563
result of subtracting the cumulative energy savings achieved 1564
since 2009 from the product of multiplying the baseline for 1565
energy savings, described in division (A) (2) (a) of this section, 1566

by four and two-tenths of one per cent. If the result is zero or 1567
less for the year for which the calculation is being made, the 1568
utility shall not be required to achieve additional energy 1569
savings for that year, but may achieve additional energy savings 1570
for that year. ~~Thereafter, the~~ The annual savings requirements 1571
shall be, for years 2017, 2018, 2019, and 2020, an additional 1572
~~one per cent of the baseline, and two per cent each year~~ 1573
~~thereafter, achieving cumulative energy savings in excess of~~ 1574
~~twenty-two per cent by the end of 2027.~~ For purposes of a waste 1575
energy recovery or combined heat and power system, an electric 1576
distribution utility shall not apply more than the total annual 1577
percentage of the electric distribution utility's industrial- 1578
customer load, relative to the electric distribution utility's 1579
total load, to the annual energy savings requirement. 1580

(b) Beginning in 2009, an electric distribution utility 1581
shall implement peak demand reduction programs designed to 1582
achieve a one per cent reduction in peak demand in 2009 and an 1583
additional seventy-five hundredths of one per cent reduction 1584
each year through 2014. In 2015 and 2016, an electric 1585
distribution utility shall achieve a reduction in peak demand 1586
equal to the result of subtracting the cumulative peak demand 1587
reductions achieved since 2009 from the product of multiplying 1588
the baseline for peak demand reduction, described in division 1589
(A) (2) (a) of this section, by four and seventy-five hundredths 1590
of one per cent. If the result is zero or less for the year for 1591
which the calculation is being made, the utility shall not be 1592
required to achieve an additional reduction in peak demand for 1593
that year, but may achieve an additional reduction in peak 1594
demand for that year. In 2017 and each year thereafter through 1595
2020, the utility shall achieve an additional seventy-five 1596
hundredths of one per cent reduction in peak demand. 1597

(2) For the purposes of divisions (A) (1) (a) and (b) of 1598
this section: 1599

(a) The baseline for energy savings under division (A) (1) 1600
(a) of this section shall be the average of the total kilowatt 1601
hours the electric distribution utility sold in the preceding 1602
three calendar years. The baseline for a peak demand reduction 1603
under division (A) (1) (b) of this section shall be the average 1604
peak demand on the utility in the preceding three calendar 1605
years, except that the commission may reduce either baseline to 1606
adjust for new economic growth in the utility's certified 1607
territory. Neither baseline shall include the load and usage of 1608
any of the following customers: 1609

(i) Beginning January 1, 2017, a customer for which a 1610
reasonable arrangement has been approved under section 4905.31 1611
of the Revised Code; 1612

(ii) A customer that has opted out of the utility's 1613
portfolio plan under section 4928.6611 of the Revised Code; 1614

(iii) A customer that has opted out of the utility's 1615
portfolio plan under Section 8 of S.B. 310 of the 130th general 1616
assembly. 1617

(b) The commission may amend the benchmarks set forth in 1618
division (A) (1) (a) or (b) of this section if, after application 1619
by the electric distribution utility, the commission determines 1620
that the amendment is necessary because the utility cannot 1621
reasonably achieve the benchmarks due to regulatory, economic, 1622
or technological reasons beyond its reasonable control. 1623

(c) Compliance with divisions (A) (1) (a) and (b) of this 1624
section shall be measured by including the effects of all 1625
demand-response programs for mercantile customers of the subject 1626

electric distribution utility, all waste energy recovery systems 1627
and all combined heat and power systems, and all such mercantile 1628
customer-sited energy efficiency, including waste energy 1629
recovery and combined heat and power, and peak demand reduction 1630
programs, adjusted upward by the appropriate loss factors. Any 1631
mechanism designed to recover the cost of energy efficiency, 1632
including waste energy recovery and combined heat and power, and 1633
peak demand reduction programs under divisions (A) (1) (a) and (b) 1634
of this section may exempt mercantile customers that commit 1635
their demand-response or other customer-sited capabilities, 1636
whether existing or new, for integration into the electric 1637
distribution utility's demand-response, energy efficiency, 1638
including waste energy recovery and combined heat and power, or 1639
peak demand reduction programs, if the commission determines 1640
that that exemption reasonably encourages such customers to 1641
commit those capabilities to those programs. If a mercantile 1642
customer makes such existing or new demand-response, energy 1643
efficiency, including waste energy recovery and combined heat 1644
and power, or peak demand reduction capability available to an 1645
electric distribution utility pursuant to division (A) (2) (c) of 1646
this section, the electric utility's baseline under division (A) 1647
(2) (a) of this section shall be adjusted to exclude the effects 1648
of all such demand-response, energy efficiency, including waste 1649
energy recovery and combined heat and power, or peak demand 1650
reduction programs that may have existed during the period used 1651
to establish the baseline. The baseline also shall be normalized 1652
for changes in numbers of customers, sales, weather, peak 1653
demand, and other appropriate factors so that the compliance 1654
measurement is not unduly influenced by factors outside the 1655
control of the electric distribution utility. 1656

(d) (i) Programs implemented by a utility may include the 1657

following: 1658

(I) Demand-response programs; 1659

(II) Smart grid investment programs, provided that such 1660
programs are demonstrated to be cost-beneficial; 1661

(III) Customer-sited programs, including waste energy 1662
recovery and combined heat and power systems; 1663

(IV) Transmission and distribution infrastructure 1664
improvements that reduce line losses; 1665

(V) Energy efficiency savings and peak demand reduction 1666
that are achieved, in whole or in part, as a result of funding 1667
provided from the universal service fund established by section 1668
4928.51 of the Revised Code to benefit low-income customers 1669
through programs that include, but are not limited to, energy 1670
audits, the installation of energy efficiency insulation, 1671
appliances, and windows, and other weatherization measures. 1672

(ii) No energy efficiency or peak demand reduction 1673
achieved under divisions (A) (2) (d) (i) (IV) and (V) of this 1674
section shall qualify for shared savings. 1675

(iii) Division (A) (2) (c) of this section shall be applied 1676
to include facilitating efforts by a mercantile customer or 1677
group of those customers to offer customer-sited demand- 1678
response, energy efficiency, including waste energy recovery and 1679
combined heat and power, or peak demand reduction capabilities 1680
to the electric distribution utility as part of a reasonable 1681
arrangement submitted to the commission pursuant to section 1682
4905.31 of the Revised Code. 1683

(e) No programs or improvements described in division (A) 1684
(2) (d) of this section shall conflict with any statewide 1685

building code adopted by the board of building standards. 1686

(B) In accordance with rules it shall adopt, the public 1687
utilities commission shall produce and docket at the commission 1688
an annual report containing the results of its verification of 1689
the annual levels of energy efficiency and of peak demand 1690
reductions achieved by each electric distribution utility 1691
pursuant to division (A) of this section. A copy of the report 1692
shall be provided to the consumers' counsel. 1693

(C) If the commission determines, after notice and 1694
opportunity for hearing and based upon its report under division 1695
(B) of this section, that an electric distribution utility has 1696
failed to comply with an energy efficiency or peak demand 1697
reduction requirement of division (A) of this section, the 1698
commission shall assess a forfeiture on the utility as provided 1699
under sections 4905.55 to 4905.60 and 4905.64 of the Revised 1700
Code, ~~either~~ in the amount, per day per undercompliance or 1701
noncompliance, relative to the period of the report, equal to 1702
that prescribed for noncompliances under section 4905.54 of the 1703
Revised Code, ~~or in an amount equal to the then existing market-~~ 1704
~~value of one renewable energy credit per megawatt hour of~~ 1705
~~undercompliance or noncompliance.~~ Revenue from any forfeiture 1706
assessed under this division shall be deposited to the credit of 1707
the advanced energy fund created under section 4928.61 of the 1708
Revised Code. 1709

(D) The commission may establish rules regarding the 1710
content of an application by an electric distribution utility 1711
for commission approval of a revenue decoupling mechanism under 1712
this division. Such an application shall not be considered an 1713
application to increase rates and may be included as part of a 1714
proposal to establish, continue, or expand energy efficiency or 1715

conservation programs. The commission by order may approve an 1716
application under this division if it determines both that the 1717
revenue decoupling mechanism provides for the recovery of 1718
revenue that otherwise may be forgone by the utility as a result 1719
of or in connection with the implementation by the electric 1720
distribution utility of any energy efficiency or energy 1721
conservation programs and reasonably aligns the interests of the 1722
utility and of its customers in favor of those programs. 1723

(E) The commission additionally shall adopt rules that 1724
require an electric distribution utility to provide a customer 1725
upon request with two years' consumption data in an accessible 1726
form. 1727

(F) (1) All the terms and conditions of an electric 1728
distribution utility's portfolio plan in effect as of the 1729
effective date of the amendments to this section by H.B. 6 of 1730
the 133rd general assembly shall remain in place through 1731
December 31, 2020, and terminate on that date. 1732

(2) If a portfolio plan is extended beyond its commission- 1733
approved term by division (F) (1) of this section, the existing 1734
plan's budget shall be increased for the extended term to 1735
include an amount equal to the annual average of the approved 1736
budget for all years of the portfolio plan in effect as of the 1737
effective date of the amendments to this section by H.B. 6 of 1738
the 133rd general assembly. 1739

(3) All other terms and conditions of a portfolio plan 1740
extended beyond its commission-approved term by division (F) (1) 1741
of this section shall remain the same unless changes are 1742
authorized by the commission upon the electric distribution 1743
utility's request. 1744

(G) All requirements imposed and all programs implemented 1745
under this section shall terminate on December 31, 2020, 1746
provided an electric distribution utility recovers in the 1747
following year all remaining program costs incurred or to be 1748
incurred, including costs incurred for contractual obligations 1749
and any costs to discontinue the portfolio plan programs, 1750
through applicable tariff schedules or riders in effect on the 1751
effective date of the amendments to this section by H.B. 6 of 1752
the 133rd general assembly. 1753

Sec. 4928.661. (A) Not earlier than January 1, 2020, an 1754
electric distribution utility may submit an application to the 1755
public utilities commission for approval of programs to 1756
encourage energy efficiency or peak demand reduction. The 1757
application may include descriptions of the proposed programs 1758
including all of the following: 1759

(1) The size and scope of the programs; 1760

(2) Applicability of the programs to specific customer 1761
classes; 1762

(3) Recovery of costs and incentives; 1763

(4) Any other information determined by the electric 1764
distribution utility to be appropriate for the commission's 1765
review. 1766

(B) The commission shall issue an order approving or 1767
modifying and approving an application if it finds that the 1768
proposed programs will be cost-effective, in the public 1769
interest, and consistent with state policy as specified in 1770
section 4928.02 of the Revised Code. 1771

(C) Applications submitted and approved under this section 1772
shall not take effect earlier than January 1, 2021. 1773

Sec. 4928.6610. As used in sections 4928.6611 to ~~4928.6616~~ 1774
4928.6615 of the Revised Code: 1775

(A) "Customer" means ~~any~~ either of the following: 1776

(1) Effective January 1, 2020, a mercantile customer as 1777
defined in section 4928.01 of the Revised Code; 1778

(2) Any customer of an electric distribution utility to 1779
which either of the following applies: 1780

~~(1)~~ (a) The customer receives service above the primary 1781
voltage level as determined by the utility's tariff 1782
classification. 1783

~~(2)~~ (b) The customer is a commercial or industrial 1784
customer to which both of the following apply: 1785

~~(a)~~ (i) The customer receives electricity through a meter 1786
of an end user or through more than one meter at a single 1787
location in a quantity that exceeds forty-five million kilowatt 1788
hours of electricity for the preceding calendar year. 1789

~~(b)~~ (ii) The customer has made a written request for 1790
registration as a self-assessing purchaser pursuant to section 1791
5727.81 of the Revised Code. 1792

(B) "Energy intensity" means the amount of energy, from 1793
electricity, used or consumed per unit of production. 1794

(C) "Portfolio plan" means either of the following: 1795

(1) The comprehensive energy efficiency and peak-demand 1796
reduction program portfolio plan required under rules adopted by 1797
the public utilities commission and codified in Chapter 4901:1- 1798
39 of the Administrative Code or hereafter recodified or 1799
amended; 1800

(2) A plan approved under section 4928.661 of the Revised 1801
Code or under rules adopted under that section. 1802

Sec. 4928.75. Beginning in fiscal year 2021 and each 1803
fiscal year thereafter, the director of development services 1804
shall, in each fiscal year, submit a completed waiver request in 1805
accordance with section 96.83 of Title 45 of the Code of Federal 1806
Regulations to the United States department of health and human 1807
services and any other applicable federal agencies for the state 1808
to expend twenty-five per cent of federal low-income home energy 1809
assistance programs funds from the home energy assistance block 1810
grants for weatherization services allowed by section 96.83(a) 1811
of Title 45 of the Code of Federal Regulations to the United 1812
States department of health and human services. 1813

Sec. 4928.80. (A) Each electric distribution utility shall 1814
file with the public utilities commission a tariff applicable to 1815
county fairs and agricultural societies that includes either of 1816
the following: 1817

(1) A fixed monthly service fee; 1818

(2) An energy charge on a kilowatt-hour basis. 1819

(B) The minimum monthly charge shall not exceed the fixed 1820
monthly service fee and the customer shall not be subject to any 1821
demand-based riders. 1822

