

As Reported by the House Energy and Natural Resources 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, and 5
5727.75; to amend, for the purpose of adopting a 6
new section number as indicated in parentheses, 7
section 519.214 (519.215); and to enact new 8
section 519.214 and sections 3706.40, 3706.42, 9
3706.44, 3706.46, 3706.47, 3706.48, 3706.481, 10
3706.482, 3706.483, 3706.485, 3706.49, 3706.50, 11
4905.311, 4906.101, 4906.203, 4928.147, 12
4928.148, 4928.46, 4928.47, 4928.471, 4928.647, 13
4928.661, 4928.75, and 4928.80; to repeal 14
section 4928.6616; and to repeal, effective 15
January 1, 2020, sections 1710.061, 4928.64, 16
4928.643, 4928.644, and 4928.65 of the Revised 17
Code to create the Ohio Clean Air Program, to 18
facilitate and encourage electricity production 19
and use from clean air resources, and to 20
proactively engage the buying power of consumers 21
in this state for the purpose of improving air 22
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, and 5727.75 be amended; section 26
519.214 (519.215) be amended for the purpose of adopting a new 27
section number as indicated in parentheses; and new section 28
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
3706.49, 3706.50, 4905.311, 4906.101, 4906.203, 4928.147, 31
4928.148, 4928.46, 4928.47, 4928.471, 4928.647, 4928.661, 32
4928.75, and 4928.80 of the Revised Code be enacted to read as 33
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.

(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.

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.

(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.

(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.

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

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 an electric generating 332
facility in this state fueled by nuclear power that satisfies 333
all of the following criteria: 334

(1) 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

(2) 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

(3) Either of the following: 341

(a) 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

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

(4) 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

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

(B) "Program year" means the twelve-month period beginning 353
the first day of June of a given year of the Ohio clean air 354
program and ending the thirty-first day of May of the following 355
year. 356

(C) "Electric distribution utility" and "renewable energy 357
resource" have the same meanings as in section 4928.01 of the 358
Revised Code. 359

(D) "Annual capacity factor" means the actual energy 360
produced in a year divided by the energy that would have been 361
produced if the facility was operating continuously at the 362
maximum rating. 363

(E) "Clean air credit" means a credit that represents the 364
clean air attributes of one megawatt hour of electric energy 365
produced from a certified clean air resource. 366

Sec. 3706.42. (A) There is hereby created the Ohio clean 367
air program, which shall terminate on December 31, 2026. 368

(B) Any person owning or controlling an electric 369
generating facility that meets the definition of a clean air 370
resource in section 3706.40 of the Revised Code may submit a 371
written application with the Ohio air quality development 372

authority for certification as a clean air resource to be 373
eligible to participate in the Ohio clean air program. 374
Applications shall be submitted by the first day of February for 375
any program year beginning the first day of June of the same 376
calendar year. 377

(C) Applications shall include all of the following 378
information: 379

(1) The in-service date and estimated remaining useful 380
life of the resource; 381

(2) For an existing resource, the quantity of megawatt 382
hours generated by the resource annually during each of the 383
previous five calendar years during which the resource was 384
generating, and the annual capacity factor for each of those 385
calendar years; 386

(3) A forecast estimate of the annual quantity of megawatt 387
hours to be generated by the resource and the projected annual 388
capacity factor over the remaining useful life of the resource; 389

(4) A forecast estimate of the emissions that would occur 390
in this state during the remaining useful life of the resource 391
if the resource discontinued operations prior to the end of the 392
resource's useful life; 393

(5) Verified documentation demonstrating all of the 394
following: 395

(a) That certification as a clean air resource and 396
participation in the Ohio clean air program will permit the 397
resource to reduce future emissions per unit of electrical 398
energy generated in this state; 399

(b) That without certification as a clean air resource, 400

the positive contributions to the air quality of this state that 401
the resource has made and is capable of making in the future may 402
be diminished or eliminated; 403

(c) That the clean air resource meets the definition of a 404
clean air resource in section 3706.40 of the Revised Code; 405

(d) That the person seeking certification owns or controls 406
the resource. 407

(6) The resource's nameplate capacity; 408

(7) Any other data or information that the authority 409
requests and determines is necessary to evaluate an application 410
for certification as a clean air resource or to demonstrate that 411
certification would be in the public interest. 412

(D) The authority shall post on the authority's web site 413
all applications and nonconfidential supporting materials 414
submitted under this section. 415

(E) Interested persons may file comments not later than 416
twenty days after the date that an application is posted on the 417
authority's web site. All comments shall be posted on the 418
authority's web site. An applicant may respond to those comments 419
not later than ten days thereafter. 420

Sec. 3706.44. (A) (1) On or before the thirty-first day of 421
March, the Ohio air quality development authority shall review 422
all applications timely submitted under section 3706.42 of the 423
Revised Code and issue an order certifying a clean air resource 424
that meets the definition of a clean air resource in section 425
3706.40 of the Revised Code. 426

(2) A clean air resource shall remain certified as a clean 427
air resource as long as the resource continues to meet the 428

definition of a clean air resource in section 3706.40 of the 429
Revised Code. 430

(B) In the event the authority does not issue an order 431
under division (A) of this section by the thirty-first day of 432
March, each electric generating facility included in a timely 433
and properly filed application shall be deemed a clean air 434
resource. 435

(C) (1) The authority may decertify a clean air resource at 436
any time if it determines that certification is not in the 437
public interest. 438

(2) Before decertifying a clean air resource, the 439
authority shall do both of the following: 440

(a) Allow the resource to provide additional information 441
in support of remaining certified; 442

(b) Hold a public hearing and allow for public comment. 443

Sec. 3706.46. (A) For the purpose of funding benefits 444
provided by the Ohio clean air program, there is hereby created 445
the Ohio clean air program fund. The fund shall be in the 446
custody of the state treasurer but shall not be part of the 447
state treasury. The fund shall consist of the charges under 448
section 3706.47 of the Revised Code. All interest generated by 449
the fund shall be retained in the fund and used for the purpose 450
of funding the Ohio clean air program. 451

(B) The treasurer shall distribute the moneys in the Ohio 452
clean air program fund in accordance with the directions 453
provided by the Ohio air quality development authority. 454

Sec. 3706.47. (A) Beginning January 1, 2020, and ending on 455
December 31, 2026, each retail electric customer of an electric 456

distribution utility in this state shall pay a per-account 457
monthly charge, which shall be billed and collected by each 458
electric distribution utility and remitted to the state 459
treasurer for deposit into the Ohio clean air program fund, 460
created under section 3706.46 of the Revised Code. 461

(B) The monthly charges established under division (A) of 462
this section shall be in accordance with the following: 463

(1) For customers classified by the utility as 464
residential: 465

(a) For the year 2020, fifty cents; 466

(b) For the years 2021, 2022, 2023, 2024, 2025, and 2026, 467
one dollar. 468

(2) For customers classified by the utility as commercial, 469
except as provided in division (B)(4) of this section, a charge 470
that is determined by a structure and design that the public 471
utilities commission shall, not later than October 1, 2019, 472
establish. The commission shall establish the structure and 473
design of the charge such that the average charge across all 474
customers subject to the charge under division (B)(2) of this 475
section is: 476

(a) For the year 2020, ten dollars; and 477

(b) For the years 2021, 2022, 2023, 2024, 2025, and 2026, 478
fifteen dollars. 479

(3) For customers classified by the utility as industrial, 480
except as provided in division (B)(4) of this section, a charge 481
that is determined by a structure and design that the commission 482
shall, not later than October 1, 2019, establish. The commission 483
shall establish the structure and design of the charge such that 484

the average charge across all customers subject to the charge 485
under division (B) (3) of this section is two hundred fifty 486
dollars; 487

(4) For customers classified by the utility as commercial 488
or industrial that exceeded forty-five million kilowatt hours of 489
electricity at a single location in the preceding year, two 490
thousand five hundred dollars. 491

(C) The commission shall comply with divisions (B) (2) and 492
(3) of this section in a manner that avoids abrupt or excessive 493
total electric bill impacts for typical customers with a 494
classification of commercial or industrial. 495

(D) For purposes of division (B) of this section, the 496
classification of residential, commercial, and industrial 497
customers shall be consistent with the utility's reporting under 498
its approved rate schedules. 499

Sec. 3706.48. Each owner of a certified clean air resource 500
shall report to the Ohio air quality development authority, not 501
later than seven days after the close of each month during a 502
program year, the number of megawatt hours the resource produced 503
in the previous month. 504

Sec. 3706.481. A certified clean air resource shall earn a 505
clean air credit for each megawatt hour of electricity it 506
produces. 507

Sec. 3706.482. (A) (1) Not later than fourteen days after 508
the close of each month during a program year, the Ohio air 509
quality development authority shall direct the treasurer of 510
state to remit money from the Ohio clean air program fund, as 511
long as there is sufficient money in the fund, to each owner of 512
a certified clean air resource in the amount equivalent to the 513

number of credits earned by the resource during the previous 514
month multiplied by the credit price. 515

(2) If the money in the Ohio clean air program fund is 516
insufficient to pay for all the credits earned by a resource, 517
the unpaid credits shall be paid first in the next monthly 518
payment period. 519

(B) The price for each clean air credit shall be nine 520
dollars. 521

Sec. 3706.483. The Ohio air quality development authority 522
shall adopt rules to provide for this state a system of 523
registering clean air credits by specifying that the generation 524
attribute tracking system may be used for that purpose and not 525
by creating a registry. 526

Sec. 3706.485. (A) An electric distribution utility shall 527
submit an application to the Ohio air quality development 528
authority for reimbursement from the Ohio clean air program fund 529
of the net costs that are recoverable under section 4928.641 of 530
the Revised Code. The public utilities commission shall certify 531
the utility's net costs to be recovered in accordance with 532
division (F) of section 4928.641 of the Revised Code. 533

(B) Not later than ninety days after the receipt of an 534
application under division (A) of this section, the authority 535
shall direct the treasurer of state to remit money from the Ohio 536
clean air program fund to the electric distribution utility as 537
reimbursement for those costs. 538

Sec. 3706.49. (A) To facilitate air quality development 539
related capital formation and investment by or in a certified 540
clean air resource, the Ohio air quality development authority 541
may pledge a portion of moneys that may, in the future, be 542

accumulated in the Ohio clean air program fund for the benefit 543
of any certified clean air resource, provided the resource 544
agrees to be bound by the conditions the authority may attach to 545
the pledge. 546

(B) The authority shall not be required to direct 547
distribution of moneys in the Ohio clean air program fund unless 548
or until there are adequate moneys available in the Ohio clean 549
air program fund. Nothing herein shall cause any such pledge to 550
be construed or applied to create, directly or indirectly, a 551
general obligation of or for this state. 552

Sec. 3706.50. (A) In the years 2021, 2022, 2023, 2024, 553
2025, 2026, and 2027, the Ohio air quality development authority 554
shall conduct an annual audit of the Ohio clean air program. 555

(B) Not later than ninety days after the effective date of 556
this section, the authority shall adopt rules that are necessary 557
to begin implementation of the Ohio clean air program. The rules 558
adopted under this division shall include provisions for both of 559
the following: 560

(1) Tracking the number of clean air credits earned by 561
each certified clean air resource during each month of a program 562
year, based on the information reported under section 3706.48 of 563
the Revised Code; 564

(2) The annual audit required under division (A) of this 565
section. 566

(C) Not later than two hundred seventy-five days after the 567
effective date of this section, the authority shall adopt rules 568
that are necessary for the further implementation and 569
administration of the Ohio clean air program. 570

Sec. 4905.311. In order to promote job growth and 571

retention in this state, the public utilities commission, when 572
ruling on a reasonable arrangement application under section 573
4905.31 of the Revised Code, shall attempt to minimize electric 574
rates to the maximum amount possible on trade-exposed industrial 575
manufacturers. 576

Sec. 4906.10. (A) The power siting board shall render a 577
decision upon the record either granting or denying the 578
application as filed, or granting it upon such terms, 579
conditions, or modifications of the construction, operation, or 580
maintenance of the major utility facility as the board considers 581
appropriate. The certificate shall be subject to section 582
4906.101 of the Revised Code and conditioned upon the facility 583
being in compliance with standards and rules adopted under 584
sections 1501.33, 1501.34, and 4561.32 and Chapters 3704., 585
3734., and 6111. of the Revised Code. An applicant may withdraw 586
an application if the board grants a certificate on terms, 587
conditions, or modifications other than those proposed by the 588
applicant in the application. 589

The board shall not grant a certificate for the 590
construction, operation, and maintenance of a major utility 591
facility, either as proposed or as modified by the board, unless 592
it finds and determines all of the following: 593

(1) The basis of the need for the facility if the facility 594
is an electric transmission line or gas pipeline; 595

(2) The nature of the probable environmental impact; 596

(3) That the facility represents the minimum adverse 597
environmental impact, considering the state of available 598
technology and the nature and economics of the various 599
alternatives, and other pertinent considerations; 600

(4) In the case of an electric transmission line or 601
generating facility, that the facility is consistent with 602
regional plans for expansion of the electric power grid of the 603
electric systems serving this state and interconnected utility 604
systems and that the facility will serve the interests of 605
electric system economy and reliability; 606

(5) That the facility will comply with Chapters 3704., 607
3734., and 6111. of the Revised Code and all rules and standards 608
adopted under those chapters and under sections 1501.33, 609
1501.34, and 4561.32 of the Revised Code. In determining whether 610
the facility will comply with all rules and standards adopted 611
under section 4561.32 of the Revised Code, the board shall 612
consult with the office of aviation of the division of multi- 613
modal planning and programs of the department of transportation 614
under section 4561.341 of the Revised Code. 615

(6) That the facility will serve the public interest, 616
convenience, and necessity; 617

(7) In addition to the provisions contained in divisions 618
(A) (1) to (6) of this section and rules adopted under those 619
divisions, what its impact will be on the viability as 620
agricultural land of any land in an existing agricultural 621
district established under Chapter 929. of the Revised Code that 622
is located within the site and alternative site of the proposed 623
major utility facility. Rules adopted to evaluate impact under 624
division (A) (7) of this section shall not require the 625
compilation, creation, submission, or production of any 626
information, document, or other data pertaining to land not 627
located within the site and alternative site. 628

(8) That the facility incorporates maximum feasible water 629
conservation practices as determined by the board, considering 630

available technology and the nature and economics of the various
alternatives.