(C) The electric distribution utility shall be eligible to 1823
recover any revenue loss associated with customer migration to 1824
this new tariff. 1825

Sec. 5727.47. (A) Notice of each assessment certified or 1826
issued pursuant to section 5727.23 or 5727.38 of the Revised 1827
Code shall be mailed to the public utility, and its mailing 1828
shall be prima-facie evidence of its receipt by the public 1829

utility to which it is addressed. With the notice, the tax 1830
commissioner shall provide instructions on how to petition for 1831
reassessment and request a hearing on the petition. ~~If~~ Except as 1832
otherwise provided in division (G) of this section, if a public 1833
utility objects to such an assessment, it may file with the 1834
commissioner, either personally or by certified mail, within 1835
sixty days after the mailing of the notice of assessment a 1836
written petition for reassessment signed by the utility's 1837
authorized agent having knowledge of the facts. The date the 1838
commissioner receives the petition shall be considered the date 1839
of filing. The petition shall indicate the utility's objections, 1840
but additional objections may be raised in writing if received 1841
by the commissioner prior to the date shown on the final 1842
determination. 1843

In the case of a petition seeking a reduction in taxable 1844
value filed with respect to an assessment certified under 1845
section 5727.23 of the Revised Code, the petitioner shall state 1846
in the petition the total amount of reduction in taxable value 1847
sought by the petitioner. If the petitioner objects to the 1848
percentage of true value at which taxable property is assessed 1849
by the commissioner, the petitioner shall state in the petition 1850
the total amount of reduction in taxable value sought both with 1851
and without regard to the objection pertaining to the percentage 1852
of true value at which its taxable property is assessed. If a 1853
petitioner objects to the commissioner's apportionment of the 1854
taxable value of the petitioner's taxable property, the 1855
petitioner shall distinctly state in the petition that the 1856
petitioner objects to the commissioner's apportionment, and, 1857
within forty-five days after filing the petition for 1858
reassessment, shall submit the petitioner's proposed 1859
apportionment of the taxable value of its taxable property among 1860

taxing districts. If a petitioner that objects to the 1861
commissioner's apportionment fails to state its objections to 1862
that apportionment in its petition for reassessment or fails to 1863
submit its proposed apportionment within forty-five days after 1864
filing the petition for reassessment, the commissioner shall 1865
dismiss the petitioner's objection to the commissioner's 1866
apportionment, and the taxable value of the petitioner's taxable 1867
property, subject to any adjustment to taxable value pursuant to 1868
the petition or appeal, shall be apportioned in the manner used 1869
by the commissioner in the preliminary or amended preliminary 1870
assessment certified under section 5727.23 of the Revised Code. 1871

If an additional objection seeking a reduction in taxable 1872
value in excess of the reduction stated in the original petition 1873
is properly and timely raised with respect to an assessment 1874
issued under section 5727.23 of the Revised Code, the petitioner 1875
shall state the total amount of the reduction in taxable value 1876
sought in the additional objection both with and without regard 1877
to any reduction in taxable value pertaining to the percentage 1878
of true value at which taxable property is assessed. If a 1879
petitioner fails to state the reduction in taxable value sought 1880
in the original petition or in additional objections properly 1881
raised after the petition is filed, the commissioner shall 1882
notify the petitioner of the failure by certified mail. If the 1883
petitioner fails to notify the commissioner in writing of the 1884
reduction in taxable value sought in the petition or in an 1885
additional objection within thirty days after receiving the 1886
commissioner's notice, the commissioner shall dismiss the 1887
petition or the additional objection in which that reduction is 1888
sought. 1889

(B) (1) Subject to divisions (B) (2) and (3) of this 1890
section, a public utility filing a petition for reassessment 1891

regarding an assessment certified or issued under section 1892
5727.23 or 5727.38 of the Revised Code shall pay the tax with 1893
respect to the assessment objected to as required by law. The 1894
acceptance of any tax payment by the treasurer of state, tax 1895
commissioner, or any county treasurer shall not prejudice any 1896
claim for taxes on final determination by the commissioner or 1897
final decision by the board of tax appeals or any court. 1898

(2) If a public utility properly and timely files a 1899
petition for reassessment regarding an assessment certified 1900
under section 5727.23 of the Revised Code, the petitioner shall 1901
pay the tax as prescribed by divisions (B) (2) (a), (b), and (c) 1902
of this section: 1903

(a) If the petitioner does not object to the 1904
commissioner's apportionment of the taxable value of the 1905
petitioner's taxable property, the petitioner is not required to 1906
pay the part of the tax otherwise due on the taxable value that 1907
the petitioner seeks to have reduced, subject to division (B) (2) 1908
(c) of this section. 1909

(b) If the petitioner objects to the commissioner's 1910
apportionment of the taxable value of the petitioner's taxable 1911
property, the petitioner is not required to pay the tax 1912
otherwise due on the part of the taxable value apportioned to 1913
any taxing district that the petitioner objects to, subject to 1914
division (B) (2) (c) of this section. If, pursuant to division (A) 1915
of this section, the petitioner has, in a proper and timely 1916
manner, apportioned taxable value to a taxing district to which 1917
the commissioner did not apportion the petitioner's taxable 1918
value, the petitioner shall pay the tax due on the taxable value 1919
that the petitioner has apportioned to the taxing district, 1920
subject to division (B) (2) (c) of this section. 1921

(c) If a petitioner objects to the percentage of true value at which taxable property is assessed by the commissioner, the petitioner shall pay the tax due on the basis of the percentage of true value at which the public utility's taxable property is assessed by the commissioner. In any case, the petitioner's payment of tax shall not be less than the amount of tax due based on the taxable value reflected on the last appeal notice issued by the commissioner under division (C) of this section. Until the county auditor receives notification under division (E) of this section and proceeds under section 5727.471 of the Revised Code to issue any refund that is found to be due, the county auditor shall not issue a refund for any increase in the reduction in taxable value that is sought by a petitioner later than forty-five days after the petitioner files the original petition as required under division (A) of this section.

(3) Any part of the tax that, under division (B) (2) (a) or (b) of this section, is not paid shall be collected upon receipt of the notification as provided in section 5727.471 of the Revised Code with interest thereon computed in the same manner as interest is computed under division (E) of section 5715.19 of the Revised Code, subject to any correction of the assessment by the commissioner under division (E) of this section or the final judgment of the board of tax appeals or a court to which the board's final judgment is appealed. The penalty imposed under section 323.121 of the Revised Code shall apply only to the unpaid portion of the tax if the petitioner's tax payment is less than the amount of tax due based on the taxable value reflected on the last appeal notice issued by the commissioner under division (C) of this section.

(C) Upon receipt of a properly filed petition for

reassessment with respect to an assessment certified under 1953
section 5727.23 of the Revised Code, the tax commissioner shall 1954
notify the treasurer of state or the auditor of each county to 1955
which the assessment objected to has been certified. In the case 1956
of a petition with respect to an assessment certified under 1957
section 5727.23 of the Revised Code, the commissioner shall 1958
issue an appeal notice within thirty days after receiving the 1959
amount of the taxable value reduction and apportionment changes 1960
sought by the petitioner in the original petition or in any 1961
additional objections properly and timely raised by the 1962
petitioner. The appeal notice shall indicate the amount of the 1963
reduction in taxable value sought in the petition or in the 1964
additional objections and the extent to which the reduction in 1965
taxable value and any change in apportionment requested by the 1966
petitioner would affect the commissioner's apportionment of the 1967
taxable value among taxing districts in the county as shown in 1968
the assessment. If a petitioner is seeking a reduction in 1969
taxable value on the basis of a lower percentage of true value 1970
than the percentage at which the commissioner assessed the 1971
petitioner's taxable property, the appeal notice shall indicate 1972
the reduction in taxable value sought by the petitioner without 1973
regard to the reduction sought on the basis of the lower 1974
percentage and shall indicate that the petitioner is required to 1975
pay tax on the reduced taxable value determined without regard 1976
to the reduction sought on the basis of a lower percentage of 1977
true value, as provided under division (B) (2) (c) of this 1978
section. The appeal notice shall include a statement that the 1979
reduced taxable value and the apportionment indicated in the 1980
notice are not final and are subject to adjustment by the 1981
commissioner or by the board of tax appeals or a court on 1982
appeal. If the commissioner finds an error in the appeal notice, 1983
the commissioner may amend the notice, but the notice is only 1984

for informational and tax payment purposes; the notice is not 1985
subject to appeal by any person. The commissioner also shall 1986
mail a copy of the appeal notice to the petitioner. Upon the 1987
request of a taxing authority, the county auditor may disclose 1988
to the taxing authority the extent to which a reduction in 1989
taxable value sought by a petitioner would affect the 1990
apportionment of taxable value to the taxing district or 1991
districts under the taxing authority's jurisdiction, but such a 1992
disclosure does not constitute a notice required by law to be 1993
given for the purpose of section 5717.02 of the Revised Code. 1994

(D) If the petitioner requests a hearing on the petition, 1995
the tax commissioner shall assign a time and place for the 1996
hearing on the petition and notify the petitioner of such time 1997
and place, but the commissioner may continue the hearing from 1998
time to time as necessary. 1999

(E) The tax commissioner may make corrections to the 2000
assessment as the commissioner finds proper. The commissioner 2001
shall serve a copy of the commissioner's final determination on 2002
the petitioner in the manner provided in section 5703.37 of the 2003
Revised Code. The commissioner's decision in the matter shall be 2004
final, subject to appeal under section 5717.02 of the Revised 2005
Code. With respect to a final determination issued for an 2006
assessment certified under section 5727.23 of the Revised Code, 2007
the commissioner also shall transmit a copy of the final 2008
determination to the applicable county auditor. In the absence 2009
of any further appeal, or when a decision of the board of tax 2010
appeals or of any court to which the decision has been appealed 2011
becomes final, the commissioner shall notify the public utility 2012
and, as appropriate, shall proceed under section 5727.42 of the 2013
Revised Code, or notify the applicable county auditor, who shall 2014
proceed under section 5727.471 of the Revised Code. 2015

The notification made under this division is not subject 2016
to further appeal. 2017

(F) On appeal, no adjustment shall be made in the tax 2018
commissioner's assessment certified under section 5727.23 of the 2019
Revised Code that reduces the taxable value of a petitioner's 2020
taxable property by an amount that exceeds the reduction sought 2021
by the petitioner in its petition for reassessment or in any 2022
additional objections properly and timely raised after the 2023
petition is filed with the commissioner. 2024

(G) An electric company with taxable property that is, or 2025
is part of, a clean air resource fueled by nuclear power and 2026
certified under section 3706.44 of the Revised Code may file a 2027
petition for reassessment seeking a reduction in taxable value 2028
of that property, provided that any such petition shall not 2029
request, and the tax commissioner shall have no authority to 2030
grant, a reduction in taxable value below the taxable values for 2031
such property as of the effective date of the amendments to this 2032
section by H.B. 6 of the 133rd general assembly. As used in this 2033
division, "clean air resource" has the same meaning as defined 2034
by section 3706.40 of the Revised Code. 2035

Sec. 5727.75. (A) For purposes of this section: 2036

(1) "Qualified energy project" means an energy project 2037
certified by the director of development services pursuant to 2038
this section. 2039

(2) "Energy project" means a project to provide electric 2040
power through the construction, installation, and use of an 2041
energy facility. 2042

(3) "Alternative energy zone" means a county declared as 2043
such by the board of county commissioners under division (E) (1) 2044

(b) or (c) of this section. 2045

(4) "Full-time equivalent employee" means the total number 2046
of employee-hours for which compensation was paid to individuals 2047
employed at a qualified energy project for services performed at 2048
the project during the calendar year divided by two thousand 2049
eighty hours. 2050

(5) "Solar energy project" means an energy project 2051
composed of an energy facility using solar panels to generate 2052
electricity. 2053

(6) "Internet identifier of record" has the same meaning 2054
as in section 9.312 of the Revised Code. 2055

(B) (1) Tangible personal property of a qualified energy 2056
project using renewable energy resources is exempt from taxation 2057
for tax years 2011 through 2021 if all of the following 2058
conditions are satisfied: 2059

(a) On or before December 31, 2020, the owner or a lessee 2060
pursuant to a sale and leaseback transaction of the project 2061
submits an application to the power siting board for a 2062
certificate under section 4906.20 of the Revised Code, or if 2063
that section does not apply, submits an application for any 2064
approval, consent, permit, or certificate or satisfies any 2065
condition required by a public agency or political subdivision 2066
of this state for the construction or initial operation of an 2067
energy project. 2068

(b) Construction or installation of the energy facility 2069
begins on or after January 1, 2009, and before January 1, 2021. 2070
For the purposes of this division, construction begins on the 2071
earlier of the date of application for a certificate or other 2072
approval or permit described in division (B) (1) (a) of this 2073

section, or the date the contract for the construction or 2074
installation of the energy facility is entered into. 2075

(c) For a qualified energy project with a nameplate 2076
capacity of ~~five~~twenty megawatts or greater, a board of county 2077
commissioners of a county in which property of the project is 2078
located has adopted a resolution under division (E)(1)(b) or (c) 2079
of this section to approve the application submitted under 2080
division (E) of this section to exempt the property located in 2081
that county from taxation. A board's adoption of a resolution 2082
rejecting an application or its failure to adopt a resolution 2083
approving the application does not affect the tax-exempt status 2084
of the qualified energy project's property that is located in 2085
another county. 2086

(2) If tangible personal property of a qualified energy 2087
project using renewable energy resources was exempt from 2088
taxation under this section beginning in any of tax years 2011 2089
through 2021, and the certification under division (E)(2) of 2090
this section has not been revoked, the tangible personal 2091
property of the qualified energy project is exempt from taxation 2092
for tax year 2022 and all ensuing tax years if the property was 2093
placed into service before January 1, 2022, as certified in the 2094
construction progress report required under division (F)(2) of 2095
this section. Tangible personal property that has not been 2096
placed into service before that date is taxable property subject 2097
to taxation. An energy project for which certification has been 2098
revoked is ineligible for further exemption under this section. 2099
Revocation does not affect the tax-exempt status of the 2100
project's tangible personal property for the tax year in which 2101
revocation occurs or any prior tax year. 2102

(C) Tangible personal property of a qualified energy 2103

project using clean coal technology, advanced nuclear 2104
technology, or cogeneration technology is exempt from taxation 2105
for the first tax year that the property would be listed for 2106
taxation and all subsequent years if all of the following 2107
circumstances are met: 2108

(1) The property was placed into service before January 1, 2109
2021. Tangible personal property that has not been placed into 2110
service before that date is taxable property subject to 2111
taxation. 2112

(2) For such a qualified energy project with a nameplate 2113
capacity of ~~five~~twenty megawatts or greater, a board of county 2114
commissioners of a county in which property of the qualified 2115
energy project is located has adopted a resolution under 2116
division (E) (1) (b) or (c) of this section to approve the 2117
application submitted under division (E) of this section to 2118
exempt the property located in that county from taxation. A 2119
board's adoption of a resolution rejecting the application or 2120
its failure to adopt a resolution approving the application does 2121
not affect the tax-exempt status of the qualified energy 2122
project's property that is located in another county. 2123

(3) The certification for the qualified energy project 2124
issued under division (E) (2) of this section has not been 2125
revoked. An energy project for which certification has been 2126
revoked is ineligible for exemption under this section. 2127
Revocation does not affect the tax-exempt status of the 2128
project's tangible personal property for the tax year in which 2129
revocation occurs or any prior tax year. 2130

(D) Except as otherwise provided in this section, real 2131
property of a qualified energy project is exempt from taxation 2132
for any tax year for which the tangible personal property of the 2133

qualified energy project is exempted under this section. 2134

(E) (1) (a) A person may apply to the director of 2135
development services for certification of an energy project as a 2136
qualified energy project on or before the following dates: 2137

(i) December 31, 2020, for an energy project using 2138
renewable energy resources; 2139

(ii) December 31, 2017, for an energy project using clean 2140
coal technology, advanced nuclear technology, or cogeneration 2141
technology. 2142

(b) The director shall forward a copy of each application 2143
for certification of an energy project with a nameplate capacity 2144
of ~~five~~ twenty megawatts or greater to the board of county 2145
commissioners of each county in which the project is located and 2146
to each taxing unit with territory located in each of the 2147
affected counties. Any board that receives from the director a 2148
copy of an application submitted under this division shall adopt 2149
a resolution approving or rejecting the application unless it 2150
has adopted a resolution under division (E) (1) (c) of this 2151
section. A resolution adopted under division (E) (1) (b) or (c) of 2152
this section may require an annual service payment to be made in 2153
addition to the service payment required under division (G) of 2154
this section. The sum of the service payment required in the 2155
resolution and the service payment required under division (G) 2156
of this section shall not exceed nine thousand dollars per 2157
megawatt of nameplate capacity located in the county. The 2158
resolution shall specify the time and manner in which the 2159
payments required by the resolution shall be paid to the county 2160
treasurer. The county treasurer shall deposit the payment to the 2161
credit of the county's general fund to be used for any purpose 2162
for which money credited to that fund may be used. 2163

The board shall send copies of the resolution to the owner 2164
of the facility and the director by certified mail or, if the 2165
board has record of an internet identifier of record associated 2166
with the owner or director, by ordinary mail and by that 2167
internet identifier of record. The board shall send such notice 2168
within thirty days after receipt of the application, or a longer 2169
period of time if authorized by the director. 2170

(c) A board of county commissioners may adopt a resolution 2171
declaring the county to be an alternative energy zone and 2172
declaring all applications submitted to the director of 2173
development services under this division after the adoption of 2174
the resolution, and prior to its repeal, to be approved by the 2175
board. 2176

All tangible personal property and real property of an 2177
energy project with a nameplate capacity of ~~five~~twenty 2178
megawatts or greater is taxable if it is located in a county in 2179
which the board of county commissioners adopted a resolution 2180
rejecting the application submitted under this division or 2181
failed to adopt a resolution approving the application under 2182
division (E)(1)(b) or (c) of this section. 2183

(2) The director shall certify an energy project if all of 2184
the following circumstances exist: 2185

(a) The application was timely submitted. 2186

(b) For an energy project with a nameplate capacity of 2187
~~five~~twenty megawatts or greater, a board of county 2188
commissioners of at least one county in which the project is 2189
located has adopted a resolution approving the application under 2190
division (E)(1)(b) or (c) of this section. 2191

(c) No portion of the project's facility was used to 2192

supply electricity before December 31, 2009. 2193

(3) The director shall deny a certification application if 2194
the director determines the person has failed to comply with any 2195
requirement under this section. The director may revoke a 2196
certification if the director determines the person, or 2197
subsequent owner or lessee pursuant to a sale and leaseback 2198
transaction of the qualified energy project, has failed to 2199
comply with any requirement under this section. Upon 2200
certification or revocation, the director shall notify the 2201
person, owner, or lessee, the tax commissioner, and the county 2202
auditor of a county in which the project is located of the 2203
certification or revocation. Notice shall be provided in a 2204
manner convenient to the director. 2205

(F) The owner or a lessee pursuant to a sale and leaseback 2206
transaction of a qualified energy project shall do each of the 2207
following: 2208

(1) Comply with all applicable regulations; 2209

(2) File with the director of development services a 2210
certified construction progress report before the first day of 2211
March of each year during the energy facility's construction or 2212
installation indicating the percentage of the project completed, 2213
and the project's nameplate capacity, as of the preceding 2214
thirty-first day of December. Unless otherwise instructed by the 2215
director of development services, the owner or lessee of an 2216
energy project shall file a report with the director on or 2217
before the first day of March each year after completion of the 2218
energy facility's construction or installation indicating the 2219
project's nameplate capacity as of the preceding thirty-first 2220
day of December. Not later than sixty days after June 17, 2010, 2221
the owner or lessee of an energy project, the construction of 2222

which was completed before June 17, 2010, shall file a 2223
certificate indicating the project's nameplate capacity. 2224

(3) File with the director of development services, in a 2225
manner prescribed by the director, a report of the total number 2226
of full-time equivalent employees, and the total number of full- 2227
time equivalent employees domiciled in Ohio, who are employed in 2228
the construction or installation of the energy facility; 2229

(4) For energy projects with a nameplate capacity of ~~five~~ 2230
twenty megawatts or greater, repair all roads, bridges, and 2231
culverts affected by construction as reasonably required to 2232
restore them to their preconstruction condition, as determined 2233
by the county engineer in consultation with the local 2234
jurisdiction responsible for the roads, bridges, and culverts. 2235
In the event that the county engineer deems any road, bridge, or 2236
culvert to be inadequate to support the construction or 2237
decommissioning of the energy facility, the road, bridge, or 2238
culvert shall be rebuilt or reinforced to the specifications 2239
established by the county engineer prior to the construction or 2240
decommissioning of the facility. The owner or lessee of the 2241
facility shall post a bond in an amount established by the 2242
county engineer and to be held by the board of county 2243
commissioners to ensure funding for repairs of roads, bridges, 2244
and culverts affected during the construction. The bond shall be 2245
released by the board not later than one year after the date the 2246
repairs are completed. The energy facility owner or lessee 2247
pursuant to a sale and leaseback transaction shall post a bond, 2248
as may be required by the Ohio power siting board in the 2249
certificate authorizing commencement of construction issued 2250
pursuant to section 4906.10 of the Revised Code, to ensure 2251
funding for repairs to roads, bridges, and culverts resulting 2252
from decommissioning of the facility. The energy facility owner 2253

or lessee and the county engineer may enter into an agreement 2254
regarding specific transportation plans, reinforcements, 2255
modifications, use and repair of roads, financial security to be 2256
provided, and any other relevant issue. 2257

(5) Provide or facilitate training for fire and emergency 2258
responders for response to emergency situations related to the 2259
energy project and, for energy projects with a nameplate 2260
capacity of ~~five~~twenty megawatts or greater, at the person's 2261
expense, equip the fire and emergency responders with proper 2262
equipment as reasonably required to enable them to respond to 2263
such emergency situations; 2264

(6) Maintain a ratio of Ohio-domiciled full-time 2265
equivalent employees employed in the construction or 2266
installation of the energy project to total full-time equivalent 2267
employees employed in the construction or installation of the 2268
energy project of not less than eighty per cent in the case of a 2269
solar energy project, and not less than fifty per cent in the 2270
case of any other energy project. In the case of an energy 2271
project for which certification from the power siting board is 2272
required under section 4906.20 of the Revised Code, the number 2273
of full-time equivalent employees employed in the construction 2274
or installation of the energy project equals the number actually 2275
employed or the number projected to be employed in the 2276
certificate application, if such projection is required under 2277
regulations adopted pursuant to section 4906.03 of the Revised 2278
Code, whichever is greater. For all other energy projects, the 2279
number of full-time equivalent employees employed in the 2280
construction or installation of the energy project equals the 2281
number actually employed or the number projected to be employed 2282
by the director of development services, whichever is greater. 2283
To estimate the number of employees to be employed in the 2284

construction or installation of an energy project, the director 2285
shall use a generally accepted job-estimating model in use for 2286
renewable energy projects, including but not limited to the job 2287
and economic development impact model. The director may adjust 2288
an estimate produced by a model to account for variables not 2289
accounted for by the model. 2290

(7) For energy projects with a nameplate capacity in 2291
excess of ~~two~~ twenty megawatts, establish a relationship with a 2292
member of the university system of Ohio as defined in section 2293
3345.011 of the Revised Code or with a person offering an 2294
apprenticeship program registered with the employment and 2295
training administration within the United States department of 2296
labor or with the apprenticeship council created by section 2297
4139.02 of the Revised Code, to educate and train individuals 2298
for careers in the wind or solar energy industry. The 2299
relationship may include endowments, cooperative programs, 2300
internships, apprenticeships, research and development projects, 2301
and curriculum development. 2302

~~(8) Offer to sell power or renewable energy credits from~~ 2303
~~the energy project to electric distribution utilities or~~ 2304
~~electric service companies subject to renewable energy resource~~ 2305
~~requirements under section 4928.64 of the Revised Code that have~~ 2306
~~issued requests for proposal for such power or renewable energy~~ 2307
~~credits. If no electric distribution utility or electric service~~ 2308
~~company issues a request for proposal on or before December 31,~~ 2309
~~2010, or accepts an offer for power or renewable energy credits~~ 2310
~~within forty five days after the offer is submitted, power or~~ 2311
~~renewable energy credits from the energy project may be sold to~~ 2312
~~other persons. Division (F) (8) of this section does not apply~~ 2313
~~if:—~~ 2314

~~(a) The owner or lessee is a rural electric company or a
municipal power agency as defined in section 3734.058 of the
Revised Code.~~ 2315
2316
2317

~~(b) The owner or lessee is a person that, before
completion of the energy project, contracted for the sale of
power or renewable energy credits with a rural electric company
or a municipal power agency.~~ 2318
2319
2320
2321

~~(c) The owner or lessee contracts for the sale of power or
renewable energy credits from the energy project before June 17,
2010.~~ 2322
2323
2324

~~(9)~~ Make annual service payments as required by division 2325
(G) of this section and as may be required in a resolution 2326
adopted by a board of county commissioners under division (E) of 2327
this section. 2328

(G) The owner or a lessee pursuant to a sale and leaseback 2329
transaction of a qualified energy project shall make annual 2330
service payments in lieu of taxes to the county treasurer on or 2331
before the final dates for payments of taxes on public utility 2332
personal property on the real and public utility personal 2333
property tax list for each tax year for which property of the 2334
energy project is exempt from taxation under this section. The 2335
county treasurer shall allocate the payment on the basis of the 2336
project's physical location. Upon receipt of a payment, or if 2337
timely payment has not been received, the county treasurer shall 2338
certify such receipt or non-receipt to the director of 2339
development services and tax commissioner in a form determined 2340
by the director and commissioner, respectively. Each payment 2341
shall be in the following amount: 2342

(1) In the case of a solar energy project, seven thousand 2343

dollars per megawatt of nameplate capacity located in the county 2344
as of December 31, 2010, for tax year 2011, as of December 31, 2345
2011, for tax year 2012, as of December 31, 2012, for tax year 2346
2013, as of December 31, 2013, for tax year 2014, as of December 2347
31, 2014, for tax year 2015, as of December 31, 2015, for tax 2348
year 2016, and as of December 31, 2016, for tax year 2017 and 2349
each tax year thereafter; 2350

(2) In the case of any other energy project using 2351
renewable energy resources, the following: 2352

(a) If the project maintains during the construction or 2353
installation of the energy facility a ratio of Ohio-domiciled 2354
full-time equivalent employees to total full-time equivalent 2355
employees of not less than seventy-five per cent, six thousand 2356
dollars per megawatt of nameplate capacity located in the county 2357
as of the thirty-first day of December of the preceding tax 2358
year; 2359