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

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

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

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

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

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

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

(b) If all the townships with electors voting on the 660
referendum reject the certificate, the certificate is invalid. 661

Sec. 4906.13. (A) As used in this section and sections 662
4906.20, 4906.201, 4906.203, and 4906.98 of the Revised Code, ~~—~~ 663
~~"economically:~~ 664

"Economically significant wind farm" means wind turbines 665
and associated facilities with a single interconnection to the 666
electrical grid and designed for, or capable of, operation at an 667
aggregate capacity of five or more megawatts but less than fifty 668
megawatts. The term excludes any such wind farm in operation on 669
June 24, 2008. The term also excludes one or more wind turbines 670
and associated facilities that are primarily dedicated to 671
providing electricity to a single customer at a single location 672
and that are designed for, or capable of, operation at an 673
aggregate capacity of less than twenty megawatts, as measured at 674
the customer's point of interconnection to the electrical grid. 675

"Large wind farm" means an electric generating plant that 676
consists of wind turbines and associated facilities with a 677
single interconnection to the electrical grid that is a major 678
utility facility as defined in section 4906.01 of the Revised 679
Code. 680

(B) No public agency or political subdivision of this 681
state may require any approval, consent, permit, certificate, or 682
other condition for the construction or operation of a major 683
utility facility or economically significant wind farm 684
authorized by a certificate issued pursuant to Chapter 4906. of 685
the Revised Code. Nothing herein shall prevent the application 686
of state laws for the protection of employees engaged in the 687
construction of such facility or wind farm nor of municipal 688
regulations that do not pertain to the location or design of, or 689

pollution control and abatement standards for, a major utility 690
facility or economically significant wind farm for which a 691
certificate has been granted under this chapter. 692

Sec. 4906.20. (A) ~~No~~ Subject to section 4906.203 of the 693
Revised Code, no person shall commence to construct an 694
economically significant wind farm in this state without first 695
having obtained a certificate from the power siting board. An 696
economically significant wind farm with respect to which such a 697
certificate is required shall be constructed, operated, and 698
maintained in conformity with that certificate and any terms, 699
conditions, and modifications it contains. A certificate shall 700
be issued only pursuant to this section. The certificate may be 701
transferred, subject to the approval of the board, to a person 702
that agrees to comply with those terms, conditions, and 703
modifications. 704

(B) The board shall adopt rules governing the 705
certificating of economically significant wind farms under this 706
section. Initial rules shall be adopted within one hundred 707
twenty days after June 24, 2008. 708

(1) The rules shall provide for an application process for 709
certificating economically significant wind farms that is 710
identical to the extent practicable to the process applicable to 711
certificating major utility facilities under sections 4906.06, 712
4906.07, 4906.08, 4906.09, 4906.10, 4906.11, and 4906.12 of the 713
Revised Code and shall prescribe a reasonable schedule of 714
application filing fees structured in the manner of the schedule 715
of filing fees required for major utility facilities. 716

(2) Additionally, the rules shall prescribe reasonable 717
regulations regarding any wind turbines and associated 718
facilities of an economically significant wind farm, including, 719

but not limited to, their location, erection, construction, 720
reconstruction, change, alteration, maintenance, removal, use, 721
or enlargement and including erosion control, aesthetics, 722
recreational land use, wildlife protection, interconnection with 723
power lines and with regional transmission organizations, 724
independent transmission system operators, or similar 725
organizations, ice throw, sound and noise levels, blade shear, 726
shadow flicker, decommissioning, and necessary cooperation for 727
site visits and enforcement investigations. 728

(a) The rules also shall prescribe a minimum setback for a 729
wind turbine of an economically significant wind farm. That 730
minimum shall be equal to a horizontal distance, from the 731
turbine's base to the property line of the wind farm property, 732
equal to one and one-tenth times the total height of the turbine 733
structure as measured from its base to the tip of its highest 734
blade and be at least one thousand one hundred twenty-five feet 735
in horizontal distance from the tip of the turbine's nearest 736
blade at ninety degrees to the property line of the nearest 737
adjacent property at the time of the certification application. 738

(b) (i) For any existing certificates and amendments 739
thereto, and existing certification applications that have been 740
found by the chairperson to be in compliance with division (A) 741
of section 4906.06 of the Revised Code before the effective date 742
of the amendment of this section by H.B. 59 of the 130th general 743
assembly, September 29, 2013, the distance shall be seven 744
hundred fifty feet instead of one thousand one hundred twenty- 745
five feet. 746

(ii) Any amendment made to an existing certificate after 747
the effective date of the amendment of this section by H.B. 483 748
of the 130th general assembly, September 15, 2014, shall be 749

subject to the setback provision of this section as amended by 750
that act. The amendments to this section by that act shall not 751
be construed to limit or abridge any rights or remedies in 752
equity or under the common law. 753

(c) The setback shall apply in all cases except those in 754
which all owners of property adjacent to the wind farm property 755
waive application of the setback to that property pursuant to a 756
procedure the board shall establish by rule and except in which, 757
in a particular case, the board determines that a setback 758
greater than the minimum is necessary. 759

Sec. 4906.201. (A) ~~An electric generating plant that~~ 760
~~consists of wind turbines and associated facilities with a~~ 761
~~single interconnection to the electrical grid that is designed~~ 762
~~for, or capable of, operation at an aggregate capacity of fifty~~ 763
~~megawatts or more.~~ A large wind farm is subject to the minimum 764
setback requirements established in rules adopted by the power 765
siting board under division (B) (2) of section 4906.20 of the 766
Revised Code. 767

(B) (1) For any existing certificates and amendments 768
thereto, and existing certification applications that have been 769
found by the chairperson to be in compliance with division (A) 770
of section 4906.06 of the Revised Code before the effective date 771
of the amendment of this section by H.B. 59 of the 130th general 772
assembly, September 29, 2013, the distance shall be seven 773
hundred fifty feet instead of one thousand one hundred twenty- 774
five feet. 775

(2) Any amendment made to an existing certificate after 776
the effective date of the amendment of this section by H.B. 483 777
of the 130th general assembly, September 15, 2014, shall be 778
subject to the setback provision of this section as amended by 779

that act. The amendments to this section by that act shall not 780
be construed to limit or abridge any rights or remedies in 781
equity or under the common law. 782

Sec. 4906.203. (A) If the power siting board issues a 783
certificate under section 4906.20 of the Revised Code to an 784
economically significant wind farm to be located in the 785
unincorporated area of a township, the certificate shall be 786
conditioned upon the right of referendum as provided in section 787
519.214 of the Revised Code. 788

(B) If the certificate is rejected in a referendum under 789
section 519.214 of the Revised Code, one of the following 790
applies: 791

(1) If the economically significant wind farm is to be 792
located in the unincorporated area of a single township, the 793
certificate is invalid; 794

(2) If the economically significant wind farm is to be 795
located in the unincorporated area of more than one township, 796
one of the following applies: 797

(a) If less than all of the townships with electors voting 798
on the referendum reject the certificate, the power siting board 799
shall modify the certificate to exclude the area of each 800
township whose electors rejected the certificate. 801

(b) If all the townships with electors voting on the 802
referendum reject the certificate, the certificate is invalid. 803

Sec. 4928.01. (A) As used in this chapter: 804

(1) "Ancillary service" means any function necessary to 805
the provision of electric transmission or distribution service 806
to a retail customer and includes, but is not limited to, 807

scheduling, system control, and dispatch services; reactive 808
supply from generation resources and voltage control service; 809
reactive supply from transmission resources service; regulation 810
service; frequency response service; energy imbalance service; 811
operating reserve-spinning reserve service; operating reserve- 812
supplemental reserve service; load following; back-up supply 813
service; real-power loss replacement service; dynamic 814
scheduling; system black start capability; and network stability 815
service. 816

(2) "Billing and collection agent" means a fully 817
independent agent, not affiliated with or otherwise controlled 818
by an electric utility, electric services company, electric 819
cooperative, or governmental aggregator subject to certification 820
under section 4928.08 of the Revised Code, to the extent that 821
the agent is under contract with such utility, company, 822
cooperative, or aggregator solely to provide billing and 823
collection for retail electric service on behalf of the utility 824
company, cooperative, or aggregator. 825

(3) "Certified territory" means the certified territory 826
established for an electric supplier under sections 4933.81 to 827
4933.90 of the Revised Code. 828

(4) "Competitive retail electric service" means a 829
component of retail electric service that is competitive as 830
provided under division (B) of this section. 831

(5) "Electric cooperative" means a not-for-profit electric 832
light company that both is or has been financed in whole or in 833
part under the "Rural Electrification Act of 1936," 49 Stat. 834
1363, 7 U.S.C. 901, and owns or operates facilities in this 835
state to generate, transmit, or distribute electricity, or a 836
not-for-profit successor of such company. 837

(6) "Electric distribution utility" means an electric 838
utility that supplies at least retail electric distribution 839
service. 840

(7) "Electric light company" has the same meaning as in 841
section 4905.03 of the Revised Code and includes an electric 842
services company, but excludes any self-generator to the extent 843
that it consumes electricity it so produces, sells that 844
electricity for resale, or obtains electricity from a generating 845
facility it hosts on its premises. 846

(8) "Electric load center" has the same meaning as in 847
section 4933.81 of the Revised Code. 848

(9) "Electric services company" means an electric light 849
company that is engaged on a for-profit or not-for-profit basis 850
in the business of supplying or arranging for the supply of only 851
a competitive retail electric service in this state. "Electric 852
services company" includes a power marketer, power broker, 853
aggregator, or independent power producer but excludes an 854
electric cooperative, municipal electric utility, governmental 855
aggregator, or billing and collection agent. 856

(10) "Electric supplier" has the same meaning as in 857
section 4933.81 of the Revised Code. 858

(11) "Electric utility" means an electric light company 859
that has a certified territory and is engaged on a for-profit 860
basis either in the business of supplying a noncompetitive 861
retail electric service in this state or in the businesses of 862
supplying both a noncompetitive and a competitive retail 863
electric service in this state. "Electric utility" excludes a 864
municipal electric utility or a billing and collection agent. 865

(12) "Firm electric service" means electric service other 866

than nonfirm electric service. 867

(13) "Governmental aggregator" means a legislative 868
authority of a municipal corporation, a board of township 869
trustees, or a board of county commissioners acting as an 870
aggregator for the provision of a competitive retail electric 871
service under authority conferred under section 4928.20 of the 872
Revised Code. 873

(14) A person acts "knowingly," regardless of the person's 874
purpose, when the person is aware that the person's conduct will 875
probably cause a certain result or will probably be of a certain 876
nature. A person has knowledge of circumstances when the person 877
is aware that such circumstances probably exist. 878

(15) "Level of funding for low-income customer energy 879
efficiency programs provided through electric utility rates" 880
means the level of funds specifically included in an electric 881
utility's rates on October 5, 1999, pursuant to an order of the 882
public utilities commission issued under Chapter 4905. or 4909. 883
of the Revised Code and in effect on October 4, 1999, for the 884
purpose of improving the energy efficiency of housing for the 885
utility's low-income customers. The term excludes the level of 886
any such funds committed to a specific nonprofit organization or 887
organizations pursuant to a stipulation or contract. 888

(16) "Low-income customer assistance programs" means the 889
percentage of income payment plan program, the home energy 890
assistance program, the home weatherization assistance program, 891
and the targeted energy efficiency and weatherization program. 892

(17) "Market development period" for an electric utility 893
means the period of time beginning on the starting date of 894
competitive retail electric service and ending on the applicable 895

date for that utility as specified in section 4928.40 of the 896
Revised Code, irrespective of whether the utility applies to 897
receive transition revenues under this chapter. 898

(18) "Market power" means the ability to impose on 899
customers a sustained price for a product or service above the 900
price that would prevail in a competitive market. 901

(19) "Mercantile customer" means a commercial or 902
industrial customer if the electricity consumed is for 903
nonresidential use and the customer consumes more than seven 904
hundred thousand kilowatt hours per year or is part of a 905
national account involving multiple facilities in one or more 906
states. 907

(20) "Municipal electric utility" means a municipal 908
corporation that owns or operates facilities to generate, 909
transmit, or distribute electricity. 910

(21) "Noncompetitive retail electric service" means a 911
component of retail electric service that is noncompetitive as 912
provided under division (B) of this section. 913

(22) "Nonfirm electric service" means electric service 914
provided pursuant to a schedule filed under section 4905.30 of 915
the Revised Code or pursuant to an arrangement under section 916
4905.31 of the Revised Code, which schedule or arrangement 917
includes conditions that may require the customer to curtail or 918
interrupt electric usage during nonemergency circumstances upon 919
notification by an electric utility. 920