(b) If the project maintains during the construction or 2360
installation of the energy facility a ratio of Ohio-domiciled 2361
full-time equivalent employees to total full-time equivalent 2362
employees of less than seventy-five per cent but not less than 2363
sixty per cent, seven thousand dollars per megawatt of nameplate 2364
capacity located in the county as of the thirty-first day of 2365
December of the preceding tax year; 2366

(c) If the project maintains during the construction or 2367
installation of the energy facility a ratio of Ohio-domiciled 2368
full-time equivalent employees to total full-time equivalent 2369
employees of less than sixty per cent but not less than fifty 2370
per cent, eight thousand dollars per megawatt of nameplate 2371
capacity located in the county as of the thirty-first day of 2372
December of the preceding tax year. 2373

(3) In the case of an energy project using clean coal 2374
technology, advanced nuclear technology, or cogeneration 2375
technology, the following: 2376

(a) If the project maintains during the construction or 2377
installation of the energy facility a ratio of Ohio-domiciled 2378
full-time equivalent employees to total full-time equivalent 2379
employees of not less than seventy-five per cent, six thousand 2380
dollars per megawatt of nameplate capacity located in the county 2381
as of the thirty-first day of December of the preceding tax 2382
year; 2383

(b) If the project maintains during the construction or 2384
installation of the energy facility a ratio of Ohio-domiciled 2385
full-time equivalent employees to total full-time equivalent 2386
employees of less than seventy-five per cent but not less than 2387
sixty per cent, seven thousand dollars per megawatt of nameplate 2388
capacity located in the county as of the thirty-first day of 2389
December of the preceding tax year; 2390

(c) If the project maintains during the construction or 2391
installation of the energy facility a ratio of Ohio-domiciled 2392
full-time equivalent employees to total full-time equivalent 2393
employees of less than sixty per cent but not less than fifty 2394
per cent, eight thousand dollars per megawatt of nameplate 2395
capacity located in the county as of the thirty-first day of 2396
December of the preceding tax year. 2397

(H) The director of development services in consultation 2398
with the tax commissioner shall adopt rules pursuant to Chapter 2399
119. of the Revised Code to implement and enforce this section. 2400

Section 2. That existing sections 303.213, 519.213, 2401
519.214, 713.081, 3706.02, 3706.03, 4906.10, 4906.13, 4906.20, 2402

4906.201, 4928.01, 4928.02, 4928.66, 4928.6610, 5727.47, and 2403
5727.75 of the Revised Code are hereby repealed. 2404

Section 3. That section 4928.6616 of the Revised Code is 2405
hereby repealed. 2406

Section 4. The amendments by this act to division (A) (34) 2407
of section 4928.01 of the Revised Code, division (C) of section 2408
4928.66 of the Revised Code, and divisions (F) (8) and (9) of 2409
section 5727.75 of the Revised Code take effect January 1, 2020. 2410

Section 5. That sections 1710.06, 4928.142, 4928.143, 2411
4928.20, 4928.61, 4928.62, 4928.641, 4928.645, and 5501.311 of 2412
the Revised Code be amended to read as follows: 2413

Sec. 1710.06. (A) The board of directors of a special 2414
improvement district may develop and adopt one or more written 2415
plans for public improvements or public services that benefit 2416
all or any part of the district. Each plan shall set forth the 2417
specific public improvements or public services that are to be 2418
provided, identify the area in which they will be provided, and 2419
specify the method of assessment to be used. Each plan for 2420
public improvements or public services shall indicate the period 2421
of time the assessments are to be levied for the improvements 2422
and services and, if public services are included in the plan, 2423
the period of time the services are to remain in effect. Plans 2424
for public improvements may include the planning, design, 2425
construction, reconstruction, enlargement, or alteration of any 2426
public improvements and the acquisition of land for the 2427
improvements. Plans for public improvements or public services 2428
may also include, but are not limited to, provisions for the 2429
following: 2430

(1) Creating and operating the district and the nonprofit 2431

corporation under this chapter, including hiring employees and 2432
professional services, contracting for insurance, and purchasing 2433
or leasing office space and office equipment and other 2434
requirements of the district; 2435

(2) Planning, designing, and implementing a public 2436
improvements or public services plan, including hiring 2437
architectural, engineering, legal, appraisal, insurance, 2438
consulting, energy auditing, and planning services, and, for 2439
public services, managing, protecting, and maintaining public 2440
and private facilities, including public improvements; 2441

(3) Conducting court proceedings to carry out this 2442
chapter; 2443

(4) Paying damages resulting from the provision of public 2444
improvements or public services and implementing the plans; 2445

(5) Paying the costs of issuing, paying interest on, and 2446
redeeming notes and bonds issued for funding public improvements 2447
and public services plans; and 2448

(6) Sale, lease, lease with an option to purchase, 2449
conveyance of other interests in, or other contracts for the 2450
acquisition, construction, maintenance, repair, furnishing, 2451
equipping, operation, or improvement of any special energy 2452
improvement project by the special improvement district, between 2453
a participating political subdivision and the special 2454
improvement district, and between the special improvement 2455
district and any owner of real property in the special 2456
improvement district on which a special energy improvement 2457
project has been acquired, installed, equipped, or improved; ~~and~~ 2458

~~(7) Aggregating the renewable energy credits generated by~~ 2459
~~one or more special energy improvement projects within a special~~ 2460

~~improvement district, upon the consent of the owners of the~~ 2461
~~credits and for the purpose of negotiating and completing the~~ 2462
~~sale of such credits.~~ 2463

(B) Once the board of directors of the special improvement 2464
district adopts a plan, it shall submit the plan to the 2465
legislative authority of each participating political 2466
subdivision and the municipal executive of each municipal 2467
corporation in which the district is located, if any. The 2468
legislative authorities and municipal executives shall review 2469
the plan and, within sixty days after receiving it, may submit 2470
their comments and recommendations about it to the district. 2471
After reviewing these comments and recommendations, the board of 2472
directors may amend the plan. It may then submit the plan, 2473
amended or otherwise, in the form of a petition to members of 2474
the district whose property may be assessed for the plan. Once 2475
the petition is signed by those members who own at least sixty 2476
per cent of the front footage of property that is to be assessed 2477
and that abuts upon a street, alley, public road, place, 2478
boulevard, parkway, park entrance, easement, or other public 2479
improvement, or those members who own at least seventy-five per 2480
cent of the area to be assessed for the improvement or service, 2481
the petition may be submitted to each legislative authority for 2482
approval. Except as provided in division (H) of section 1710.02 2483
of the Revised Code, if the special improvement district was 2484
created for the purpose of developing and implementing plans for 2485
special energy improvement projects or shoreline improvement 2486
projects, the petition required under this division shall be 2487
signed by one hundred per cent of the owners of the area of all 2488
real property located within the area to be assessed for the 2489
special energy improvement project or shoreline improvement 2490
project. 2491

Each legislative authority shall, by resolution, approve 2492
or reject the petition within sixty days after receiving it. If 2493
the petition is approved by the legislative authority of each 2494
participating political subdivision, the plan contained in the 2495
petition shall be effective at the earliest date on which a 2496
nonemergency resolution of the legislative authority with the 2497
latest effective date may become effective. A plan may not be 2498
resubmitted to the legislative authorities and municipal 2499
executives more than three times in any twelve-month period. 2500

(C) Each participating political subdivision shall levy, 2501
by special assessment upon specially benefited property located 2502
within the district, the costs of any public improvements or 2503
public services plan contained in a petition approved by the 2504
participating political subdivisions under this section or 2505
division (F) of section 1710.02 of the Revised Code. The levy 2506
shall be made in accordance with the procedures set forth in 2507
Chapter 727. of the Revised Code, except that: 2508

(1) The assessment for each improvements or services plan 2509
may be levied by any one or any combination of the methods of 2510
assessment listed in section 727.01 of the Revised Code, 2511
provided that the assessment is uniformly applied. 2512

(2) For the purpose of levying an assessment, the board of 2513
directors may combine one or more improvements or services plans 2514
or parts of plans and levy a single assessment against specially 2515
benefited property. 2516

(3) For purposes of special assessments levied by a 2517
township pursuant to this chapter, references in Chapter 727. of 2518
the Revised Code to the municipal corporation shall be deemed to 2519
refer to the township, and references to the legislative 2520
authority of the municipal corporation shall be deemed to refer 2521

to the board of township trustees. 2522

Church property or property owned by a political 2523
subdivision, including any participating political subdivision 2524
in which a special improvement district is located, shall be 2525
included in and be subject to special assessments made pursuant 2526
to a plan adopted under this section or division (F) of section 2527
1710.02 of the Revised Code, if the church or political 2528
subdivision has specifically requested in writing that its 2529
property be included within the special improvement district and 2530
the church or political subdivision is a member of the district 2531
or, in the case of a district created by an existing qualified 2532
nonprofit corporation, if the church is a member of the 2533
corporation. 2534

(D) All rights and privileges of property owners who are 2535
assessed under Chapter 727. of the Revised Code shall be granted 2536
to property owners assessed under this chapter, including those 2537
rights and privileges specified in sections 727.15 to 727.17 and 2538
727.18 to 727.22 of the Revised Code and the right to notice of 2539
the resolution of necessity and the filing of the estimated 2540
assessment under section 727.13 of the Revised Code. Property 2541
owners assessed for public services under this chapter shall 2542
have the same rights and privileges as property owners assessed 2543
for public improvements under this chapter. 2544

Sec. 4928.142. (A) For the purpose of complying with 2545
section 4928.141 of the Revised Code and subject to division (D) 2546
of this section and, as applicable, subject to the rate plan 2547
requirement of division (A) of section 4928.141 of the Revised 2548
Code, an electric distribution utility may establish a standard 2549
service offer price for retail electric generation service that 2550
is delivered to the utility under a market-rate offer. 2551

(1) The market-rate offer shall be determined through a 2552
competitive bidding process that provides for all of the 2553
following: 2554

(a) Open, fair, and transparent competitive solicitation; 2555

(b) Clear product definition; 2556

(c) Standardized bid evaluation criteria; 2557

(d) Oversight by an independent third party that shall 2558
design the solicitation, administer the bidding, and ensure that 2559
the criteria specified in ~~division~~ divisions (A) (1) (a) to (c) of 2560
this section are met; 2561

(e) Evaluation of the submitted bids prior to the 2562
selection of the least-cost bid winner or winners. 2563

No generation supplier shall be prohibited from 2564
participating in the bidding process. 2565

(2) The public utilities commission shall modify rules, or 2566
adopt new rules as necessary, concerning the conduct of the 2567
competitive bidding process and the qualifications of bidders, 2568
which rules shall foster supplier participation in the bidding 2569
process and shall be consistent with the requirements of 2570
division (A) (1) of this section. 2571

(B) Prior to initiating a competitive bidding process for 2572
a market-rate offer under division (A) of this section, the 2573
electric distribution utility shall file an application with the 2574
commission. An electric distribution utility may file its 2575
application with the commission prior to the effective date of 2576
the commission rules required under division (A) (2) of this 2577
section, and, as the commission determines necessary, the 2578
utility shall immediately conform its filing to the rules upon 2579

their taking effect. 2580

An application under this division shall detail the 2581
electric distribution utility's proposed compliance with the 2582
requirements of division (A)(1) of this section and with 2583
commission rules under division (A)(2) of this section and 2584
demonstrate that all of the following requirements are met: 2585

(1) The electric distribution utility or its transmission 2586
service affiliate belongs to at least one regional transmission 2587
organization that has been approved by the federal energy 2588
regulatory commission; or there otherwise is comparable and 2589
nondiscriminatory access to the electric transmission grid. 2590

(2) Any such regional transmission organization has a 2591
market-monitor function and the ability to take actions to 2592
identify and mitigate market power or the electric distribution 2593
utility's market conduct; or a similar market monitoring 2594
function exists with commensurate ability to identify and 2595
monitor market conditions and mitigate conduct associated with 2596
the exercise of market power. 2597

(3) A published source of information is available 2598
publicly or through subscription that identifies pricing 2599
information for traded electricity on- and off-peak energy 2600
products that are contracts for delivery beginning at least two 2601
years from the date of the publication and is updated on a 2602
regular basis. 2603

The commission shall initiate a proceeding and, within 2604
ninety days after the application's filing date, shall determine 2605
by order whether the electric distribution utility and its 2606
market-rate offer meet all of the foregoing requirements. If the 2607
finding is positive, the electric distribution utility may 2608

initiate its competitive bidding process. If the finding is 2609
negative as to one or more requirements, the commission in the 2610
order shall direct the electric distribution utility regarding 2611
how any deficiency may be remedied in a timely manner to the 2612
commission's satisfaction; otherwise, the electric distribution 2613
utility shall withdraw the application. However, if such remedy 2614
is made and the subsequent finding is positive and also if the 2615
electric distribution utility made a simultaneous filing under 2616
this section and section 4928.143 of the Revised Code, the 2617
utility shall not initiate its competitive bid until at least 2618
one hundred fifty days after the filing date of those 2619
applications. 2620

(C) Upon the completion of the competitive bidding process 2621
authorized by divisions (A) and (B) of this section, including 2622
for the purpose of division (D) of this section, the commission 2623
shall select the least-cost bid winner or winners of that 2624
process, and such selected bid or bids, as prescribed as retail 2625
rates by the commission, shall be the electric distribution 2626
utility's standard service offer unless the commission, by order 2627
issued before the third calendar day following the conclusion of 2628
the competitive bidding process for the market rate offer, 2629
determines that one or more of the following criteria were not 2630
met: 2631