(23) "Percentage of income payment plan arrears" means 921
funds eligible for collection through the percentage of income 922
payment plan rider, but uncollected as of July 1, 2000. 923

(24) "Person" has the same meaning as in section 1.59 of 924

the Revised Code. 925

(25) "Advanced energy project" means any technologies, 926
products, activities, or management practices or strategies that 927
facilitate the generation or use of electricity or energy and 928
that reduce or support the reduction of energy consumption or 929
support the production of clean, renewable energy for 930
industrial, distribution, commercial, institutional, 931
governmental, research, not-for-profit, or residential energy 932
users, including, but not limited to, advanced energy resources 933
and renewable energy resources. "Advanced energy project" also 934
includes any project described in division (A), (B), or (C) of 935
section 4928.621 of the Revised Code. 936

(26) "Regulatory assets" means the unamortized net 937
regulatory assets that are capitalized or deferred on the 938
regulatory books of the electric utility, pursuant to an order 939
or practice of the public utilities commission or pursuant to 940
generally accepted accounting principles as a result of a prior 941
commission rate-making decision, and that would otherwise have 942
been charged to expense as incurred or would not have been 943
capitalized or otherwise deferred for future regulatory 944
consideration absent commission action. "Regulatory assets" 945
includes, but is not limited to, all deferred demand-side 946
management costs; all deferred percentage of income payment plan 947
arrears; post-in-service capitalized charges and assets 948
recognized in connection with statement of financial accounting 949
standards no. 109 (receivables from customers for income taxes); 950
future nuclear decommissioning costs and fuel disposal costs as 951
those costs have been determined by the commission in the 952
electric utility's most recent rate or accounting application 953
proceeding addressing such costs; the undepreciated costs of 954
safety and radiation control equipment on nuclear generating 955

plants owned or leased by an electric utility; and fuel costs 956
currently deferred pursuant to the terms of one or more 957
settlement agreements approved by the commission. 958

(27) "Retail electric service" means any service involved 959
in supplying or arranging for the supply of electricity to 960
ultimate consumers in this state, from the point of generation 961
to the point of consumption. For the purposes of this chapter, 962
retail electric service includes one or more of the following 963
"service components": generation service, aggregation service, 964
power marketing service, power brokerage service, transmission 965
service, distribution service, ancillary service, metering 966
service, and billing and collection service. 967

(28) "Starting date of competitive retail electric 968
service" means January 1, 2001. 969

(29) "Customer-generator" means a user of a net metering 970
system. 971

(30) "Net metering" means measuring the difference in an 972
applicable billing period between the electricity supplied by an 973
electric service provider and the electricity generated by a 974
customer-generator that is fed back to the electric service 975
provider. 976

(31) "Net metering system" means a facility for the 977
production of electrical energy that does all of the following: 978

(a) Uses as its fuel either solar, wind, biomass, landfill 979
gas, or hydropower, or uses a microturbine or a fuel cell; 980

(b) Is located on a customer-generator's premises; 981

(c) Operates in parallel with the electric utility's 982
transmission and distribution facilities; 983

(d) Is intended primarily to offset part or all of the 984
customer-generator's requirements for electricity. For an 985
industrial customer-generator with a net metering system that 986
has a capacity of less than twenty megawatts and uses wind as 987
energy, this means the net metering system was sized so as to 988
not exceed one hundred per cent of the customer-generator's 989
annual requirements for electric energy at the time of 990
interconnection. 991

(32) "Self-generator" means an entity in this state that 992
owns or hosts on its premises an electric generation facility 993
that produces electricity primarily for the owner's consumption 994
and that may provide any such excess electricity to another 995
entity, whether the facility is installed or operated by the 996
owner or by an agent under a contract. 997

(33) "Rate plan" means the standard service offer in 998
effect on the effective date of the amendment of this section by 999
S.B. 221 of the 127th general assembly, July 31, 2008. 1000

(34) "Advanced energy resource" means any of the 1001
following: 1002

(a) Any method or any modification or replacement of any 1003
property, process, device, structure, or equipment that 1004
increases the generation output of an electric generating 1005
facility to the extent such efficiency is achieved without 1006
additional carbon dioxide emissions by that facility; 1007

(b) Any distributed generation system consisting of 1008
customer cogeneration technology; 1009

(c) Clean coal technology that includes a carbon-based 1010
product that is chemically altered before combustion to 1011
demonstrate a reduction, as expressed as ash, in emissions of 1012

nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 1013
sulfur trioxide in accordance with the American society of 1014
testing and materials standard D1757A or a reduction of metal 1015
oxide emissions in accordance with standard D5142 of that 1016
society, or clean coal technology that includes the design 1017
capability to control or prevent the emission of carbon dioxide, 1018
which design capability the commission shall adopt by rule and 1019
shall be based on economically feasible best available 1020
technology or, in the absence of a determined best available 1021
technology, shall be of the highest level of economically 1022
feasible design capability for which there exists generally 1023
accepted scientific opinion; 1024

(d) Advanced nuclear energy technology consisting of 1025
generation III technology as defined by the nuclear regulatory 1026
commission; other, later technology; or significant improvements 1027
to existing facilities; 1028

(e) Any fuel cell used in the generation of electricity, 1029
including, but not limited to, a proton exchange membrane fuel 1030
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 1031
solid oxide fuel cell; 1032

(f) Advanced solid waste or construction and demolition 1033
debris conversion technology, including, but not limited to, 1034
advanced stoker technology, and advanced fluidized bed 1035
gasification technology, that results in measurable greenhouse 1036
gas emissions reductions as calculated pursuant to the United 1037
States environmental protection agency's waste reduction model 1038
(WARM); 1039

(g) Demand-side management and any energy efficiency 1040
improvement; 1041

(h) Any new, retrofitted, refueled, or repowered 1042
generating facility located in Ohio, including a simple or 1043
combined-cycle natural gas generating facility or a generating 1044
facility that uses biomass, coal, modular nuclear, or any other 1045
fuel as its input; 1046

(i) Any uprated capacity of an existing electric 1047
generating facility if the uprated capacity results from the 1048
deployment of advanced technology. 1049

~~"Advanced energy resource" does not include a waste energy~~ 1050
~~recovery system that is, or has been, included in an energy~~ 1051
~~efficiency program of an electric distribution utility pursuant~~ 1052
~~to requirements under section 4928.66 of the Revised Code.~~ 1053

(35) "Air contaminant source" has the same meaning as in 1054
section 3704.01 of the Revised Code. 1055

(36) "Cogeneration technology" means technology that 1056
produces electricity and useful thermal output simultaneously. 1057

(37) (a) "Renewable energy resource" means any of the 1058
following: 1059

(i) Solar photovoltaic or solar thermal energy; 1060

(ii) Wind energy; 1061

(iii) Power produced by a hydroelectric facility; 1062

(iv) Power produced by a small hydroelectric facility, 1063
which is a facility that operates, or is rated to operate, at an 1064
aggregate capacity of less than six megawatts; 1065

(v) Power produced by a run-of-the-river hydroelectric 1066
facility placed in service on or after January 1, 1980, that is 1067
located within this state, relies upon the Ohio river, and 1068

operates, or is rated to operate, at an aggregate capacity of 1069
forty or more megawatts; 1070

(vi) Geothermal energy; 1071

(vii) Fuel derived from solid wastes, as defined in 1072
section 3734.01 of the Revised Code, through fractionation, 1073
biological decomposition, or other process that does not 1074
principally involve combustion; 1075

(viii) Biomass energy; 1076

(ix) Energy produced by cogeneration technology that is 1077
placed into service on or before December 31, 2015, and for 1078
which more than ninety per cent of the total annual energy input 1079
is from combustion of a waste or byproduct gas from an air 1080
contaminant source in this state, which source has been in 1081
operation since on or before January 1, 1985, provided that the 1082
cogeneration technology is a part of a facility located in a 1083
county having a population of more than three hundred sixty-five 1084
thousand but less than three hundred seventy thousand according 1085
to the most recent federal decennial census; 1086

(x) Biologically derived methane gas; 1087

(xi) Heat captured from a generator of electricity, 1088
boiler, or heat exchanger fueled by biologically derived methane 1089
gas; 1090

(xii) Energy derived from nontreated by-products of the 1091
pulping process or wood manufacturing process, including bark, 1092
wood chips, sawdust, and lignin in spent pulping liquors. 1093

"Renewable energy resource" includes, but is not limited 1094
to, any fuel cell used in the generation of electricity, 1095
including, but not limited to, a proton exchange membrane fuel 1096

cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 1097
solid oxide fuel cell; wind turbine located in the state's 1098
territorial waters of Lake Erie; methane gas emitted from an 1099
abandoned coal mine; waste energy recovery system placed into 1100
service or retrofitted on or after the effective date of the 1101
amendment of this section by S.B. 315 of the 129th general 1102
assembly, September 10, 2012, except that a waste energy 1103
recovery system described in division (A)(38)(b) of this section 1104
may be included only if it was placed into service between 1105
January 1, 2002, and December 31, 2004; storage facility that 1106
will promote the better utilization of a renewable energy 1107
resource; or distributed generation system used by a customer to 1108
generate electricity from any such energy. 1109

~~"Renewable energy resource" does not include a waste 1110~~
~~energy recovery system that is, or was, on or after January 1, 1111~~
~~2012, included in an energy efficiency program of an electric 1112~~
~~distribution utility pursuant to requirements under section 1113~~
~~4928.66 of the Revised Code. 1114~~

(b) As used in division (A)(37) of this section, 1115
"hydroelectric facility" means a hydroelectric generating 1116
facility that is located at a dam on a river, or on any water 1117
discharged to a river, that is within or bordering this state or 1118
within or bordering an adjoining state and meets all of the 1119
following standards: 1120

(i) The facility provides for river flows that are not 1121
detrimental for fish, wildlife, and water quality, including 1122
seasonal flow fluctuations as defined by the applicable 1123
licensing agency for the facility. 1124

(ii) The facility demonstrates that it complies with the 1125
water quality standards of this state, which compliance may 1126

consist of certification under Section 401 of the "Clean Water Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and demonstrates that it has not contributed to a finding by this state that the river has impaired water quality under Section 303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 U.S.C. 1313.

(iii) The facility complies with mandatory prescriptions regarding fish passage as required by the federal energy regulatory commission license issued for the project, regarding fish protection for riverine, anadromous, and catadromous fish.

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

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

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

(vii) The facility complies with the terms of its federal energy regulatory commission license or exemption that are related to recreational access, accommodation, and facilities or, if the facility is not regulated by that commission, the facility complies with similar requirements as are recommended

by resource agencies, to the extent they have jurisdiction over 1156
the facility; and the facility provides access to water to the 1157
public without fee or charge. 1158

(viii) The facility is not recommended for removal by any 1159
federal agency or agency of any state, to the extent the 1160
particular agency has jurisdiction over the facility. 1161

(c) The standards in divisions (A) (37) (b) (i) to (viii) of 1162
this section do not apply to a small hydroelectric facility 1163
under division (A) (37) (a) (iv) of this section. 1164

(38) "Waste energy recovery system" means either of the 1165
following: 1166

(a) A facility that generates electricity through the 1167
conversion of energy from either of the following: 1168

(i) Exhaust heat from engines or manufacturing, 1169
industrial, commercial, or institutional sites, except for 1170
exhaust heat from a facility whose primary purpose is the 1171
generation of electricity; 1172

(ii) Reduction of pressure in gas pipelines before gas is 1173
distributed through the pipeline, provided that the conversion 1174
of energy to electricity is achieved without using additional 1175
fossil fuels. 1176

(b) A facility at a state institution of higher education 1177
as defined in section 3345.011 of the Revised Code that recovers 1178
waste heat from electricity-producing engines or combustion 1179
turbines and that simultaneously uses the recovered heat to 1180
produce steam, provided that the facility was placed into 1181
service between January 1, 2002, and December 31, 2004. 1182

(39) "Smart grid" means capital improvements to an 1183

electric distribution utility's distribution infrastructure that 1184
improve reliability, efficiency, resiliency, or reduce energy 1185
demand or use, including, but not limited to, advanced metering 1186
and automation of system functions. 1187

(40) "Combined heat and power system" means the 1188
coproduction of electricity and useful thermal energy from the 1189
same fuel source designed to achieve thermal-efficiency levels 1190
of at least sixty per cent, with at least twenty per cent of the 1191
system's total useful energy in the form of thermal energy. 1192

(41) "National security generation resource" means all 1193
generating facilities owned directly or indirectly by a 1194
corporation that was formed prior to 1960 by investor-owned 1195
utilities for the original purpose of providing capacity and 1196
electricity to the federal government for use in the nation's 1197
defense or in furtherance of national interests. The term 1198
includes the Ohio valley electric corporation. 1199

(42) "Prudently incurred costs related to a national 1200
security generation resource" means, subject to section 4928.148 1201
of the Revised Code, costs, including deferred costs, allocated 1202
pursuant to a power agreement approved by the federal energy 1203
regulatory commission that relates to a national security 1204
generation resource. Such costs shall exclude any return on 1205
investment in common equity and, in the event of a premature 1206
retirement of a national security generation resource, shall 1207
exclude any recovery of remaining debt. Such costs shall include 1208
any incremental costs resulting from the bankruptcy of a current 1209
or former co-owner of the national security generation resource 1210
if not otherwise recovered through a utility rate cost recovery 1211
mechanism. 1212

(43) "National security generation resource net impact" 1213

means retail recovery of prudently incurred costs related to a 1214
national security generation resource, less any revenues 1215
realized from offering the contractual commitment related to a 1216
national security generation resource into the wholesale 1217
markets, provided that where the net revenues exceed net costs, 1218
those excess revenues shall be credited to customers. 1219