(1) Each portion of the bidding process was 2632
oversubscribed, such that the amount of supply bid upon was 2633
greater than the amount of the load bid out. 2634

(2) There were four or more bidders. 2635

(3) At least twenty-five per cent of the load is bid upon 2636
by one or more persons other than the electric distribution 2637
utility. 2638

All costs incurred by the electric distribution utility as 2639
a result of or related to the competitive bidding process or to 2640
procuring generation service to provide the standard service 2641
offer, including the costs of energy and capacity and the costs 2642
of all other products and services procured as a result of the 2643
competitive bidding process, shall be timely recovered through 2644
the standard service offer price, and, for that purpose, the 2645
commission shall approve a reconciliation mechanism, other 2646
recovery mechanism, or a combination of such mechanisms for the 2647
utility. 2648

(D) The first application filed under this section by an 2649
electric distribution utility that, as of July 31, 2008, 2650
directly owns, in whole or in part, operating electric 2651
generating facilities that had been used and useful in this 2652
state shall require that a portion of that utility's standard 2653
service offer load for the first five years of the market rate 2654
offer be competitively bid under division (A) of this section as 2655
follows: ten per cent of the load in year one, not more than 2656
twenty per cent in year two, thirty per cent in year three, 2657
forty per cent in year four, and fifty per cent in year five. 2658
Consistent with those percentages, the commission shall 2659
determine the actual percentages for each year of years one 2660
through five. The standard service offer price for retail 2661
electric generation service under this first application shall 2662
be a proportionate blend of the bid price and the generation 2663
service price for the remaining standard service offer load, 2664
which latter price shall be equal to the electric distribution 2665
utility's most recent standard service offer price, adjusted 2666
upward or downward as the commission determines reasonable, 2667
relative to the jurisdictional portion of any known and 2668
measurable changes from the level of any one or more of the 2669

following costs as reflected in that most recent standard 2670
service offer price: 2671

(1) The electric distribution utility's prudently incurred 2672
cost of fuel used to produce electricity; 2673

(2) Its prudently incurred purchased power costs; 2674

(3) Its prudently incurred costs of ~~satisfying the supply~~ 2675
~~and demand portfolio requirements of this state, including, but~~ 2676
~~not limited to, renewable energy resource and energy efficiency~~ 2677
~~requirements programs;~~ 2678

(4) Its costs prudently incurred to comply with 2679
environmental laws and regulations, with consideration of the 2680
derating of any facility associated with those costs. 2681

In making any adjustment to the most recent standard 2682
service offer price on the basis of costs described in division 2683
(D) of this section, the commission shall include the benefits 2684
that may become available to the electric distribution utility 2685
as a result of or in connection with the costs included in the 2686
adjustment, including, but not limited to, the utility's receipt 2687
of emissions credits or its receipt of tax benefits or of other 2688
benefits, and, accordingly, the commission may impose such 2689
conditions on the adjustment to ensure that any such benefits 2690
are properly aligned with the associated cost responsibility. 2691
The commission shall also determine how such adjustments will 2692
affect the electric distribution utility's return on common 2693
equity that may be achieved by those adjustments. The commission 2694
shall not apply its consideration of the return on common equity 2695
to reduce any adjustments authorized under this division unless 2696
the adjustments will cause the electric distribution utility to 2697
earn a return on common equity that is significantly in excess 2698

of the return on common equity that is earned by publicly traded 2699
companies, including utilities, that face comparable business 2700
and financial risk, with such adjustments for capital structure 2701
as may be appropriate. The burden of proof for demonstrating 2702
that significantly excessive earnings will not occur shall be on 2703
the electric distribution utility. 2704

Additionally, the commission may adjust the electric 2705
distribution utility's most recent standard service offer price 2706
by such just and reasonable amount that the commission 2707
determines necessary to address any emergency that threatens the 2708
utility's financial integrity or to ensure that the resulting 2709
revenue available to the utility for providing the standard 2710
service offer is not so inadequate as to result, directly or 2711
indirectly, in a taking of property without compensation 2712
pursuant to Section 19 of Article I, Ohio Constitution. The 2713
electric distribution utility has the burden of demonstrating 2714
that any adjustment to its most recent standard service offer 2715
price is proper in accordance with this division. 2716

(E) Beginning in the second year of a blended price under 2717
division (D) of this section and notwithstanding any other 2718
requirement of this section, the commission may alter 2719
prospectively the proportions specified in that division to 2720
mitigate any effect of an abrupt or significant change in the 2721
electric distribution utility's standard service offer price 2722
that would otherwise result in general or with respect to any 2723
rate group or rate schedule but for such alteration. Any such 2724
alteration shall be made not more often than annually, and the 2725
commission shall not, by altering those proportions and in any 2726
event, including because of the length of time, as authorized 2727
under division (C) of this section, taken to approve the market 2728
rate offer, cause the duration of the blending period to exceed 2729

ten years as counted from the effective date of the approved 2730
market rate offer. Additionally, any such alteration shall be 2731
limited to an alteration affecting the prospective proportions 2732
used during the blending period and shall not affect any 2733
blending proportion previously approved and applied by the 2734
commission under this division. 2735

(F) An electric distribution utility that has received 2736
commission approval of its first application under division (C) 2737
of this section shall not, nor ever shall be authorized or 2738
required by the commission to, file an application under section 2739
4928.143 of the Revised Code. 2740

Sec. 4928.143. (A) For the purpose of complying with 2741
section 4928.141 of the Revised Code, an electric distribution 2742
utility may file an application for public utilities commission 2743
approval of an electric security plan as prescribed under 2744
division (B) of this section. The utility may file that 2745
application prior to the effective date of any rules the 2746
commission may adopt for the purpose of this section, and, as 2747
the commission determines necessary, the utility immediately 2748
shall conform its filing to those rules upon their taking 2749
effect. 2750

(B) Notwithstanding any other provision of Title XLIX of 2751
the Revised Code to the contrary except division (D) of this 2752
section, divisions (I), (J), and (K) of section 4928.20, 2753
~~division (E) of section 4928.64,~~ and section 4928.69 of the 2754
Revised Code: 2755

(1) An electric security plan shall include provisions 2756
relating to the supply and pricing of electric generation 2757
service. In addition, if the proposed electric security plan has 2758
a term longer than three years, it may include provisions in the 2759

plan to permit the commission to test the plan pursuant to 2760
division (E) of this section and any transitional conditions 2761
that should be adopted by the commission if the commission 2762
terminates the plan as authorized under that division. 2763

(2) The plan may provide for or include, without 2764
limitation, any of the following: 2765

(a) Automatic recovery of any of the following costs of 2766
the electric distribution utility, provided the cost is 2767
prudently incurred: the cost of fuel used to generate the 2768
electricity supplied under the offer; the cost of purchased 2769
power supplied under the offer, including the cost of energy and 2770
capacity, and including purchased power acquired from an 2771
affiliate; the cost of emission allowances; and the cost of 2772
federally mandated carbon or energy taxes; 2773

(b) A reasonable allowance for construction work in 2774
progress for any of the electric distribution utility's cost of 2775
constructing an electric generating facility or for an 2776
environmental expenditure for any electric generating facility 2777
of the electric distribution utility, provided the cost is 2778
incurred or the expenditure occurs on or after January 1, 2009. 2779
Any such allowance shall be subject to the construction work in 2780
progress allowance limitations of division (A) of section 2781
4909.15 of the Revised Code, except that the commission may 2782
authorize such an allowance upon the incurrence of the cost or 2783
occurrence of the expenditure. No such allowance for generating 2784
facility construction shall be authorized, however, unless the 2785
commission first determines in the proceeding that there is need 2786
for the facility based on resource planning projections 2787
submitted by the electric distribution utility. Further, no such 2788
allowance shall be authorized unless the facility's construction 2789

was sourced through a competitive bid process, regarding which 2790
process the commission may adopt rules. An allowance approved 2791
under division (B) (2) (b) of this section shall be established as 2792
a nonbypassable surcharge for the life of the facility. 2793

(c) The establishment of a nonbypassable surcharge for the 2794
life of an electric generating facility that is owned or 2795
operated by the electric distribution utility, was sourced 2796
through a competitive bid process subject to any such rules as 2797
the commission adopts under division (B) (2) (b) of this section, 2798
and is newly used and useful on or after January 1, 2009, which 2799
surcharge shall cover all costs of the utility specified in the 2800
application, excluding costs recovered through a surcharge under 2801
division (B) (2) (b) of this section. However, no surcharge shall 2802
be authorized unless the commission first determines in the 2803
proceeding that there is need for the facility based on resource 2804
planning projections submitted by the electric distribution 2805
utility. Additionally, if a surcharge is authorized for a 2806
facility pursuant to plan approval under division (C) of this 2807
section and as a condition of the continuation of the surcharge, 2808
the electric distribution utility shall dedicate to Ohio 2809
consumers the capacity and energy and the rate associated with 2810
the cost of that facility. Before the commission authorizes any 2811
surcharge pursuant to this division, it may consider, as 2812
applicable, the effects of any decommissioning, deratings, and 2813
retirements. 2814

(d) Terms, conditions, or charges relating to limitations 2815
on customer shopping for retail electric generation service, 2816
bypassability, standby, back-up, or supplemental power service, 2817
default service, carrying costs, amortization periods, and 2818
accounting or deferrals, including future recovery of such 2819
deferrals, as would have the effect of stabilizing or providing 2820

certainty regarding retail electric service; 2821

(e) Automatic increases or decreases in any component of 2822
the standard service offer price; 2823

(f) Consistent with sections 4928.23 to 4928.2318 of the 2824
Revised Code, both of the following: 2825

(i) Provisions for the electric distribution utility to 2826
securitize any phase-in, inclusive of carrying charges, of the 2827
utility's standard service offer price, which phase-in is 2828
authorized in accordance with section 4928.144 of the Revised 2829
Code; 2830

(ii) Provisions for the recovery of the utility's cost of 2831
securitization. 2832

(g) Provisions relating to transmission, ancillary, 2833
congestion, or any related service required for the standard 2834
service offer, including provisions for the recovery of any cost 2835
of such service that the electric distribution utility incurs on 2836
or after that date pursuant to the standard service offer; 2837

(h) Provisions regarding the utility's distribution 2838
service, including, without limitation and notwithstanding any 2839
provision of Title XLIX of the Revised Code to the contrary, 2840
provisions regarding single issue ratemaking, a revenue 2841
decoupling mechanism or any other incentive ratemaking, and 2842
provisions regarding distribution infrastructure and 2843
modernization incentives for the electric distribution utility. 2844
The latter may include a long-term energy delivery 2845
infrastructure modernization plan for that utility or any plan 2846
providing for the utility's recovery of costs, including lost 2847
revenue, shared savings, and avoided costs, and a just and 2848
reasonable rate of return on such infrastructure modernization. 2849

As part of its determination as to whether to allow in an 2850
electric distribution utility's electric security plan inclusion 2851
of any provision described in division (B) (2) (h) of this 2852
section, the commission shall examine the reliability of the 2853
electric distribution utility's distribution system and ensure 2854
that customers' and the electric distribution utility's 2855
expectations are aligned and that the electric distribution 2856
utility is placing sufficient emphasis on and dedicating 2857
sufficient resources to the reliability of its distribution 2858
system. 2859

(i) Provisions under which the electric distribution 2860
utility may implement economic development, job retention, and 2861
energy efficiency programs, which provisions may allocate 2862
program costs across all classes of customers of the utility and 2863
those of electric distribution utilities in the same holding 2864
company system. 2865

(C) (1) The burden of proof in the proceeding shall be on 2866
the electric distribution utility. The commission shall issue an 2867
order under this division for an initial application under this 2868
section not later than one hundred fifty days after the 2869
application's filing date and, for any subsequent application by 2870
the utility under this section, not later than two hundred 2871
seventy-five days after the application's filing date. Subject 2872
to division (D) of this section, the commission by order shall 2873
approve or modify and approve an application filed under 2874
division (A) of this section if it finds that the electric 2875
security plan so approved, including its pricing and all other 2876
terms and conditions, including any deferrals and any future 2877
recovery of deferrals, is more favorable in the aggregate as 2878
compared to the expected results that would otherwise apply 2879
under section 4928.142 of the Revised Code. Additionally, if the 2880

commission so approves an application that contains a surcharge 2881
under division (B) (2) (b) or (c) of this section, the commission 2882
shall ensure that the benefits derived for any purpose for which 2883
the surcharge is established are reserved and made available to 2884
those that bear the surcharge. Otherwise, the commission by 2885
order shall disapprove the application. 2886

(2) (a) If the commission modifies and approves an 2887
application under division (C) (1) of this section, the electric 2888
distribution utility may withdraw the application, thereby 2889
terminating it, and may file a new standard service offer under 2890
this section or a standard service offer under section 4928.142 2891
of the Revised Code. 2892

(b) If the utility terminates an application pursuant to 2893
division (C) (2) (a) of this section or if the commission 2894
disapproves an application under division (C) (1) of this 2895
section, the commission shall issue such order as is necessary 2896
to continue the provisions, terms, and conditions of the 2897
utility's most recent standard service offer, along with any 2898
expected increases or decreases in fuel costs from those 2899
contained in that offer, until a subsequent offer is authorized 2900
pursuant to this section or section 4928.142 of the Revised 2901
Code, respectively. 2902