(B) For the purposes of this chapter, a retail electric 1220
service component shall be deemed a competitive retail electric 1221
service if the service component is competitive pursuant to a 1222
declaration by a provision of the Revised Code or pursuant to an 1223
order of the public utilities commission authorized under 1224
division (A) of section 4928.04 of the Revised Code. Otherwise, 1225
the service component shall be deemed a noncompetitive retail 1226
electric service. 1227

Sec. 4928.02. It is the policy of this state to do the 1228
following throughout this state: 1229

(A) Ensure the availability to consumers of adequate, 1230
reliable, safe, efficient, nondiscriminatory, and reasonably 1231
priced retail electric service; 1232

(B) Ensure the availability of unbundled and comparable 1233
retail electric service that provides consumers with the 1234
supplier, price, terms, conditions, and quality options they 1235
elect to meet their respective needs; 1236

(C) Ensure diversity of electricity supplies and 1237
suppliers, by giving consumers effective choices over the 1238
selection of those supplies and suppliers and by encouraging the 1239
development of distributed and small generation facilities; 1240

(D) Encourage innovation and market access for cost- 1241
effective supply- and demand-side retail electric service 1242

including, but not limited to, demand-side management, time- 1243
differentiated pricing, waste energy recovery systems, smart 1244
grid programs, and implementation of advanced metering 1245
infrastructure; 1246

(E) Encourage cost-effective and efficient access to 1247
information regarding the operation of the transmission and 1248
distribution systems of electric utilities in order to promote 1249
both effective customer choice of retail electric service and 1250
the development of performance standards and targets for service 1251
quality for all consumers, including annual achievement reports 1252
written in plain language; 1253

(F) Ensure that an electric utility's transmission and 1254
distribution systems are available to a customer-generator or 1255
owner of distributed generation, so that the customer-generator 1256
or owner can market and deliver the electricity it produces; 1257

(G) Recognize the continuing emergence of competitive 1258
electricity markets through the development and implementation 1259
of flexible regulatory treatment; 1260

(H) Ensure effective competition in the provision of 1261
retail electric service by avoiding anticompetitive subsidies 1262
flowing from a noncompetitive retail electric service to a 1263
competitive retail electric service or to a product or service 1264
other than retail electric service, and vice versa, including by 1265
prohibiting the recovery of any generation-related costs through 1266
distribution or transmission rates; 1267

(I) Ensure retail electric service consumers protection 1268
against unreasonable sales practices, market deficiencies, and 1269
market power; 1270

(J) Provide coherent, transparent means of giving 1271

appropriate incentives to technologies that can adapt 1272
successfully to potential environmental mandates; 1273

(K) Encourage implementation of distributed generation 1274
across customer classes through regular review and updating of 1275
administrative rules governing critical issues such as, but not 1276
limited to, interconnection standards, standby charges, and net 1277
metering; 1278

(L) Protect at-risk populations, including, but not 1279
limited to, when considering the implementation of any new 1280
advanced energy or renewable energy resource; 1281

(M) Encourage the education of small business owners in 1282
this state regarding the use of, and encourage the use of, 1283
energy efficiency programs and alternative energy resources in 1284
their businesses; 1285

(N) Facilitate the state's effectiveness in the global 1286
economy; 1287

(O) Provide clarity in cost recovery for Ohio-based 1288
electric distribution utilities in conjunction with national 1289
security generation resources and support electric distribution 1290
utility and affiliate divestiture of ownership interests in any 1291
national security generation resource if divestiture efforts 1292
result in no adverse consequences to the utility. 1293

In carrying out this policy, the commission shall consider 1294
rules as they apply to the costs of electric distribution 1295
infrastructure, including, but not limited to, line extensions, 1296
for the purpose of development in this state. 1297

Sec. 4928.147. (A) Upon the expiration of any mechanism 1298
authorized by the public utilities commission to recover an 1299
electric distribution utility's national security generation 1300

resource net impact, an electric distribution utility may 1301
recover, subject to an audit, reconciliation, and prudence 1302
review under section 4928.148 of the Revised Code, the national 1303
security generation resource net impact that remains unrecovered 1304
at the time of expiration. 1305

(B) An electric distribution utility, including all 1306
electric distribution utilities in the same holding company, 1307
shall bid all output from the national security generation 1308
resource into the wholesale market and shall not use the output 1309
in supplying its standard service offer provided under section 1310
4928.142 or 4928.143 of the Revised Code. 1311

Sec. 4928.148. (A) In establishing a nonbypassable rate 1312
mechanism for recovery of a national security generation 1313
resource net impact under section 4928.147 of the Revised Code, 1314
the public utilities commission shall do all of the following: 1315

(1) Determine, every three years, the prudence and 1316
reasonableness of the electric distribution utility's actions 1317
related to the national security generation resource, including 1318
its decisions related to offering the contractual commitment 1319
into the wholesale markets, and exclude from recovery those 1320
costs that it determines imprudent and unreasonable. 1321

(2) Determine the proper rate design for recovering or 1322
remitting the national security generation resource net impact, 1323
provided, however, that the monthly charge or credit recovering 1324
that impact, including any deferrals or credits, shall not 1325
exceed two dollars and fifty cents per customer per month for 1326
residential customers. For all other customer classes, the 1327
commission shall establish comparable monthly caps for each at 1328
or below two thousand five hundred dollars per customer per 1329
month. Insofar as the national security generation resource net 1330

impact exceeds these monthly limits, the electric distribution 1331
utility shall defer the remaining net impact as a regulatory 1332
asset or liability that shall be recovered as determined by the 1333
commission subject to the monthly rate caps set forth in this 1334
division. 1335

(3) Provide for discontinuation, subject to final 1336
reconciliation, of the nonbypassable rate mechanism on December 1337
31, 2030, unless the mechanism is extended by the general 1338
assembly under division (B) of this section. 1339

(B) The commission shall conduct an inquiry in 2029 to 1340
determine whether it is in the public interest to continue 1341
recovery of a national security generation resource net impact 1342
after 2030, and report its findings to the general assembly. 1343

Sec. 4928.46. (A) In the event that the federal energy 1344
regulatory commission authorizes a program by which this state 1345
may take action to satisfy any portion of the capacity resource 1346
obligation associated with the organized wholesale market that 1347
functions to meet the capacity, energy services, and ancillary 1348
services needs of consumers in this state, the public utilities 1349
commission shall promptly review the program and submit a report 1350
of its findings to the general assembly. 1351

(B) The report shall include any recommendations for both 1352
of the following: 1353

(1) Legislation that may be necessary to permit this state 1354
to beneficially participate in any such program; 1355

(2) How to maintain participation by end-use customers in 1356
this state in the demand response program offered by PJM 1357
Interconnection, L.L.C., or its successor organization, 1358
including how the state may consider structuring procurement for 1359

demand response that would allow demand response to satisfy a 1360
portion of the state's capacity resource obligation. 1361

(C) The report shall incorporate the policy of 1362
facilitating the state's effectiveness in the global economy by 1363
minimizing any adverse impact on trade-exposed industrial 1364
manufacturers. 1365

Sec. 4928.47. (A) As used in this section, "clean air" 1366
resource" means any of the following: 1367

(1) A clean air resource as defined in section 3706.40 of 1368
the Revised Code; 1369

(2) A customer-sited renewable energy resource; 1370

(3) A renewable energy resource that is a self-generator. 1371

(B)(1) Through its general supervision, ratemaking, cost 1372
assignment, allocation, rate schedule approval, and rulemaking 1373
authority, as well as its authority under section 4905.31 of the 1374
Revised Code, the public utilities commission shall facilitate 1375
and encourage the establishment of retail purchased power 1376
agreements having a term of three years or more through which 1377
mercantile customers of an electric distribution utility commit 1378
to satisfy a material portion of their electricity requirements 1379
from the output of a clean air resource. 1380

(2) The commission's application and administration of 1381
this section shall be the same for all clean air resources 1382
regardless of whether the resource is certified or eligible for 1383
certification under the Ohio clean air program created under 1384
section 3706.42 of the Revised Code. 1385

(3) In addition to any other benefits that may be 1386
available as a result of the commission's application of its 1387

authority under this section, on the effective date of a retail 1388
purchased power agreement, the commission may exempt such 1389
purchasing mercantile customer from the Ohio clean air program 1390
per-account monthly charge established in section 3706.47 of the 1391
Revised Code. 1392

(C) (1) Not later than ninety days after the effective date 1393
of this section, the commission shall promulgate rules as 1394
necessary to begin the implementation of this section. 1395

(2) Not later than two hundred seventy-five days after the 1396
effective date of this section, the commission shall promulgate 1397
rules for further implementation and administration of this 1398
section. 1399

Sec. 4928.471. (A) Except as provided in division (E) of 1400
this section, not earlier than thirty days after the effective 1401
date of this section, an electric distribution utility may file 1402
an application to implement a decoupling mechanism for the 2019 1403
calendar year and each calendar year thereafter. For an electric 1404
distribution utility that applies for a decoupling mechanism 1405
under this section, the base distribution rates for residential 1406
and commercial customers shall be decoupled to the base 1407
distribution revenue and revenue resulting from implementation 1408
of section 4928.66 of the Revised Code, excluding program costs 1409
and shared savings, and recovered pursuant to an approved 1410
electric security plan under section 4928.143 of the Revised 1411
Code, as of the twelve-month period ending on December 31, 2018. 1412
An application under this division shall not be considered an 1413
application under section 4909.18 of the Revised Code. 1414

(B) The commission shall issue an order approving an 1415
application for a decoupling mechanism filed under division (A) 1416
of this section not later than sixty days after the application 1417

is filed. In determining that an application is not unjust and 1418
unreasonable, the commission shall verify that the rate schedule 1419
or schedules are designed to recover the electric distribution 1420
utility's 2018 annual revenues as described in division (A) of 1421
this section and that the decoupling rate design is aligned with 1422
the rate design of the electric distribution utility's existing 1423
base distribution rates. The decoupling mechanism shall recover 1424
an amount equal to the base distribution revenue and revenue 1425
resulting from implementation of section 4928.66 of the Revised 1426
Code, excluding program costs and shared savings, and recovered 1427
pursuant to an approved electric security plan under section 1428
4928.143 of the Revised Code, as of the twelve-month period 1429
ending on December 31, 2018. The decoupling mechanism shall be 1430
adjusted annually thereafter to reconcile any over recovery or 1431
under recovery from the prior year and to enable an electric 1432
distribution utility to recover the same level of revenues 1433
described in division (A) of this section in each year. 1434

(C) The commission's approval of a decoupling mechanism 1435
under this section shall not affect any other rates, riders, 1436
charges, schedules, classifications, or services previously 1437
approved by the commission. The decoupling mechanism shall 1438
remain in effect until the next time that the electric 1439
distribution utility applies for and the commission approves 1440
base distribution rates for the utility under section 4909.18 of 1441
the Revised Code. 1442

(D) If the commission determines that approving a 1443
decoupling mechanism will result in a double recovery by the 1444
electric distribution utility, the commission shall not approve 1445
the application unless the utility cures the double recovery. 1446

(E) Divisions (A), (B), and (C) of this section shall not 1447

apply to an electric distribution utility that has base 1448
distribution rates that became effective between December 31, 1449
2018, and the effective date of this section pursuant to an 1450
application for an increase in base distribution rates filed 1451
under section 4909.18 of the Revised Code. 1452

Sec. 4928.647. Subject to approval by the public utilities 1453
commission and regardless of any limitations set forth in any 1454
other section of Chapter 4928. of the Revised Code, an electric 1455
distribution utility may offer a customer the opportunity to 1456
purchase renewable energy services on a nondiscriminatory basis, 1457
by doing either of the following: 1458

(A) (1) An electric distribution utility may seek approval 1459
from the commission to establish a schedule or schedules 1460
applicable to residential, commercial, industrial, or other 1461
customers and provide a customer the opportunity to purchase 1462
renewable energy credits for any purpose the customer elects. 1463

(2) The commission shall not approve any schedule unless 1464
it determines both of the following: 1465

(a) The proposed schedule or schedules do not create an 1466
undue burden or unreasonable preference or disadvantage to 1467
nonparticipating customers. 1468

(b) The electric distribution utility seeking approval 1469
commits to comply with any conditions the commission may impose 1470
to ensure that the electric distribution utility and any 1471
participating customers are solely responsible for the risks, 1472
costs, and benefits of any schedule or schedules. 1473

(B) (1) Consistent with section 4905.31 of the Revised 1474
Code, an electric distribution utility, a customer, or a group 1475
of customers may seek approval of a nondiscriminatory schedule 1476

or reasonable arrangement involving the production and supply of 1477
renewable energy, including long-term renewable energy purchase 1478
agreements through which an electric distribution utility may 1479
construct, lease, finance, or operate renewable energy resources 1480
dedicated to that customer or customers. 1481

(2) The commission shall not approve any schedule or 1482
arrangement unless it determines both of the following: 1483

(a) The proposed schedule or arrangement does not create 1484
an undue burden or unreasonable preference or disadvantage to 1485
nonparticipating customers. 1486

(b) The electric distribution utility seeking approval 1487
commits to comply with any conditions the commission may impose 1488
to ensure that the electric distribution utility and any 1489
participating customers are solely responsible for the risks, 1490
costs, and benefits of any schedule or reasonable arrangement. 1491

Sec. 4928.66. (A) (1) (a) Beginning in 2009, an electric 1492
distribution utility shall implement energy efficiency programs 1493
that achieve energy savings equivalent to at least three-tenths 1494
of one per cent of the total, annual average, and normalized 1495
kilowatt-hour sales of the electric distribution utility during 1496
the preceding three calendar years to customers in this state. 1497
An energy efficiency program may include a combined heat and 1498
power system placed into service or retrofitted on or after the 1499
effective date of the amendment of this section by S.B. 315 of 1500
the 129th general assembly, September 10, 2012, or a waste 1501
energy recovery system placed into service or retrofitted on or 1502
after September 10, 2012, except that a waste energy recovery 1503
system described in division (A) (38) (b) of section 4928.01 of 1504
the Revised Code may be included only if it was placed into 1505
service between January 1, 2002, and December 31, 2004. For a 1506

waste energy recovery or combined heat and power system, the 1507
savings shall be as estimated by the public utilities 1508
commission. The savings requirement, using such a three-year 1509
average, shall increase to an additional five-tenths of one per 1510
cent in 2010, seven-tenths of one per cent in 2011, eight-tenths 1511
of one per cent in 2012, nine-tenths of one per cent in 2013, 1512
and one per cent in 2014. In 2015 and 2016, an electric 1513
distribution utility shall achieve energy savings equal to the 1514
result of subtracting the cumulative energy savings achieved 1515
since 2009 from the product of multiplying the baseline for 1516
energy savings, described in division (A) (2) (a) of this section, 1517
by four and two-tenths of one per cent. If the result is zero or 1518
less for the year for which the calculation is being made, the 1519
utility shall not be required to achieve additional energy 1520
savings for that year, but may achieve additional energy savings 1521
for that year. ~~Thereafter, the~~ The annual savings requirements 1522
shall be, for years 2017, 2018, 2019, and 2020, an additional 1523
~~one per cent of the baseline, and two per cent each year~~ 1524
~~thereafter, achieving cumulative energy savings in excess of~~ 1525
~~twenty-two per cent by the end of 2027.~~ For purposes of a waste 1526
energy recovery or combined heat and power system, an electric 1527
distribution utility shall not apply more than the total annual 1528
percentage of the electric distribution utility's industrial- 1529
customer load, relative to the electric distribution utility's 1530
total load, to the annual energy savings requirement. 1531

(b) Beginning in 2009, an electric distribution utility 1532
shall implement peak demand reduction programs designed to 1533
achieve a one per cent reduction in peak demand in 2009 and an 1534
additional seventy-five hundredths of one per cent reduction 1535
each year through 2014. In 2015 and 2016, an electric 1536
distribution utility shall achieve a reduction in peak demand 1537

equal to the result of subtracting the cumulative peak demand 1538
reductions achieved since 2009 from the product of multiplying 1539
the baseline for peak demand reduction, described in division 1540
(A) (2) (a) of this section, by four and seventy-five hundredths 1541
of one per cent. If the result is zero or less for the year for 1542
which the calculation is being made, the utility shall not be 1543
required to achieve an additional reduction in peak demand for 1544
that year, but may achieve an additional reduction in peak 1545
demand for that year. In 2017 and each year thereafter through 1546
2020, the utility shall achieve an additional seventy-five 1547
hundredths of one per cent reduction in peak demand. 1548

(2) For the purposes of divisions (A) (1) (a) and (b) of 1549
this section: 1550

(a) The baseline for energy savings under division (A) (1) 1551
(a) of this section shall be the average of the total kilowatt 1552
hours the electric distribution utility sold in the preceding 1553
three calendar years. The baseline for a peak demand reduction 1554
under division (A) (1) (b) of this section shall be the average 1555
peak demand on the utility in the preceding three calendar 1556
years, except that the commission may reduce either baseline to 1557
adjust for new economic growth in the utility's certified 1558
territory. Neither baseline shall include the load and usage of 1559
any of the following customers: 1560

(i) Beginning January 1, 2017, a customer for which a 1561
reasonable arrangement has been approved under section 4905.31 1562
of the Revised Code; 1563

(ii) A customer that has opted out of the utility's 1564
portfolio plan under section 4928.6611 of the Revised Code; 1565

(iii) A customer that has opted out of the utility's 1566

portfolio plan under Section 8 of S.B. 310 of the 130th general 1567
assembly. 1568

(b) The commission may amend the benchmarks set forth in 1569
division (A)(1)(a) or (b) of this section if, after application 1570
by the electric distribution utility, the commission determines 1571
that the amendment is necessary because the utility cannot 1572
reasonably achieve the benchmarks due to regulatory, economic, 1573
or technological reasons beyond its reasonable control. 1574

(c) Compliance with divisions (A)(1)(a) and (b) of this 1575
section shall be measured by including the effects of all 1576
demand-response programs for mercantile customers of the subject 1577
electric distribution utility, all waste energy recovery systems 1578
and all combined heat and power systems, and all such mercantile 1579
customer-sited energy efficiency, including waste energy 1580
recovery and combined heat and power, and peak demand reduction 1581
programs, adjusted upward by the appropriate loss factors. Any 1582
mechanism designed to recover the cost of energy efficiency, 1583
including waste energy recovery and combined heat and power, and 1584
peak demand reduction programs under divisions (A)(1)(a) and (b) 1585
of this section may exempt mercantile customers that commit 1586
their demand-response or other customer-sited capabilities, 1587
whether existing or new, for integration into the electric 1588
distribution utility's demand-response, energy efficiency, 1589
including waste energy recovery and combined heat and power, or 1590
peak demand reduction programs, if the commission determines 1591
that that exemption reasonably encourages such customers to 1592
commit those capabilities to those programs. If a mercantile 1593
customer makes such existing or new demand-response, energy 1594
efficiency, including waste energy recovery and combined heat 1595
and power, or peak demand reduction capability available to an 1596
electric distribution utility pursuant to division (A)(2)(c) of 1597

this section, the electric utility's baseline under division (A) 1598
(2) (a) of this section shall be adjusted to exclude the effects 1599
of all such demand-response, energy efficiency, including waste 1600
energy recovery and combined heat and power, or peak demand 1601
reduction programs that may have existed during the period used 1602
to establish the baseline. The baseline also shall be normalized 1603
for changes in numbers of customers, sales, weather, peak 1604
demand, and other appropriate factors so that the compliance 1605
measurement is not unduly influenced by factors outside the 1606
control of the electric distribution utility. 1607

(d) (i) Programs implemented by a utility may include the 1608
following: 1609

(I) Demand-response programs; 1610

(II) Smart grid investment programs, provided that such 1611
programs are demonstrated to be cost-beneficial; 1612

(III) Customer-sited programs, including waste energy 1613
recovery and combined heat and power systems; 1614

(IV) Transmission and distribution infrastructure 1615
improvements that reduce line losses; 1616

(V) Energy efficiency savings and peak demand reduction 1617
that are achieved, in whole or in part, as a result of funding 1618
provided from the universal service fund established by section 1619
4928.51 of the Revised Code to benefit low-income customers 1620
through programs that include, but are not limited to, energy 1621
audits, the installation of energy efficiency insulation, 1622
appliances, and windows, and other weatherization measures. 1623

(ii) No energy efficiency or peak demand reduction 1624
achieved under divisions (A) (2) (d) (i) (IV) and (V) of this 1625
section shall qualify for shared savings. 1626

(iii) Division (A) (2) (c) of this section shall be applied 1627
to include facilitating efforts by a mercantile customer or 1628
group of those customers to offer customer-sited demand- 1629
response, energy efficiency, including waste energy recovery and 1630
combined heat and power, or peak demand reduction capabilities 1631
to the electric distribution utility as part of a reasonable 1632
arrangement submitted to the commission pursuant to section 1633
4905.31 of the Revised Code. 1634

(e) No programs or improvements described in division (A) 1635
(2) (d) of this section shall conflict with any statewide 1636
building code adopted by the board of building standards. 1637

(B) In accordance with rules it shall adopt, the public 1638
utilities commission shall produce and docket at the commission 1639
an annual report containing the results of its verification of 1640
the annual levels of energy efficiency and of peak demand 1641
reductions achieved by each electric distribution utility 1642
pursuant to division (A) of this section. A copy of the report 1643
shall be provided to the consumers' counsel. 1644

(C) If the commission determines, after notice and 1645
opportunity for hearing and based upon its report under division 1646
(B) of this section, that an electric distribution utility has 1647
failed to comply with an energy efficiency or peak demand 1648
reduction requirement of division (A) of this section, the 1649
commission shall assess a forfeiture on the utility as provided 1650
under sections 4905.55 to 4905.60 and 4905.64 of the Revised 1651
Code, ~~either~~ in the amount, per day per undercompliance or 1652
noncompliance, relative to the period of the report, equal to 1653
that prescribed for noncompliances under section 4905.54 of the 1654
Revised Code, ~~or in an amount equal to the then existing market~~ 1655
~~value of one renewable energy credit per megawatt hour of~~ 1656

~~undercompliance or noncompliance.~~ Revenue from any forfeiture 1657
assessed under this division shall be deposited to the credit of 1658
the advanced energy fund created under section 4928.61 of the 1659
Revised Code. 1660

(D) The commission may establish rules regarding the 1661
content of an application by an electric distribution utility 1662
for commission approval of a revenue decoupling mechanism under 1663
this division. Such an application shall not be considered an 1664
application to increase rates and may be included as part of a 1665
proposal to establish, continue, or expand energy efficiency or 1666
conservation programs. The commission by order may approve an 1667
application under this division if it determines both that the 1668
revenue decoupling mechanism provides for the recovery of 1669
revenue that otherwise may be forgone by the utility as a result 1670
of or in connection with the implementation by the electric 1671
distribution utility of any energy efficiency or energy 1672
conservation programs and reasonably aligns the interests of the 1673
utility and of its customers in favor of those programs. 1674

(E) The commission additionally shall adopt rules that 1675
require an electric distribution utility to provide a customer 1676
upon request with two years' consumption data in an accessible 1677
form. 1678

(F) (1) All the terms and conditions of an electric 1679
distribution utility's portfolio plan in effect as of the 1680
effective date of the amendments to this section by H.B. 6 of 1681
the 133rd general assembly shall remain in place through 1682
December 31, 2020, and terminate on that date. 1683

(2) If a portfolio plan is extended beyond its commission- 1684
approved term by division (F) (1) of this section, the existing 1685
plan's budget shall be increased for the extended term to 1686

include an amount equal to the annual average of the approved 1687
budget for all years of the portfolio plan in effect as of the 1688
effective date of the amendments to this section by H.B. 6 of 1689
the 133rd general assembly. 1690

(3) All other terms and conditions of a portfolio plan 1691
extended beyond its commission-approved term by division (F) (1) 1692
of this section shall remain the same unless changes are 1693
authorized by the commission upon the electric distribution 1694
utility's request. 1695

(G) All requirements imposed and all programs implemented 1696
under this section shall terminate on December 31, 2020, 1697
provided an electric distribution utility recovers in the 1698
following year all remaining program costs incurred or to be 1699
incurred, including costs incurred for contractual obligations 1700
and any costs to discontinue the portfolio plan programs, 1701
through applicable tariff schedules or riders in effect on the 1702
effective date of the amendments to this section by H.B. 6 of 1703
the 133rd general assembly. 1704

Sec. 4928.661. (A) Not earlier than January 1, 2020, an 1705
electric distribution utility may submit an application to the 1706
public utilities commission for approval of programs to 1707
encourage energy efficiency or peak demand reduction. The 1708
application may include descriptions of the proposed programs 1709
including all of the following: 1710

(1) The size and scope of the programs; 1711

(2) Applicability of the programs to specific customer 1712
classes; 1713

(3) Recovery of costs and incentives; 1714

(4) Any other information determined by the electric 1715

distribution utility to be appropriate for the commission's 1716
review. 1717

(B) The commission shall issue an order approving or 1718
modifying and approving an application if it finds that the 1719
proposed programs will be cost-effective, in the public 1720
interest, and consistent with state policy as specified in 1721
section 4928.02 of the Revised Code. 1722

(C) Applications submitted and approved under this section 1723
shall not take effect earlier than January 1, 2021. 1724

Sec. 4928.6610. As used in sections 4928.6611 to ~~4928.6616~~ 1725
4928.6615 of the Revised Code: 1726

(A) "Customer" means ~~any~~ either of the following: 1727

(1) Effective January 1, 2020, a mercantile customer as 1728
defined in section 4928.01 of the Revised Code; 1729

(2) Any customer of an electric distribution utility to 1730
which either of the following applies: 1731

~~(1)~~ (a) The customer receives service above the primary 1732
voltage level as determined by the utility's tariff 1733
classification. 1734

~~(2)~~ (b) The customer is a commercial or industrial 1735
customer to which both of the following apply: 1736

~~(a)~~ (i) The customer receives electricity through a meter 1737
of an end user or through more than one meter at a single 1738
location in a quantity that exceeds forty-five million kilowatt 1739
hours of electricity for the preceding calendar year. 1740

~~(b)~~ (ii) The customer has made a written request for 1741
registration as a self-assessing purchaser pursuant to section 1742

5727.81 of the Revised Code. 1743

(B) "Energy intensity" means the amount of energy, from 1744
electricity, used or consumed per unit of production. 1745

(C) "Portfolio plan" means either of the following: 1746

(1) The comprehensive energy efficiency and peak-demand 1747
reduction program portfolio plan required under rules adopted by 1748
the public utilities commission and codified in Chapter 4901:1- 1749
39 of the Administrative Code or hereafter recodified or 1750
amended; 1751

(2) A plan approved under section 4928.661 of the Revised 1752
Code or under rules adopted under that section. 1753