(D) Regarding the rate plan requirement of division (A) of 2903
section 4928.141 of the Revised Code, if an electric 2904
distribution utility that has a rate plan that extends beyond 2905
December 31, 2008, files an application under this section for 2906
the purpose of its compliance with division (A) of section 2907
4928.141 of the Revised Code, that rate plan and its terms and 2908
conditions are hereby incorporated into its proposed electric 2909
security plan and shall continue in effect until the date 2910

scheduled under the rate plan for its expiration, and that 2911
portion of the electric security plan shall not be subject to 2912
commission approval or disapproval under division (C) of this 2913
section, and the earnings test provided for in division (F) of 2914
this section shall not apply until after the expiration of the 2915
rate plan. However, that utility may include in its electric 2916
security plan under this section, and the commission may 2917
approve, modify and approve, or disapprove subject to division 2918
(C) of this section, provisions for the incremental recovery or 2919
the deferral of any costs that are not being recovered under the 2920
rate plan and that the utility incurs during that continuation 2921
period to comply with section 4928.141, ~~division (B) of section~~ 2922
~~4928.64,~~ the Revised Code or division (A) of section 4928.66 of 2923
the Revised Code. 2924

(E) If an electric security plan approved under division 2925
(C) of this section, except one withdrawn by the utility as 2926
authorized under that division, has a term, exclusive of phase- 2927
ins or deferrals, that exceeds three years from the effective 2928
date of the plan, the commission shall test the plan in the 2929
fourth year, and if applicable, every fourth year thereafter, to 2930
determine whether the plan, including its then-existing pricing 2931
and all other terms and conditions, including any deferrals and 2932
any future recovery of deferrals, continues to be more favorable 2933
in the aggregate and during the remaining term of the plan as 2934
compared to the expected results that would otherwise apply 2935
under section 4928.142 of the Revised Code. The commission shall 2936
also determine the prospective effect of the electric security 2937
plan to determine if that effect is substantially likely to 2938
provide the electric distribution utility with a return on 2939
common equity that is significantly in excess of the return on 2940
common equity that is likely to be earned by publicly traded 2941

companies, including utilities, that face comparable business 2942
and financial risk, with such adjustments for capital structure 2943
as may be appropriate. The burden of proof for demonstrating 2944
that significantly excessive earnings will not occur shall be on 2945
the electric distribution utility. If the test results are in 2946
the negative or the commission finds that continuation of the 2947
electric security plan will result in a return on equity that is 2948
significantly in excess of the return on common equity that is 2949
likely to be earned by publicly traded companies, including 2950
utilities, that will face comparable business and financial 2951
risk, with such adjustments for capital structure as may be 2952
appropriate, during the balance of the plan, the commission may 2953
terminate the electric security plan, but not until it shall 2954
have provided interested parties with notice and an opportunity 2955
to be heard. The commission may impose such conditions on the 2956
plan's termination as it considers reasonable and necessary to 2957
accommodate the transition from an approved plan to the more 2958
advantageous alternative. In the event of an electric security 2959
plan's termination pursuant to this division, the commission 2960
shall permit the continued deferral and phase-in of any amounts 2961
that occurred prior to that termination and the recovery of 2962
those amounts as contemplated under that electric security plan. 2963

(F) With regard to the provisions that are included in an 2964
electric security plan under this section, the commission shall 2965
consider, following the end of each annual period of the plan, 2966
if any such adjustments resulted in excessive earnings as 2967
measured by whether the earned return on common equity of the 2968
electric distribution utility is significantly in excess of the 2969
return on common equity that was earned during the same period 2970
by publicly traded companies, including utilities, that face 2971
comparable business and financial risk, with such adjustments 2972

for capital structure as may be appropriate. Consideration also 2973
shall be given to the capital requirements of future committed 2974
investments in this state. The burden of proof for demonstrating 2975
that significantly excessive earnings did not occur shall be on 2976
the electric distribution utility. If the commission finds that 2977
such adjustments, in the aggregate, did result in significantly 2978
excessive earnings, it shall require the electric distribution 2979
utility to return to consumers the amount of the excess by 2980
prospective adjustments; provided that, upon making such 2981
prospective adjustments, the electric distribution utility shall 2982
have the right to terminate the plan and immediately file an 2983
application pursuant to section 4928.142 of the Revised Code. 2984
Upon termination of a plan under this division, rates shall be 2985
set on the same basis as specified in division (C) (2) (b) of this 2986
section, and the commission shall permit the continued deferral 2987
and phase-in of any amounts that occurred prior to that 2988
termination and the recovery of those amounts as contemplated 2989
under that electric security plan. In making its determination 2990
of significantly excessive earnings under this division, the 2991
commission shall not consider, directly or indirectly, the 2992
revenue, expenses, or earnings of any affiliate or parent 2993
company. 2994

Sec. 4928.20. (A) The legislative authority of a municipal 2995
corporation may adopt an ordinance, or the board of township 2996
trustees of a township or the board of county commissioners of a 2997
county may adopt a resolution, under which, on or after the 2998
starting date of competitive retail electric service, it may 2999
aggregate in accordance with this section the retail electrical 3000
loads located, respectively, within the municipal corporation, 3001
township, or unincorporated area of the county and, for that 3002
purpose, may enter into service agreements to facilitate for 3003

those loads the sale and purchase of electricity. The 3004
legislative authority or board also may exercise such authority 3005
jointly with any other such legislative authority or board. For 3006
customers that are not mercantile customers, an ordinance or 3007
resolution under this division shall specify whether the 3008
aggregation will occur only with the prior, affirmative consent 3009
of each person owning, occupying, controlling, or using an 3010
electric load center proposed to be aggregated or will occur 3011
automatically for all such persons pursuant to the opt-out 3012
requirements of division (D) of this section. The aggregation of 3013
mercantile customers shall occur only with the prior, 3014
affirmative consent of each such person owning, occupying, 3015
controlling, or using an electric load center proposed to be 3016
aggregated. Nothing in this division, however, authorizes the 3017
aggregation of the retail electric loads of an electric load 3018
center, as defined in section 4933.81 of the Revised Code, that 3019
is located in the certified territory of a nonprofit electric 3020
supplier under sections 4933.81 to 4933.90 of the Revised Code 3021
or an electric load center served by transmission or 3022
distribution facilities of a municipal electric utility. 3023

(B) If an ordinance or resolution adopted under division 3024
(A) of this section specifies that aggregation of customers that 3025
are not mercantile customers will occur automatically as 3026
described in that division, the ordinance or resolution shall 3027
direct the board of elections to submit the question of the 3028
authority to aggregate to the electors of the respective 3029
municipal corporation, township, or unincorporated area of a 3030
county at a special election on the day of the next primary or 3031
general election in the municipal corporation, township, or 3032
county. The legislative authority or board shall certify a copy 3033
of the ordinance or resolution to the board of elections not 3034

less than ninety days before the day of the special election. No 3035
ordinance or resolution adopted under division (A) of this 3036
section that provides for an election under this division shall 3037
take effect unless approved by a majority of the electors voting 3038
upon the ordinance or resolution at the election held pursuant 3039
to this division. 3040

(C) Upon the applicable requisite authority under 3041
divisions (A) and (B) of this section, the legislative authority 3042
or board shall develop a plan of operation and governance for 3043
the aggregation program so authorized. Before adopting a plan 3044
under this division, the legislative authority or board shall 3045
hold at least two public hearings on the plan. Before the first 3046
hearing, the legislative authority or board shall publish notice 3047
of the hearings once a week for two consecutive weeks in a 3048
newspaper of general circulation in the jurisdiction or as 3049
provided in section 7.16 of the Revised Code. The notice shall 3050
summarize the plan and state the date, time, and location of 3051
each hearing. 3052

(D) No legislative authority or board, pursuant to an 3053
ordinance or resolution under divisions (A) and (B) of this 3054
section that provides for automatic aggregation of customers 3055
that are not mercantile customers as described in division (A) 3056
of this section, shall aggregate the electrical load of any 3057
electric load center located within its jurisdiction unless it 3058
in advance clearly discloses to the person owning, occupying, 3059
controlling, or using the load center that the person will be 3060
enrolled automatically in the aggregation program and will 3061
remain so enrolled unless the person affirmatively elects by a 3062
stated procedure not to be so enrolled. The disclosure shall 3063
state prominently the rates, charges, and other terms and 3064
conditions of enrollment. The stated procedure shall allow any 3065

person enrolled in the aggregation program the opportunity to 3066
opt out of the program every three years, without paying a 3067
switching fee. Any such person that opts out before the 3068
commencement of the aggregation program pursuant to the stated 3069
procedure shall default to the standard service offer provided 3070
under section 4928.14 or division (D) of section 4928.35 of the 3071
Revised Code until the person chooses an alternative supplier. 3072

(E) (1) With respect to a governmental aggregation for a 3073
municipal corporation that is authorized pursuant to divisions 3074
(A) to (D) of this section, resolutions may be proposed by 3075
initiative or referendum petitions in accordance with sections 3076
731.28 to 731.41 of the Revised Code. 3077

(2) With respect to a governmental aggregation for a 3078
township or the unincorporated area of a county, which 3079
aggregation is authorized pursuant to divisions (A) to (D) of 3080
this section, resolutions may be proposed by initiative or 3081
referendum petitions in accordance with sections 731.28 to 3082
731.40 of the Revised Code, except that: 3083

(a) The petitions shall be filed, respectively, with the 3084
township fiscal officer or the board of county commissioners, 3085
who shall perform those duties imposed under those sections upon 3086
the city auditor or village clerk. 3087

(b) The petitions shall contain the signatures of not less 3088
than ten per cent of the total number of electors in, 3089
respectively, the township or the unincorporated area of the 3090
county who voted for the office of governor at the preceding 3091
general election for that office in that area. 3092

(F) A governmental aggregator under division (A) of this 3093
section is not a public utility engaging in the wholesale 3094

purchase and resale of electricity, and provision of the 3095
aggregated service is not a wholesale utility transaction. A 3096
governmental aggregator shall be subject to supervision and 3097
regulation by the public utilities commission only to the extent 3098
of any competitive retail electric service it provides and 3099
commission authority under this chapter. 3100

(G) This section does not apply in the case of a municipal 3101
corporation that supplies such aggregated service to electric 3102
load centers to which its municipal electric utility also 3103
supplies a noncompetitive retail electric service through 3104
transmission or distribution facilities the utility singly or 3105
jointly owns or operates. 3106

(H) A governmental aggregator shall not include in its 3107
aggregation the accounts of any of the following: 3108

(1) A customer that has opted out of the aggregation; 3109

(2) A customer in contract with a certified electric 3110
services company; 3111

(3) A customer that has a special contract with an 3112
electric distribution utility; 3113

(4) A customer that is not located within the governmental 3114
aggregator's governmental boundaries; 3115

(5) Subject to division (C) of section 4928.21 of the 3116
Revised Code, a customer who appears on the "do not aggregate" 3117
list maintained under that section. 3118

(I) Customers that are part of a governmental aggregation 3119
under this section shall be responsible only for such portion of 3120
a surcharge under section 4928.144 of the Revised Code that is 3121
proportionate to the benefits, as determined by the commission, 3122

that electric load centers within the jurisdiction of the 3123
governmental aggregation as a group receive. The proportionate 3124
surcharge so established shall apply to each customer of the 3125
governmental aggregation while the customer is part of that 3126
aggregation. If a customer ceases being such a customer, the 3127
otherwise applicable surcharge shall apply. Nothing in this 3128
section shall result in less than full recovery by an electric 3129
distribution utility of any surcharge authorized under section 3130
4928.144 of the Revised Code. Nothing in this section shall 3131
result in less than the full and timely imposition, charging, 3132
collection, and adjustment by an electric distribution utility, 3133
its assignee, or any collection agent, of the phase-in-recovery 3134
charges authorized pursuant to a final financing order issued 3135
pursuant to sections 4928.23 to 4928.2318 of the Revised Code. 3136

(J) On behalf of the customers that are part of a 3137
governmental aggregation under this section and by filing 3138
written notice with the public utilities commission, the 3139
legislative authority that formed or is forming that 3140
governmental aggregation may elect not to receive standby 3141
service within the meaning of division (B)(2)(d) of section 3142
4928.143 of the Revised Code from an electric distribution 3143
utility in whose certified territory the governmental 3144
aggregation is located and that operates under an approved 3145
electric security plan under that section. Upon the filing of 3146
that notice, the electric distribution utility shall not charge 3147
any such customer to whom competitive retail electric generation 3148
service is provided by another supplier under the governmental 3149
aggregation for the standby service. Any such consumer that 3150
returns to the utility for competitive retail electric service 3151
shall pay the market price of power incurred by the utility to 3152
serve that consumer ~~plus any amount attributable to the~~ 3153

~~utility's cost of compliance with the renewable energy resource~~ 3154
~~provisions of section 4928.64 of the Revised Code to serve the~~ 3155
~~consumer.~~ Such market price shall include, but not be limited 3156
to, capacity and energy charges; all charges associated with the 3157
provision of that power supply through the regional transmission 3158
organization, including, but not limited to, transmission, 3159
ancillary services, congestion, and settlement and 3160
administrative charges; and all other costs incurred by the 3161
utility that are associated with the procurement, provision, and 3162
administration of that power supply, as such costs may be 3163
approved by the commission. The period of time during which the 3164
market price ~~and renewable energy resource amount~~ shall be so 3165
assessed on the consumer shall be from the time the consumer so 3166
returns to the electric distribution utility until the 3167
expiration of the electric security plan. However, if that 3168
period of time is expected to be more than two years, the 3169
commission may reduce the time period to a period of not less 3170
than two years. 3171