Sec. 4928.75. Beginning in fiscal year 2021 and each 1754
fiscal year thereafter, the director of development services 1755
shall, in each fiscal year, submit a completed waiver request in 1756
accordance with section 96.83 of Title 45 of the Code of Federal 1757
Regulations to the United States department of health and human 1758
services and any other applicable federal agencies for the state 1759
to expend twenty-five per cent of federal low-income home energy 1760
assistance programs funds from the home energy assistance block 1761
grants for weatherization services allowed by section 96.83(a) 1762
of Title 45 of the Code of Federal Regulations to the United 1763
States department of health and human services. 1764

Sec. 4928.80. (A) Each electric distribution utility shall 1765
file with the public utilities commission a tariff applicable to 1766
county fairs and agricultural societies that includes either of 1767
the following: 1768

(1) A fixed monthly service fee; 1769

(2) An energy charge on a kilowatt-hour basis. 1770

(B) The minimum monthly charge shall not exceed the fixed 1771
monthly service fee and the customer shall not be subject to any 1772
demand-based riders. 1773

(C) The electric distribution utility shall be eligible to 1774
recover any revenue loss associated with customer migration to 1775
this new tariff. 1776

Sec. 5727.75. (A) For purposes of this section: 1777

(1) "Qualified energy project" means an energy project 1778
certified by the director of development services pursuant to 1779
this section. 1780

(2) "Energy project" means a project to provide electric 1781
power through the construction, installation, and use of an 1782
energy facility. 1783

(3) "Alternative energy zone" means a county declared as 1784
such by the board of county commissioners under division (E) (1) 1785
(b) or (c) of this section. 1786

(4) "Full-time equivalent employee" means the total number 1787
of employee-hours for which compensation was paid to individuals 1788
employed at a qualified energy project for services performed at 1789
the project during the calendar year divided by two thousand 1790
eighty hours. 1791

(5) "Solar energy project" means an energy project 1792
composed of an energy facility using solar panels to generate 1793
electricity. 1794

(6) "Internet identifier of record" has the same meaning 1795
as in section 9.312 of the Revised Code. 1796

(B) (1) Tangible personal property of a qualified energy 1797
project using renewable energy resources is exempt from taxation 1798

for tax years 2011 through 2021 if all of the following 1799
conditions are satisfied: 1800

(a) On or before December 31, 2020, the owner or a lessee 1801
pursuant to a sale and leaseback transaction of the project 1802
submits an application to the power siting board for a 1803
certificate under section 4906.20 of the Revised Code, or if 1804
that section does not apply, submits an application for any 1805
approval, consent, permit, or certificate or satisfies any 1806
condition required by a public agency or political subdivision 1807
of this state for the construction or initial operation of an 1808
energy project. 1809

(b) Construction or installation of the energy facility 1810
begins on or after January 1, 2009, and before January 1, 2021. 1811
For the purposes of this division, construction begins on the 1812
earlier of the date of application for a certificate or other 1813
approval or permit described in division (B) (1) (a) of this 1814
section, or the date the contract for the construction or 1815
installation of the energy facility is entered into. 1816

(c) For a qualified energy project with a nameplate 1817
capacity of ~~five~~twenty megawatts or greater, a board of county 1818
commissioners of a county in which property of the project is 1819
located has adopted a resolution under division (E) (1) (b) or (c) 1820
of this section to approve the application submitted under 1821
division (E) of this section to exempt the property located in 1822
that county from taxation. A board's adoption of a resolution 1823
rejecting an application or its failure to adopt a resolution 1824
approving the application does not affect the tax-exempt status 1825
of the qualified energy project's property that is located in 1826
another county. 1827

(2) If tangible personal property of a qualified energy 1828

project using renewable energy resources was exempt from 1829
taxation under this section beginning in any of tax years 2011 1830
through 2021, and the certification under division (E) (2) of 1831
this section has not been revoked, the tangible personal 1832
property of the qualified energy project is exempt from taxation 1833
for tax year 2022 and all ensuing tax years if the property was 1834
placed into service before January 1, 2022, as certified in the 1835
construction progress report required under division (F) (2) of 1836
this section. Tangible personal property that has not been 1837
placed into service before that date is taxable property subject 1838
to taxation. An energy project for which certification has been 1839
revoked is ineligible for further exemption under this section. 1840
Revocation does not affect the tax-exempt status of the 1841
project's tangible personal property for the tax year in which 1842
revocation occurs or any prior tax year. 1843

(C) Tangible personal property of a qualified energy 1844
project using clean coal technology, advanced nuclear 1845
technology, or cogeneration technology is exempt from taxation 1846
for the first tax year that the property would be listed for 1847
taxation and all subsequent years if all of the following 1848
circumstances are met: 1849

(1) The property was placed into service before January 1, 1850
2021. Tangible personal property that has not been placed into 1851
service before that date is taxable property subject to 1852
taxation. 1853

(2) For such a qualified energy project with a nameplate 1854
capacity of ~~five~~ twenty megawatts or greater, a board of county 1855
commissioners of a county in which property of the qualified 1856
energy project is located has adopted a resolution under 1857
division (E) (1) (b) or (c) of this section to approve the 1858

application submitted under division (E) of this section to 1859
exempt the property located in that county from taxation. A 1860
board's adoption of a resolution rejecting the application or 1861
its failure to adopt a resolution approving the application does 1862
not affect the tax-exempt status of the qualified energy 1863
project's property that is located in another county. 1864

(3) The certification for the qualified energy project 1865
issued under division (E) (2) of this section has not been 1866
revoked. An energy project for which certification has been 1867
revoked is ineligible for exemption under this section. 1868
Revocation does not affect the tax-exempt status of the 1869
project's tangible personal property for the tax year in which 1870
revocation occurs or any prior tax year. 1871

(D) Except as otherwise provided in this section, real 1872
property of a qualified energy project is exempt from taxation 1873
for any tax year for which the tangible personal property of the 1874
qualified energy project is exempted under this section. 1875

(E) (1) (a) A person may apply to the director of 1876
development services for certification of an energy project as a 1877
qualified energy project on or before the following dates: 1878

(i) December 31, 2020, for an energy project using 1879
renewable energy resources; 1880

(ii) December 31, 2017, for an energy project using clean 1881
coal technology, advanced nuclear technology, or cogeneration 1882
technology. 1883

(b) The director shall forward a copy of each application 1884
for certification of an energy project with a nameplate capacity 1885
of ~~five~~ twenty megawatts or greater to the board of county 1886
commissioners of each county in which the project is located and 1887

to each taxing unit with territory located in each of the 1888
affected counties. Any board that receives from the director a 1889
copy of an application submitted under this division shall adopt 1890
a resolution approving or rejecting the application unless it 1891
has adopted a resolution under division (E)(1)(c) of this 1892
section. A resolution adopted under division (E)(1)(b) or (c) of 1893
this section may require an annual service payment to be made in 1894
addition to the service payment required under division (G) of 1895
this section. The sum of the service payment required in the 1896
resolution and the service payment required under division (G) 1897
of this section shall not exceed nine thousand dollars per 1898
megawatt of nameplate capacity located in the county. The 1899
resolution shall specify the time and manner in which the 1900
payments required by the resolution shall be paid to the county 1901
treasurer. The county treasurer shall deposit the payment to the 1902
credit of the county's general fund to be used for any purpose 1903
for which money credited to that fund may be used. 1904

The board shall send copies of the resolution to the owner 1905
of the facility and the director by certified mail or, if the 1906
board has record of an internet identifier of record associated 1907
with the owner or director, by ordinary mail and by that 1908
internet identifier of record. The board shall send such notice 1909
within thirty days after receipt of the application, or a longer 1910
period of time if authorized by the director. 1911

(c) A board of county commissioners may adopt a resolution 1912
declaring the county to be an alternative energy zone and 1913
declaring all applications submitted to the director of 1914
development services under this division after the adoption of 1915
the resolution, and prior to its repeal, to be approved by the 1916
board. 1917

All tangible personal property and real property of an 1918
energy project with a nameplate capacity of ~~five~~twenty 1919
megawatts or greater is taxable if it is located in a county in 1920
which the board of county commissioners adopted a resolution 1921
rejecting the application submitted under this division or 1922
failed to adopt a resolution approving the application under 1923
division (E)(1)(b) or (c) of this section. 1924

(2) The director shall certify an energy project if all of 1925
the following circumstances exist: 1926

(a) The application was timely submitted. 1927

(b) For an energy project with a nameplate capacity of 1928
~~five~~twenty megawatts or greater, a board of county 1929
commissioners of at least one county in which the project is 1930
located has adopted a resolution approving the application under 1931
division (E)(1)(b) or (c) of this section. 1932

(c) No portion of the project's facility was used to 1933
supply electricity before December 31, 2009. 1934

(3) The director shall deny a certification application if 1935
the director determines the person has failed to comply with any 1936
requirement under this section. The director may revoke a 1937
certification if the director determines the person, or 1938
subsequent owner or lessee pursuant to a sale and leaseback 1939
transaction of the qualified energy project, has failed to 1940
comply with any requirement under this section. Upon 1941
certification or revocation, the director shall notify the 1942
person, owner, or lessee, the tax commissioner, and the county 1943
auditor of a county in which the project is located of the 1944
certification or revocation. Notice shall be provided in a 1945
manner convenient to the director. 1946

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

(1) Comply with all applicable regulations;

(2) File with the director of development services a certified construction progress report before the first day of March of each year during the energy facility's construction or installation indicating the percentage of the project completed, and the project's nameplate capacity, as of the preceding thirty-first day of December. Unless otherwise instructed by the director of development services, the owner or lessee of an energy project shall file a report with the director on or before the first day of March each year after completion of the energy facility's construction or installation indicating the project's nameplate capacity as of the preceding thirty-first day of December. Not later than sixty days after June 17, 2010, the owner or lessee of an energy project, the construction of which was completed before June 17, 2010, shall file a certificate indicating the project's nameplate capacity.

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

(4) For energy projects with a nameplate capacity of ~~five-~~twenty megawatts or greater, repair all roads, bridges, and culverts affected by construction as reasonably required to restore them to their preconstruction condition, as determined by the county engineer in consultation with the local jurisdiction responsible for the roads, bridges, and culverts.

In the event that the county engineer deems any road, bridge, or culvert to be inadequate to support the construction or decommissioning of the energy facility, the road, bridge, or culvert shall be rebuilt or reinforced to the specifications established by the county engineer prior to the construction or decommissioning of the facility. The owner or lessee of the facility shall post a bond in an amount established by the county engineer and to be held by the board of county commissioners to ensure funding for repairs of roads, bridges, and culverts affected during the construction. The bond shall be released by the board not later than one year after the date the repairs are completed. The energy facility owner or lessee pursuant to a sale and leaseback transaction shall post a bond, as may be required by the Ohio power siting board in the certificate authorizing commencement of construction issued pursuant to section 4906.10 of the Revised Code, to ensure funding for repairs to roads, bridges, and culverts resulting from decommissioning of the facility. The energy facility owner or lessee and the county engineer may enter into an agreement regarding specific transportation plans, reinforcements, modifications, use and repair of roads, financial security to be provided, and any other relevant issue.

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

(6) Maintain a ratio of Ohio-domiciled full-time equivalent employees employed in the construction or

installation of the energy project to total full-time equivalent 2008
employees employed in the construction or installation of the 2009
energy project of not less than eighty per cent in the case of a 2010
solar energy project, and not less than fifty per cent in the 2011
case of any other energy project. In the case of an energy 2012
project for which certification from the power siting board is 2013
required under section 4906.20 of the Revised Code, the number 2014
of full-time equivalent employees employed in the construction 2015
or installation of the energy project equals the number actually 2016
employed or the number projected to be employed in the 2017
certificate application, if such projection is required under 2018
regulations adopted pursuant to section 4906.03 of the Revised 2019
Code, whichever is greater. For all other energy projects, the 2020
number of full-time equivalent employees employed in the 2021
construction or installation of the energy project equals the 2022
number actually employed or the number projected to be employed 2023
by the director of development services, whichever is greater. 2024
To estimate the number of employees to be employed in the 2025
construction or installation of an energy project, the director 2026
shall use a generally accepted job-estimating model in use for 2027
renewable energy projects, including but not limited to the job 2028
and economic development impact model. The director may adjust 2029
an estimate produced by a model to account for variables not 2030
accounted for by the model. 2031

(7) For energy projects with a nameplate capacity in 2032
excess of ~~two~~ twenty megawatts, establish a relationship with a 2033
member of the university system of Ohio as defined in section 2034
3345.011 of the Revised Code or with a person offering an 2035
apprenticeship program registered with the employment and 2036
training administration within the United States department of 2037
labor or with the apprenticeship council created by section 2038

4139.02 of the Revised Code, to educate and train individuals 2039
for careers in the wind or solar energy industry. The 2040
relationship may include endowments, cooperative programs, 2041
internships, apprenticeships, research and development projects, 2042
and curriculum development. 2043

~~(8) Offer to sell power or renewable energy credits from 2044
the energy project to electric distribution utilities or 2045
electric service companies subject to renewable energy resource 2046
requirements under section 4928.64 of the Revised Code that have 2047
issued requests for proposal for such power or renewable energy 2048
credits. If no electric distribution utility or electric service 2049
company issues a request for proposal on or before December 31, 2050
2010, or accepts an offer for power or renewable energy credits 2051
within forty five days after the offer is submitted, power or 2052
renewable energy credits from the energy project may be sold to 2053
other persons. Division (F) (8) of this section does not apply 2054
if:— 2055~~

~~(a) The owner or lessee is a rural electric company or a 2056
municipal power agency as defined in section 3734.058 of the 2057
Revised Code.— 2058~~

~~(b) The owner or lessee is a person that, before 2059
completion of the energy project, contracted for the sale of 2060
power or renewable energy credits with a rural electric company 2061
or a municipal power agency.— 2062~~

~~(c) The owner or lessee contracts for the sale of power or 2063
renewable energy credits from the energy project before June 17, 2064
2010.— 2065~~

~~(9) Make annual service payments as required by division 2066
(G) of this section and as may be required in a resolution 2067~~

adopted by a board of county commissioners under division (E) of 2068
this section. 2069

(G) The owner or a lessee pursuant to a sale and leaseback 2070
transaction of a qualified energy project shall make annual 2071
service payments in lieu of taxes to the county treasurer on or 2072
before the final dates for payments of taxes on public utility 2073
personal property on the real and public utility personal 2074
property tax list for each tax year for which property of the 2075
energy project is exempt from taxation under this section. The 2076
county treasurer shall allocate the payment on the basis of the 2077
project's physical location. Upon receipt of a payment, or if 2078
timely payment has not been received, the county treasurer shall 2079
certify such receipt or non-receipt to the director of 2080
development services and tax commissioner in a form determined 2081
by the director and commissioner, respectively. Each payment 2082
shall be in the following amount: 2083

(1) In the case of a solar energy project, seven thousand 2084
dollars per megawatt of nameplate capacity located in the county 2085
as of December 31, 2010, for tax year 2011, as of December 31, 2086
2011, for tax year 2012, as of December 31, 2012, for tax year 2087
2013, as of December 31, 2013, for tax year 2014, as of December 2088
31, 2014, for tax year 2015, as of December 31, 2015, for tax 2089
year 2016, and as of December 31, 2016, for tax year 2017 and 2090
each tax year thereafter; 2091

(2) In the case of any other energy project using 2092
renewable energy resources, the following: 2093

(a) If the project maintains during the construction or 2094
installation of the energy facility a ratio of Ohio-domiciled 2095
full-time equivalent employees to total full-time equivalent 2096
employees of not less than seventy-five per cent, six thousand 2097

dollars per megawatt of nameplate capacity located in the county 2098
as of the thirty-first day of December of the preceding tax 2099
year; 2100

(b) If the project maintains during the construction or 2101
installation of the energy facility a ratio of Ohio-domiciled 2102
full-time equivalent employees to total full-time equivalent 2103
employees of less than seventy-five per cent but not less than 2104
sixty per cent, seven thousand dollars per megawatt of nameplate 2105
capacity located in the county as of the thirty-first day of 2106
December of the preceding tax year; 2107

(c) If the project maintains during the construction or 2108
installation of the energy facility a ratio of Ohio-domiciled 2109
full-time equivalent employees to total full-time equivalent 2110
employees of less than sixty per cent but not less than fifty 2111
per cent, eight thousand dollars per megawatt of nameplate 2112
capacity located in the county as of the thirty-first day of 2113
December of the preceding tax year. 2114

(3) In the case of an energy project using clean coal 2115
technology, advanced nuclear technology, or cogeneration 2116
technology, the following: 2117

(a) If the project maintains during the construction or 2118
installation of the energy facility a ratio of Ohio-domiciled 2119
full-time equivalent employees to total full-time equivalent 2120
employees of not less than seventy-five per cent, six thousand 2121
dollars per megawatt of nameplate capacity located in the county 2122
as of the thirty-first day of December of the preceding tax 2123
year; 2124

(b) If the project maintains during the construction or 2125
installation of the energy facility a ratio of Ohio-domiciled 2126

full-time equivalent employees to total full-time equivalent 2127
employees of less than seventy-five per cent but not less than 2128
sixty per cent, seven thousand dollars per megawatt of nameplate 2129
capacity located in the county as of the thirty-first day of 2130
December of the preceding tax year; 2131

(c) If the project maintains during the construction or 2132
installation of the energy facility a ratio of Ohio-domiciled 2133
full-time equivalent employees to total full-time equivalent 2134
employees of less than sixty per cent but not less than fifty 2135
per cent, eight thousand dollars per megawatt of nameplate 2136
capacity located in the county as of the thirty-first day of 2137
December of the preceding tax year. 2138

(H) The director of development services in consultation 2139
with the tax commissioner shall adopt rules pursuant to Chapter 2140
119. of the Revised Code to implement and enforce this section. 2141

Section 2. That existing sections 303.213, 519.213, 2142
519.214, 713.081, 3706.02, 3706.03, 4906.10, 4906.13, 4906.20, 2143
4906.201, 4928.01, 4928.02, 4928.66, 4928.6610, and 5727.75 of 2144
the Revised Code are hereby repealed. 2145

Section 3. That section 4928.6616 of the Revised Code is 2146
hereby repealed. 2147

Section 4. The amendments by this act to division (A) (34) 2148
of section 4928.01 of the Revised Code, division (C) of section 2149
4928.66 of the Revised Code, and divisions (F) (8) and (9) of 2150
section 5727.75 of the Revised Code take effect January 1, 2020. 2151

Section 5. That sections 1710.06, 4928.142, 4928.143, 2152
4928.20, 4928.61, 4928.62, 4928.641, 4928.645, and 5501.311 of 2153
the Revised Code be amended to read as follows: 2154

Sec. 1710.06. (A) The board of directors of a special 2155

improvement district may develop and adopt one or more written 2156
plans for public improvements or public services that benefit 2157
all or any part of the district. Each plan shall set forth the 2158
specific public improvements or public services that are to be 2159
provided, identify the area in which they will be provided, and 2160
specify the method of assessment to be used. Each plan for 2161
public improvements or public services shall indicate the period 2162
of time the assessments are to be levied for the improvements 2163
and services and, if public services are included in the plan, 2164
the period of time the services are to remain in effect. Plans 2165
for public improvements may include the planning, design, 2166
construction, reconstruction, enlargement, or alteration of any 2167
public improvements and the acquisition of land for the 2168
improvements. Plans for public improvements or public services 2169
may also include, but are not limited to, provisions for the 2170
following: 2171

(1) Creating and operating the district and the nonprofit 2172
corporation under this chapter, including hiring employees and 2173
professional services, contracting for insurance, and purchasing 2174
or leasing office space and office equipment and other 2175
requirements of the district; 2176

(2) Planning, designing, and implementing a public 2177
improvements or public services plan, including hiring 2178
architectural, engineering, legal, appraisal, insurance, 2179
consulting, energy auditing, and planning services, and, for 2180
public services, managing, protecting, and maintaining public 2181
and private facilities, including public improvements; 2182

(3) Conducting court proceedings to carry out this 2183
chapter; 2184

(4) Paying damages resulting from the provision of public 2185

improvements or public services and implementing the plans; 2186

(5) Paying the costs of issuing, paying interest on, and 2187
redeeming notes and bonds issued for funding public improvements 2188
and public services plans; and 2189

(6) Sale, lease, lease with an option to purchase, 2190
conveyance of other interests in, or other contracts for the 2191
acquisition, construction, maintenance, repair, furnishing, 2192
equipping, operation, or improvement of any special energy 2193
improvement project by the special improvement district, between 2194
a participating political subdivision and the special 2195
improvement district, and between the special improvement 2196
district and any owner of real property in the special 2197
improvement district on which a special energy improvement 2198
project has been acquired, installed, equipped, or improved; ~~and~~ 2199

~~(7) Aggregating the renewable energy credits generated by 2200
one or more special energy improvement projects within a special 2201
improvement district, upon the consent of the owners of the 2202
credits and for the purpose of negotiating and completing the 2203
sale of such credits. 2204~~

(B) Once the board of directors of the special improvement 2205
district adopts a plan, it shall submit the plan to the 2206
legislative authority of each participating political 2207
subdivision and the municipal executive of each municipal 2208
corporation in which the district is located, if any. The 2209
legislative authorities and municipal executives shall review 2210
the plan and, within sixty days after receiving it, may submit 2211
their comments and recommendations about it to the district. 2212
After reviewing these comments and recommendations, the board of 2213
directors may amend the plan. It may then submit the plan, 2214
amended or otherwise, in the form of a petition to members of 2215

the district whose property may be assessed for the plan. Once 2216
the petition is signed by those members who own at least sixty 2217
per cent of the front footage of property that is to be assessed 2218
and that abuts upon a street, alley, public road, place, 2219
boulevard, parkway, park entrance, easement, or other public 2220
improvement, or those members who own at least seventy-five per 2221
cent of the area to be assessed for the improvement or service, 2222
the petition may be submitted to each legislative authority for 2223
approval. Except as provided in division (H) of section 1710.02 2224
of the Revised Code, if the special improvement district was 2225
created for the purpose of developing and implementing plans for 2226
special energy improvement projects or shoreline improvement 2227
projects, the petition required under this division shall be 2228
signed by one hundred per cent of the owners of the area of all 2229
real property located within the area to be assessed for the 2230
special energy improvement project or shoreline improvement 2231
project. 2232

Each legislative authority shall, by resolution, approve 2233
or reject the petition within sixty days after receiving it. If 2234
the petition is approved by the legislative authority of each 2235
participating political subdivision, the plan contained in the 2236
petition shall be effective at the earliest date on which a 2237
nonemergency resolution of the legislative authority with the 2238
latest effective date may become effective. A plan may not be 2239
resubmitted to the legislative authorities and municipal 2240
executives more than three times in any twelve-month period. 2241

(C) Each participating political subdivision shall levy, 2242
by special assessment upon specially benefited property located 2243
within the district, the costs of any public improvements or 2244
public services plan contained in a petition approved by the 2245
participating political subdivisions under this section or 2246

division (F) of section 1710.02 of the Revised Code. The levy 2247
shall be made in accordance with the procedures set forth in 2248
Chapter 727. of the Revised Code, except that: 2249

(1) The assessment for each improvements or services plan 2250
may be levied by any one or any combination of the methods of 2251
assessment listed in section 727.01 of the Revised Code, 2252
provided that the assessment is uniformly applied. 2253

(2) For the purpose of levying an assessment, the board of 2254
directors may combine one or more improvements or services plans 2255
or parts of plans and levy a single assessment against specially 2256
benefited property. 2257

(3) For purposes of special assessments levied by a 2258
township pursuant to this chapter, references in Chapter 727. of 2259
the Revised Code to the municipal corporation shall be deemed to 2260
refer to the township, and references to the legislative 2261
authority of the municipal corporation shall be deemed to refer 2262
to the board of township trustees. 2263

Church property or property owned by a political 2264
subdivision, including any participating political subdivision 2265
in which a special improvement district is located, shall be 2266
included in and be subject to special assessments made pursuant 2267
to a plan adopted under this section or division (F) of section 2268
1710.02 of the Revised Code, if the church or political 2269
subdivision has specifically requested in writing that its 2270
property be included within the special improvement district and 2271
the church or political subdivision is a member of the district 2272
or, in the case of a district created by an existing qualified 2273
nonprofit corporation, if the church is a member of the 2274
corporation. 2275

(D) All rights and privileges of property owners who are 2276
assessed under Chapter 727. of the Revised Code shall be granted 2277
to property owners assessed under this chapter, including those 2278
rights and privileges specified in sections 727.15 to 727.17 and 2279
727.18 to 727.22 of the Revised Code and the right to notice of 2280
the resolution of necessity and the filing of the estimated 2281
assessment under section 727.13 of the Revised Code. Property 2282
owners assessed for public services under this chapter shall 2283
have the same rights and privileges as property owners assessed 2284
for public improvements under this chapter. 2285

Sec. 4928.142. (A) For the purpose of complying with 2286
section 4928.141 of the Revised Code and subject to division (D) 2287
of this section and, as applicable, subject to the rate plan 2288
requirement of division (A) of section 4928.141 of the Revised 2289
Code, an electric distribution utility may establish a standard 2290
service offer price for retail electric generation service that 2291
is delivered to the utility under a market-rate offer. 2292

(1) The market-rate offer shall be determined through a 2293
competitive bidding process that provides for all of the 2294
following: 2295

(a) Open, fair, and transparent competitive solicitation; 2296

(b) Clear product definition; 2297

(c) Standardized bid evaluation criteria; 2298

(d) Oversight by an independent third party that shall 2299
design the solicitation, administer the bidding, and ensure that 2300
the criteria specified in ~~division~~ divisions (A) (1) (a) to (c) of 2301
this section are met; 2302

(e) Evaluation of the submitted bids prior to the 2303
selection of the least-cost bid winner or winners. 2304

No generation supplier shall be prohibited from 2305
participating in the bidding process. 2306

(2) The public utilities commission shall modify rules, or 2307
adopt new rules as necessary, concerning the conduct of the 2308
competitive bidding process and the qualifications of bidders, 2309
which rules shall foster supplier participation in the bidding 2310
process and shall be consistent with the requirements of 2311
division (A) (1) of this section. 2312

(B) Prior to initiating a competitive bidding process for 2313
a market-rate offer under division (A) of this section, the 2314
electric distribution utility shall file an application with the 2315
commission. An electric distribution utility may file its 2316
application with the commission prior to the effective date of 2317
the commission rules required under division (A) (2) of this 2318
section, and, as the commission determines necessary, the 2319
utility shall immediately conform its filing to the rules upon 2320
their taking effect. 2321

An application under this division shall detail the 2322
electric distribution utility's proposed compliance with the 2323
requirements of division (A) (1) of this section and with 2324
commission rules under division (A) (2) of this section and 2325
demonstrate that all of the following requirements are met: 2326