(K) The commission shall adopt rules to encourage and 3172
promote large-scale governmental aggregation in this state. For 3173
that purpose, the commission shall conduct an immediate review 3174
of any rules it has adopted for the purpose of this section that 3175
are in effect on the effective date of the amendment of this 3176
section by S.B. 221 of the 127th general assembly, July 31, 3177
2008. Further, within the context of an electric security plan 3178
under section 4928.143 of the Revised Code, the commission shall 3179
consider the effect on large-scale governmental aggregation of 3180
any nonbypassable generation charges, however collected, that 3181
would be established under that plan, except any nonbypassable 3182
generation charges that relate to any cost incurred by the 3183
electric distribution utility, the deferral of which has been 3184

authorized by the commission prior to the effective date of the 3185
amendment of this section by S.B. 221 of the 127th general 3186
assembly, July 31, 2008. 3187

Sec. 4928.61. (A) There is hereby established in the state 3188
treasury the advanced energy fund, into which shall be deposited 3189
all advanced energy revenues remitted to the director of 3190
development under division (B) of this section, for the 3191
exclusive purposes of funding the advanced energy program 3192
created under section 4928.62 of the Revised Code and paying the 3193
program's administrative costs. Interest on the fund shall be 3194
credited to the fund. 3195

(B) Advanced energy revenues shall include all of the 3196
following: 3197

(1) Revenues remitted to the director after collection by 3198
each electric distribution utility in this state of a temporary 3199
rider on retail electric distribution service rates as such 3200
rates are determined by the public utilities commission pursuant 3201
to this chapter. The rider shall be a uniform amount statewide, 3202
determined by the director of development, after consultation 3203
with the public benefits advisory board created by section 3204
4928.58 of the Revised Code. The amount shall be determined by 3205
dividing an aggregate revenue target for a given year as 3206
determined by the director, after consultation with the advisory 3207
board, by the number of customers of electric distribution 3208
utilities in this state in the prior year. Such aggregate 3209
revenue target shall not exceed more than fifteen million 3210
dollars in any year through 2005 and shall not exceed more than 3211
five million dollars in any year after 2005. The rider shall be 3212
imposed beginning on the effective date of the amendment of this 3213
section by Sub. H.B. 251 of the 126th general assembly, January 3214

4, 2007, and shall terminate at the end of ten years following 3215
the starting date of competitive retail electric service or 3216
until the advanced energy fund, including interest, reaches one 3217
hundred million dollars, whichever is first. 3218

(2) Revenues from payments, repayments, and collections 3219
under the advanced energy program and from program income; 3220

(3) Revenues remitted to the director after collection by 3221
a municipal electric utility or electric cooperative in this 3222
state upon the utility's or cooperative's decision to 3223
participate in the advanced energy fund; 3224

~~(4) Revenues from renewable energy compliance payments as~~ 3225
~~provided under division (C) (2) of section 4928.64 of the Revised~~ 3226
~~Code;~~ 3227

~~(5)~~ Revenue from forfeitures under division (C) of section 3228
4928.66 of the Revised Code; 3229

~~(6)~~ (5) Funds transferred pursuant to division (B) of 3230
Section 512.10 of S.B. 315 of the 129th general assembly; 3231

~~(7)~~ (6) Interest earnings on the advanced energy fund. 3232

(C) (1) Each electric distribution utility in this state 3233
shall remit to the director on a quarterly basis the revenues 3234
described in divisions (B) (1) and (2) of this section. Such 3235
remittances shall occur within thirty days after the end of each 3236
calendar quarter. 3237

(2) Each participating electric cooperative and 3238
participating municipal electric utility shall remit to the 3239
director on a quarterly basis the revenues described in division 3240
(B) (3) of this section. Such remittances shall occur within 3241
thirty days after the end of each calendar quarter. For the 3242

purpose of division (B) (3) of this section, the participation of 3243
an electric cooperative or municipal electric utility in the 3244
energy efficiency revolving loan program as it existed 3245
immediately prior to the effective date of the amendment of this 3246
section by Sub. H.B. 251 of the 126th general assembly, January 3247
4, 2007, does not constitute a decision to participate in the 3248
advanced energy fund under this section as so amended. 3249

(3) All remittances under divisions (C) (1) and (2) of this 3250
section shall continue only until the end of ten years following 3251
the starting date of competitive retail electric service or 3252
until the advanced energy fund, including interest, reaches one 3253
hundred million dollars, whichever is first. 3254

(D) Any moneys collected in rates for non-low-income 3255
customer energy efficiency programs, as of October 5, 1999, and 3256
not contributed to the energy efficiency revolving loan fund 3257
authorized under this section prior to the effective date of its 3258
amendment by Sub. H.B. 251 of the 126th general assembly, 3259
January 4, 2007, shall be used to continue to fund cost- 3260
effective, residential energy efficiency programs, be 3261
contributed into the universal service fund as a supplement to 3262
that required under section 4928.53 of the Revised Code, or be 3263
returned to ratepayers in the form of a rate reduction at the 3264
option of the affected electric distribution utility. 3265

Sec. 4928.62. (A) There is hereby created the advanced 3266
energy program, which shall be administered by the director of 3267
development. Under the program, the director may authorize the 3268
use of moneys in the advanced energy fund for financial, 3269
technical, and related assistance for advanced energy projects 3270
in this state or for economic development assistance, in 3271
furtherance of the purposes set forth in section 4928.63 of the 3272

Revised Code. 3273

(1) To the extent feasible given approved applications for 3274
assistance, the assistance shall be distributed among the 3275
certified territories of electric distribution utilities and 3276
participating electric cooperatives, and among the service areas 3277
of participating municipal electric utilities, in amounts 3278
proportionate to the remittances of each utility and cooperative 3279
under divisions (B) (1) and (3) of section 4928.61 of the Revised 3280
Code. 3281

(2) The funds described in division (B) ~~(6)~~ (5) of section 3282
4928.61 of the Revised Code shall not be subject to the 3283
territorial requirements of division (A) (1) of this section. 3284

(3) The director shall not authorize financial assistance 3285
for an advanced energy project under the program unless the 3286
director first determines that the project will create new jobs 3287
or preserve existing jobs in this state or use innovative 3288
technologies or materials. 3289

(B) In carrying out sections 4928.61 to 4928.63 of the 3290
Revised Code, the director may do all of the following to 3291
further the public interest in advanced energy projects and 3292
economic development: 3293

(1) Award grants, contracts, loans, loan participation 3294
agreements, linked deposits, and energy production incentives; 3295

(2) Acquire in the name of the director any property of 3296
any kind or character in accordance with this section, by 3297
purchase, purchase at foreclosure, or exchange, on such terms 3298
and in such manner as the director considers proper; 3299

(3) Make and enter into all contracts and agreements 3300
necessary or incidental to the performance of the director's 3301

duties and the exercise of the director's powers under sections 3302
4928.61 to 4928.63 of the Revised Code; 3303

(4) Employ or enter into contracts with financial 3304
consultants, marketing consultants, consulting engineers, 3305
architects, managers, construction experts, attorneys, technical 3306
monitors, energy evaluators, or other employees or agents as the 3307
director considers necessary, and fix their compensation; 3308

(5) Adopt rules prescribing the application procedures for 3309
financial assistance under the advanced energy program; the 3310
fees, charges, interest rates, payment schedules, local match 3311
requirements, and other terms and conditions of any grants, 3312
contracts, loans, loan participation agreements, linked 3313
deposits, and energy production incentives; criteria pertaining 3314
to the eligibility of participating lending institutions; and 3315
any other matters necessary for the implementation of the 3316
program; 3317

(6) Do all things necessary and appropriate for the 3318
operation of the program. 3319

(C) The department of development may hold ownership to 3320
any unclaimed energy efficiency and renewable energy emission 3321
allowances provided for in Chapter 3745-14 of the Administrative 3322
Code or otherwise, that result from advanced energy projects 3323
that receive funding from the advanced energy fund, and it may 3324
use the allowances to further the public interest in advanced 3325
energy projects or for economic development. 3326

(D) Financial statements, financial data, and trade 3327
secrets submitted to or received by the director from an 3328
applicant or recipient of financial assistance under sections 3329
4928.61 to 4928.63 of the Revised Code, or any information taken 3330

from those statements, data, or trade secrets for any purpose, 3331
are not public records for the purpose of section 149.43 of the 3332
Revised Code. 3333

(E) Nothing in the amendments of sections 4928.61, 3334
4928.62, and 4928.63 of the Revised Code by Sub. H.B. 251 of the 3335
126th general assembly shall affect any pending or effected 3336
assistance, pending or effected purchases or exchanges of 3337
property made, or pending or effected contracts or agreements 3338
entered into pursuant to division (A) or (B) of this section as 3339
the section existed prior to the effective date of those 3340
amendments, January 4, 2007, or shall affect the exemption 3341
provided under division (C) of this section as the section 3342
existed prior to that effective date. 3343

(F) Any assistance a school district receives for an 3344
advanced energy project, including a geothermal heating, 3345
ventilating, and air conditioning system, shall be in addition 3346
to any assistance provided under Chapter 3318. of the Revised 3347
Code and shall not be included as part of the district or state 3348
portion of the basic project cost under that chapter. 3349

Sec. 4928.641. (A) As used in this section, "net cost" 3350
means a charge or a credit and constitutes the ongoing costs 3351
including the charges incurred by the utility under each 3352
contract, including the annual renewable energy credit inventory 3353
amortization charge in division (E)(3) of this section, the 3354
carrying charges, less the revenue received by the utility as a 3355
result of liquidating into competitive markets the electrical 3356
and renewable products provided to the utility under the same 3357
contract, including capacity, ancillary services, and renewable 3358
energy credits. 3359

(B) All prudently incurred costs incurred by an electric 3360

distribution utility associated with contractual obligations 3361
that existed prior to the effective date of the amendments to 3362
this section by H.B. 6 of the 133rd general assembly to 3363
implement section 4928.64 of the Revised Code shall be 3364
recoverable from the utility's retail customers as a 3365
distribution expense if the money received from the Ohio clean 3366
air program fund, created under section 3706.46 of the Revised 3367
Code, is insufficient to offset those costs. Such costs are 3368
ongoing costs and shall include costs incurred to discontinue 3369
existing programs that were implemented by the electric 3370
distribution utility under section 4928.64 of the Revised Code. 3371

(C) If an electric distribution utility has executed a 3372
contract before April 1, 2014, to procure renewable energy 3373
resources to implement section 4928.64 of the Revised Code and 3374
there are ongoing costs associated with that contract that are 3375
being recovered from customers through a bypassable charge as of 3376
the effective date of S.B. 310 the amendments to this section by 3377
H.B. 6 of the 130th-133rd general assembly, that cost recovery 3378
shall continue on a bypassable basis, upon final 3379
reconciliation, be replaced with the accounting mechanism 3380
permitted under this section. The accounting mechanism shall be 3381
effective for the remaining term of the contract and for a 3382
subsequent reconciliation period until all the prudently 3383
incurred costs associated with that contract are fully 3384
recovered. 3385

~~(B) Division (A) of this section applies only to costs~~ 3386
~~associated with the original term of a contract described in~~ 3387
~~that division and entered into before April 1, 2014. This~~ 3388
~~section does not permit recovery of costs associated with an~~ 3389
~~extension of such a contract. This section does not permit~~ 3390
~~recovery of costs associated with an amendment of such a~~ 3391

~~contract if that amendment was made on or after April 1, 2014.~~

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(D) Subject to the requirements for recovery of ongoing costs under section 4928.64 of the Revised Code, the public utilities commission shall, in accordance with division (E) of this section, approve an accounting mechanism for each electric distribution utility that demonstrates that it has incurred or will incur ongoing costs as described in division (B) of this section.

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(E) All of the following shall apply to the accounting mechanism:

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(1) Subject to division (F) of this section, the accounting mechanism shall reflect the forecasted annual net costs to be incurred by the utility under each contract described in division (C) of this section, subject to subsequent reconciliation to actual net costs.

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(2) The book value of an electric distribution utility's inventory of renewable energy credits, as of the effective date of the amendments to this section by H.B. 6 of the 133rd general assembly, shall be reflected in the accounting mechanism over an amortization period that is substantially similar to the remaining term of any contracts described in division (C) of this section.

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(3) The electric distribution utility shall, in a timely manner, liquidate the renewable energy credits in its inventory and apply the resulting revenue against such recovery.

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(F) Not later than ninety days after the effective date of the amendments to this section by H.B. 6 of the 133rd general assembly, the commission shall approve an appropriate accounting mechanism that is reasonable and appropriate to implement the

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requirements of this section and permits a full recovery of the 3421
utility's net costs, including the accounting authority for the 3422
utility to establish and adjust regulatory assets and regulatory 3423
liabilities consistent with this section. The electric 3424
distribution utility shall be entitled to collect a carrying 3425
charge on such regulatory assets on the effective date of the 3426
amendments to this section by H.B. 6 of the 133rd general 3427
assembly and continuing until the regulatory asset is completely 3428
recovered. Such carrying charge shall include the electric 3429
distribution utility's cost of capital including the most recent 3430
authorized rate of return on equity. The carrying charge shall 3431
also be applied to any regulatory liability created as a result 3432
of the cost recovery mechanism. In each subsequent rate 3433
proceeding under Chapter 4909. of the Revised Code or section 3434
4928.143 of the Revised Code involving the electric distribution 3435
utility, the commission shall permit recovery as a distribution 3436
expense of the regulatory assets existing at that time until the 3437
utility's net costs are fully recovered. Those costs shall be 3438
assigned to each customer class using the base distribution 3439
revenue allocation. 3440

(G) The electric distribution utility shall apply to the 3441
Ohio air quality development authority for reimbursement of its 3442
net costs, in accordance with section 3706.485 of the Revised 3443
Code. To facilitate the authority's consideration of the 3444
utility's application, the commission shall annually certify 3445
each electric distribution utility's forecasted net costs under 3446
this section to the authority. The commission shall credit any 3447
revenue received by the utility from the Ohio clean air program 3448
fund under section 3706.485 of the Revised Code against the net 3449
costs that would otherwise be recovered through the utility's 3450
rates. 3451

Sec. 4928.645. (A) An electric distribution utility or 3452
electric services company may use, ~~for the purpose of complying~~ 3453
~~with the requirements under divisions (B) (1) and (2) of section~~ 3454
~~4928.64 of the Revised Code,~~ renewable energy credits any time 3455
in the five calendar years following the date of their purchase 3456
or acquisition from any entity, including, but not limited to, 3457
the following: 3458

(1) A mercantile customer; 3459

(2) An owner or operator of a hydroelectric generating 3460
facility that is located at a dam on a river, or on any water 3461
discharged to a river, that is within or bordering this state or 3462
within or bordering an adjoining state, or that produces power 3463
that can be shown to be deliverable into this state; 3464

(3) A seller of compressed natural gas that has been 3465
produced from biologically derived methane gas, provided that 3466
the seller may only provide renewable energy credits for metered 3467
amounts of gas. 3468

(B) (1) The public utilities commission shall adopt rules 3469
specifying that one unit of credit shall equal one megawatt hour 3470
of electricity derived from renewable energy resources, except 3471
that, for a generating facility of seventy-five megawatts or 3472
greater that is situated within this state and has committed by 3473
December 31, 2009, to modify or retrofit its generating unit or 3474
units to enable the facility to generate principally from 3475
biomass energy by June 30, 2013, each megawatt hour of 3476
electricity generated principally from that biomass energy shall 3477
equal, in units of credit, the product obtained by multiplying 3478
the actual percentage of biomass feedstock heat input used to 3479
generate such megawatt hour by the quotient obtained by dividing 3480
the ~~then-existing~~ unit dollar amount used, on December 31, 2019, 3481

to determine a renewable energy compliance payment as provided 3482
under former division (C) (2) (b) of section 4928.64 of the 3483
Revised Code by the then existing market value of one renewable 3484
energy credit, but such megawatt hour shall not equal less than 3485
one unit of credit. Renewable energy resources do not have to be 3486
converted to electricity in order to be eligible to receive 3487
renewable energy credits. The rules shall specify that, for 3488
purposes of converting the quantity of energy derived from 3489
biologically derived methane gas to an electricity equivalent, 3490
one megawatt hour equals 3,412,142 British thermal units. 3491

(2) The rules also shall provide for this state a system 3492
of registering renewable energy credits by specifying which of 3493
any generally available registries shall be used for that 3494
purpose and not by creating a registry. That selected system of 3495
registering renewable energy credits shall allow a hydroelectric 3496
generating facility to be eligible for obtaining renewable 3497
energy credits and shall allow customer-sited projects or 3498
actions the broadest opportunities to be eligible for obtaining 3499
renewable energy credits. 3500

Sec. 5501.311. (A) Notwithstanding sections 123.01 and 3501
127.16 of the Revised Code the director of transportation may 3502
lease or lease-purchase all or any part of a transportation 3503
facility to or from one or more persons, one or more 3504
governmental agencies, a transportation improvement district, or 3505
any combination thereof, and may grant leases, easements, or 3506
licenses for lands under the control of the department of 3507
transportation. The director may adopt rules necessary to give 3508
effect to this section. 3509

(B) Plans and specifications for the construction of a 3510
transportation facility under a lease or lease-purchase 3511

agreement are subject to approval of the director and must meet 3512
or exceed all applicable standards of the department. 3513

(C) Any lease or lease-purchase agreement under which the 3514
department is the lessee shall be for a period not exceeding the 3515
then current two-year period for which appropriations have been 3516
made by the general assembly to the department, and such 3517
agreement may contain such other terms as the department and the 3518
other parties thereto agree, notwithstanding any other provision 3519
of law, including provisions that rental payments in amounts 3520
sufficient to pay bond service charges payable during the 3521
current two-year lease term shall be an absolute and 3522
unconditional obligation of the department independent of all 3523
other duties under the agreement without set-off or deduction or 3524
any other similar rights or defenses. Any such agreement may 3525
provide for renewal of the agreement at the end of each term for 3526
another term, not exceeding two years, provided that no renewal 3527
shall be effective until the effective date of an appropriation 3528
enacted by the general assembly from which the department may 3529
lawfully pay rentals under such agreement. Any such agreement 3530
may include, without limitation, any agreement by the department 3531
with respect to any costs of transportation facilities to be 3532
included prior to acquisition and construction of such 3533
transportation facilities. Any such agreement shall not 3534
constitute a debt or pledge of the faith and credit of the 3535
state, or of any political subdivision of the state, and the 3536
lessor shall have no right to have taxes or excises levied by 3537
the general assembly, or the taxing authority of any political 3538
subdivision of the state, for the payment of rentals thereunder. 3539
Any such agreement shall contain a statement to that effect. 3540

(D) A municipal corporation, township, or county may use 3541
service payments in lieu of taxes credited to special funds or 3542

accounts pursuant to sections 5709.43, 5709.47, 5709.75, and 3543
5709.80 of the Revised Code to provide its contribution to the 3544
cost of a transportation facility, provided such facility was 3545
among the purposes for which such service payments were 3546
authorized. The contribution may be in the form of a lump sum or 3547
periodic payments. 3548

(E) Pursuant to the "Telecommunications Act of 1996," 110 3549
Stat. 152, 47 U.S.C. 332 note, the director may grant a lease, 3550
easement, or license in a transportation facility to a 3551
telecommunications service provider for construction, placement, 3552
or operation of a telecommunications facility. An interest 3553
granted under this division is subject to all of the following 3554
conditions: 3555

(1) The transportation facility is owned in fee simple or 3556
easement by this state at the time the lease, easement, or 3557
license is granted to the telecommunications provider. 3558

(2) The lease, easement, or license shall be granted on a 3559
competitive basis in accordance with policies and procedures to 3560
be determined by the director. The policies and procedures may 3561
include provisions for master leases for multiple sites. 3562

(3) The telecommunications facility shall be designed to 3563
accommodate the state's multi-agency radio communication system, 3564
the intelligent transportation system, and the department's 3565
communication system as the director may determine is necessary 3566
for highway or other departmental purposes. 3567

(4) The telecommunications facility shall be designed to 3568
accommodate such additional telecommunications equipment as may 3569
feasibly be co-located thereon as determined in the discretion 3570
of the director. 3571

(5) The telecommunications service providers awarded the 3572
lease, easement, or license, agree to permit other 3573
telecommunications service providers to co-locate on the 3574
telecommunications facility, and agree to the terms and 3575
conditions of the co-location as determined in the discretion of 3576
the director. 3577

(6) The director shall require indemnity agreements in 3578
favor of the department as a condition of any lease, easement, 3579
or license granted under this division. Each indemnity agreement 3580
shall secure this state and its agents from liability for 3581
damages arising out of safety hazards, zoning, and any other 3582
matter of public interest the director considers necessary. 3583

(7) The telecommunications service provider fully complies 3584
with any permit issued under section 5515.01 of the Revised Code 3585
pertaining to land that is the subject of the lease, easement, 3586
or license. 3587

(8) All plans and specifications shall meet with the 3588
director's approval. 3589

(9) Any other conditions the director determines 3590
necessary. 3591

(F) In accordance with section 5501.031 of the Revised 3592
Code, to further efforts to promote energy conservation and 3593
energy efficiency, the director may grant a lease, easement, or 3594
license in a transportation facility to a utility service 3595
provider that has received its certificate from the Ohio power 3596
siting board or appropriate local entity for construction, 3597
placement, or operation of an alternative energy generating 3598
facility service provider as defined in section 4928.64 of the 3599
Revised Code as that section existed prior to January 1, 2020. 3600

An interest granted under this division is subject to all of the 3601
following conditions: 3602

(1) The transportation facility is owned in fee simple or 3603
in easement by this state at the time the lease, easement, or 3604
license is granted to the utility service provider. 3605

(2) The lease, easement, or license shall be granted on a 3606
competitive basis in accordance with policies and procedures to 3607
be determined by the director. The policies and procedures may 3608
include provisions for master leases for multiple sites. 3609

(3) The alternative energy generating facility shall be 3610
designed to provide energy for the department's transportation 3611
facilities with the potential for selling excess power on the 3612
power grid, as the director may determine is necessary for 3613
highway or other departmental purposes. 3614

(4) The director shall require indemnity agreements in 3615
favor of the department as a condition of any lease, easement, 3616
or license granted under this division. Each indemnity agreement 3617
shall secure this state from liability for damages arising out 3618
of safety hazards, zoning, and any other matter of public 3619
interest the director considers necessary. 3620

(5) The alternative energy service provider fully complies 3621
with any permit issued by the Ohio power siting board under 3622
Chapter 4906. of the Revised Code and complies with section 3623
5515.01 of the Revised Code pertaining to land that is the 3624
subject of the lease, easement, or license. 3625

(6) All plans and specifications shall meet with the 3626
director's approval. 3627

(7) Any other conditions the director determines 3628
necessary. 3629

(G) Money the department receives under this section shall 3630
be deposited into the state treasury to the credit of the 3631
highway operating fund. 3632

(H) A lease, easement, or license granted under division 3633
(E) or (F) of this section, and any telecommunications facility 3634
or alternative energy generating facility relating to such 3635
interest in a transportation facility, is hereby deemed to 3636
further the essential highway purpose of building and 3637
maintaining a safe, energy-efficient, and accessible 3638
transportation system. 3639

Section 6. That existing sections 1710.06, 4928.142, 3640
4928.143, 4928.20, 4928.61, 4928.62, 4928.641, 4928.645, and 3641
5501.311 of the Revised Code are hereby repealed. 3642

Section 7. That sections 1710.061, 4928.64, 4928.643, 3643
4928.644, and 4928.65 of the Revised Code are hereby repealed. 3644

Section 8. Sections 5, 6, and 7 of this act take effect 3645
January 1, 2020. 3646

Section 9. (A) Not earlier than two years after the 3647
effective date of this section, the Director of Environmental 3648
Protection may apply to the Administrator of the United States 3649
Environmental Protection Agency for an exemption from the 3650
requirement to implement the decentralized motor vehicle 3651
inspection and maintenance program established under section 3652
3704.14 of the Revised Code. In making the application and for 3653
purposes of complying with the "Federal Clean Air Act," the 3654
Director shall request the Administrator to authorize the 3655
implementation of the Ohio Clean Air Program established by this 3656
act as an alternative to the decentralized program in those 3657
areas of the state where the program is currently operating. 3658

(B) As used in this section, "Federal Clean Air Act" has 3659
the same meaning as in section 3704.01 of the Revised Code. 3660

Section 10. (A) In 2020, the Public Utilities Commission 3661
shall review an electric distribution utility's or electric 3662
services company's compliance with the benchmarks for 2019 under 3663
division (B) (2) of section 4928.64 of the Revised Code as that 3664
division existed on the effective date of this section, and in 3665
the course of that review, shall identify any undercompliance or 3666
noncompliance of the utility or company that it determines is 3667
weather-related, related to equipment or resource shortages for 3668
qualifying renewable energy resources as applicable, or is 3669
otherwise outside the utility's or company's control. 3670

(B) Subject to the cost cap provisions of division (C) (3) 3671
of section 4928.64 of the Revised Code as that section existed 3672
on the effective date of this section, if the commission 3673
determines, after notice and opportunity for hearing, and based 3674
upon its findings in the review under division (A) of this 3675
section regarding avoidable undercompliance or noncompliance, 3676
but subject to the force-majeure provisions of division (C) (4) 3677
(a) of section 4928.64 of the Revised Code as that section 3678
existed on the effective date of this section, that the utility 3679
or company has failed to comply with the benchmarks for 2019, 3680
the commission shall impose a renewable energy compliance 3681
payment on the utility or company. 3682

(1) The compliance payment pertaining to the solar energy 3683
resource benchmark for 2019 shall be two hundred dollars per 3684
megawatt hour of undercompliance or noncompliance in the period 3685
under review. 3686

(2) The compliance payment pertaining to the renewable 3687
energy resource benchmark for 2019 shall be assessed in 3688

accordance with division (C) (2) (b) of section 4928.64 of the Revised Code as that section existed on the effective date of this section.

(C) Division (C) (2) (c) of section 4928.64 of the Revised Code as that section existed on the effective date of this section applies to compliance payments imposed under this section.

Section 11. If any provisions of a section as amended or enacted by this act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section or related sections that can be given effect without the invalid provision or application, and to this end the provisions are severable.

Section 12. The amendment by this act of divisions (B) (1) (c), (C) (2), (E), and (F) (4), (5), and (7) of section 5727.75 of the Revised Code applies to both of the following:

(A) Energy projects certified by the Director of Development Services on or after the effective date of this section;

(B) Existing qualified energy projects that, on the effective date of this section, have a nameplate capacity of fewer than five megawatts.