(1) The electric distribution utility or its transmission 2327
service affiliate belongs to at least one regional transmission 2328
organization that has been approved by the federal energy 2329
regulatory commission; or there otherwise is comparable and 2330
nondiscriminatory access to the electric transmission grid. 2331

(2) Any such regional transmission organization has a 2332
market-monitor function and the ability to take actions to 2333

identify and mitigate market power or the electric distribution 2334
utility's market conduct; or a similar market monitoring 2335
function exists with commensurate ability to identify and 2336
monitor market conditions and mitigate conduct associated with 2337
the exercise of market power. 2338

(3) A published source of information is available 2339
publicly or through subscription that identifies pricing 2340
information for traded electricity on- and off-peak energy 2341
products that are contracts for delivery beginning at least two 2342
years from the date of the publication and is updated on a 2343
regular basis. 2344

The commission shall initiate a proceeding and, within 2345
ninety days after the application's filing date, shall determine 2346
by order whether the electric distribution utility and its 2347
market-rate offer meet all of the foregoing requirements. If the 2348
finding is positive, the electric distribution utility may 2349
initiate its competitive bidding process. If the finding is 2350
negative as to one or more requirements, the commission in the 2351
order shall direct the electric distribution utility regarding 2352
how any deficiency may be remedied in a timely manner to the 2353
commission's satisfaction; otherwise, the electric distribution 2354
utility shall withdraw the application. However, if such remedy 2355
is made and the subsequent finding is positive and also if the 2356
electric distribution utility made a simultaneous filing under 2357
this section and section 4928.143 of the Revised Code, the 2358
utility shall not initiate its competitive bid until at least 2359
one hundred fifty days after the filing date of those 2360
applications. 2361

(C) Upon the completion of the competitive bidding process 2362
authorized by divisions (A) and (B) of this section, including 2363

for the purpose of division (D) of this section, the commission 2364
shall select the least-cost bid winner or winners of that 2365
process, and such selected bid or bids, as prescribed as retail 2366
rates by the commission, shall be the electric distribution 2367
utility's standard service offer unless the commission, by order 2368
issued before the third calendar day following the conclusion of 2369
the competitive bidding process for the market rate offer, 2370
determines that one or more of the following criteria were not 2371
met: 2372

(1) Each portion of the bidding process was 2373
oversubscribed, such that the amount of supply bid upon was 2374
greater than the amount of the load bid out. 2375

(2) There were four or more bidders. 2376

(3) At least twenty-five per cent of the load is bid upon 2377
by one or more persons other than the electric distribution 2378
utility. 2379

All costs incurred by the electric distribution utility as 2380
a result of or related to the competitive bidding process or to 2381
procuring generation service to provide the standard service 2382
offer, including the costs of energy and capacity and the costs 2383
of all other products and services procured as a result of the 2384
competitive bidding process, shall be timely recovered through 2385
the standard service offer price, and, for that purpose, the 2386
commission shall approve a reconciliation mechanism, other 2387
recovery mechanism, or a combination of such mechanisms for the 2388
utility. 2389

(D) The first application filed under this section by an 2390
electric distribution utility that, as of July 31, 2008, 2391
directly owns, in whole or in part, operating electric 2392

generating facilities that had been used and useful in this 2393
state shall require that a portion of that utility's standard 2394
service offer load for the first five years of the market rate 2395
offer be competitively bid under division (A) of this section as 2396
follows: ten per cent of the load in year one, not more than 2397
twenty per cent in year two, thirty per cent in year three, 2398
forty per cent in year four, and fifty per cent in year five. 2399
Consistent with those percentages, the commission shall 2400
determine the actual percentages for each year of years one 2401
through five. The standard service offer price for retail 2402
electric generation service under this first application shall 2403
be a proportionate blend of the bid price and the generation 2404
service price for the remaining standard service offer load, 2405
which latter price shall be equal to the electric distribution 2406
utility's most recent standard service offer price, adjusted 2407
upward or downward as the commission determines reasonable, 2408
relative to the jurisdictional portion of any known and 2409
measurable changes from the level of any one or more of the 2410
following costs as reflected in that most recent standard 2411
service offer price: 2412

(1) The electric distribution utility's prudently incurred 2413
cost of fuel used to produce electricity; 2414

(2) Its prudently incurred purchased power costs; 2415

(3) Its prudently incurred costs of ~~satisfying the supply~~ 2416
~~and demand portfolio requirements of this state, including, but~~ 2417
~~not limited to, renewable energy resource and energy efficiency~~ 2418
~~requirements programs;~~ 2419

(4) Its costs prudently incurred to comply with 2420
environmental laws and regulations, with consideration of the 2421
derating of any facility associated with those costs. 2422

In making any adjustment to the most recent standard 2423
service offer price on the basis of costs described in division 2424
(D) of this section, the commission shall include the benefits 2425
that may become available to the electric distribution utility 2426
as a result of or in connection with the costs included in the 2427
adjustment, including, but not limited to, the utility's receipt 2428
of emissions credits or its receipt of tax benefits or of other 2429
benefits, and, accordingly, the commission may impose such 2430
conditions on the adjustment to ensure that any such benefits 2431
are properly aligned with the associated cost responsibility. 2432
The commission shall also determine how such adjustments will 2433
affect the electric distribution utility's return on common 2434
equity that may be achieved by those adjustments. The commission 2435
shall not apply its consideration of the return on common equity 2436
to reduce any adjustments authorized under this division unless 2437
the adjustments will cause the electric distribution utility to 2438
earn a return on common equity that is significantly in excess 2439
of the return on common equity that is earned by publicly traded 2440
companies, including utilities, that face comparable business 2441
and financial risk, with such adjustments for capital structure 2442
as may be appropriate. The burden of proof for demonstrating 2443
that significantly excessive earnings will not occur shall be on 2444
the electric distribution utility. 2445

Additionally, the commission may adjust the electric 2446
distribution utility's most recent standard service offer price 2447
by such just and reasonable amount that the commission 2448
determines necessary to address any emergency that threatens the 2449
utility's financial integrity or to ensure that the resulting 2450
revenue available to the utility for providing the standard 2451
service offer is not so inadequate as to result, directly or 2452
indirectly, in a taking of property without compensation 2453

pursuant to Section 19 of Article I, Ohio Constitution. The 2454
electric distribution utility has the burden of demonstrating 2455
that any adjustment to its most recent standard service offer 2456
price is proper in accordance with this division. 2457

(E) Beginning in the second year of a blended price under 2458
division (D) of this section and notwithstanding any other 2459
requirement of this section, the commission may alter 2460
prospectively the proportions specified in that division to 2461
mitigate any effect of an abrupt or significant change in the 2462
electric distribution utility's standard service offer price 2463
that would otherwise result in general or with respect to any 2464
rate group or rate schedule but for such alteration. Any such 2465
alteration shall be made not more often than annually, and the 2466
commission shall not, by altering those proportions and in any 2467
event, including because of the length of time, as authorized 2468
under division (C) of this section, taken to approve the market 2469
rate offer, cause the duration of the blending period to exceed 2470
ten years as counted from the effective date of the approved 2471
market rate offer. Additionally, any such alteration shall be 2472
limited to an alteration affecting the prospective proportions 2473
used during the blending period and shall not affect any 2474
blending proportion previously approved and applied by the 2475
commission under this division. 2476

(F) An electric distribution utility that has received 2477
commission approval of its first application under division (C) 2478
of this section shall not, nor ever shall be authorized or 2479
required by the commission to, file an application under section 2480
4928.143 of the Revised Code. 2481

Sec. 4928.143. (A) For the purpose of complying with 2482
section 4928.141 of the Revised Code, an electric distribution 2483

utility may file an application for public utilities commission 2484
approval of an electric security plan as prescribed under 2485
division (B) of this section. The utility may file that 2486
application prior to the effective date of any rules the 2487
commission may adopt for the purpose of this section, and, as 2488
the commission determines necessary, the utility immediately 2489
shall conform its filing to those rules upon their taking 2490
effect. 2491

(B) Notwithstanding any other provision of Title XLIX of 2492
the Revised Code to the contrary except division (D) of this 2493
section, divisions (I), (J), and (K) of section 4928.20, 2494
~~division (E) of section 4928.64,~~ and section 4928.69 of the 2495
Revised Code: 2496

(1) An electric security plan shall include provisions 2497
relating to the supply and pricing of electric generation 2498
service. In addition, if the proposed electric security plan has 2499
a term longer than three years, it may include provisions in the 2500
plan to permit the commission to test the plan pursuant to 2501
division (E) of this section and any transitional conditions 2502
that should be adopted by the commission if the commission 2503
terminates the plan as authorized under that division. 2504

(2) The plan may provide for or include, without 2505
limitation, any of the following: 2506

(a) Automatic recovery of any of the following costs of 2507
the electric distribution utility, provided the cost is 2508
prudently incurred: the cost of fuel used to generate the 2509
electricity supplied under the offer; the cost of purchased 2510
power supplied under the offer, including the cost of energy and 2511
capacity, and including purchased power acquired from an 2512
affiliate; the cost of emission allowances; and the cost of 2513

federally mandated carbon or energy taxes; 2514

(b) A reasonable allowance for construction work in 2515
progress for any of the electric distribution utility's cost of 2516
constructing an electric generating facility or for an 2517
environmental expenditure for any electric generating facility 2518
of the electric distribution utility, provided the cost is 2519
incurred or the expenditure occurs on or after January 1, 2009. 2520
Any such allowance shall be subject to the construction work in 2521
progress allowance limitations of division (A) of section 2522
4909.15 of the Revised Code, except that the commission may 2523
authorize such an allowance upon the incurrence of the cost or 2524
occurrence of the expenditure. No such allowance for generating 2525
facility construction shall be authorized, however, unless the 2526
commission first determines in the proceeding that there is need 2527
for the facility based on resource planning projections 2528
submitted by the electric distribution utility. Further, no such 2529
allowance shall be authorized unless the facility's construction 2530
was sourced through a competitive bid process, regarding which 2531
process the commission may adopt rules. An allowance approved 2532
under division (B) (2) (b) of this section shall be established as 2533
a nonbypassable surcharge for the life of the facility. 2534

(c) The establishment of a nonbypassable surcharge for the 2535
life of an electric generating facility that is owned or 2536
operated by the electric distribution utility, was sourced 2537
through a competitive bid process subject to any such rules as 2538
the commission adopts under division (B) (2) (b) of this section, 2539
and is newly used and useful on or after January 1, 2009, which 2540
surcharge shall cover all costs of the utility specified in the 2541
application, excluding costs recovered through a surcharge under 2542
division (B) (2) (b) of this section. However, no surcharge shall 2543
be authorized unless the commission first determines in the 2544

proceeding that there is need for the facility based on resource 2545
planning projections submitted by the electric distribution 2546
utility. Additionally, if a surcharge is authorized for a 2547
facility pursuant to plan approval under division (C) of this 2548
section and as a condition of the continuation of the surcharge, 2549
the electric distribution utility shall dedicate to Ohio 2550
consumers the capacity and energy and the rate associated with 2551
the cost of that facility. Before the commission authorizes any 2552
surcharge pursuant to this division, it may consider, as 2553
applicable, the effects of any decommissioning, deratings, and 2554
retirements. 2555

(d) Terms, conditions, or charges relating to limitations 2556
on customer shopping for retail electric generation service, 2557
bypassability, standby, back-up, or supplemental power service, 2558
default service, carrying costs, amortization periods, and 2559
accounting or deferrals, including future recovery of such 2560
deferrals, as would have the effect of stabilizing or providing 2561
certainty regarding retail electric service; 2562

(e) Automatic increases or decreases in any component of 2563
the standard service offer price; 2564

(f) Consistent with sections 4928.23 to 4928.2318 of the 2565
Revised Code, both of the following: 2566

(i) Provisions for the electric distribution utility to 2567
securitize any phase-in, inclusive of carrying charges, of the 2568
utility's standard service offer price, which phase-in is 2569
authorized in accordance with section 4928.144 of the Revised 2570
Code; 2571

(ii) Provisions for the recovery of the utility's cost of 2572
securitization. 2573

(g) Provisions relating to transmission, ancillary, 2574
congestion, or any related service required for the standard 2575
service offer, including provisions for the recovery of any cost 2576
of such service that the electric distribution utility incurs on 2577
or after that date pursuant to the standard service offer; 2578

(h) Provisions regarding the utility's distribution 2579
service, including, without limitation and notwithstanding any 2580
provision of Title XLIX of the Revised Code to the contrary, 2581
provisions regarding single issue ratemaking, a revenue 2582
decoupling mechanism or any other incentive ratemaking, and 2583
provisions regarding distribution infrastructure and 2584
modernization incentives for the electric distribution utility. 2585
The latter may include a long-term energy delivery 2586
infrastructure modernization plan for that utility or any plan 2587
providing for the utility's recovery of costs, including lost 2588
revenue, shared savings, and avoided costs, and a just and 2589
reasonable rate of return on such infrastructure modernization. 2590
As part of its determination as to whether to allow in an 2591
electric distribution utility's electric security plan inclusion 2592
of any provision described in division (B) (2) (h) of this 2593
section, the commission shall examine the reliability of the 2594
electric distribution utility's distribution system and ensure 2595
that customers' and the electric distribution utility's 2596
expectations are aligned and that the electric distribution 2597
utility is placing sufficient emphasis on and dedicating 2598
sufficient resources to the reliability of its distribution 2599
system. 2600

(i) Provisions under which the electric distribution 2601
utility may implement economic development, job retention, and 2602
energy efficiency programs, which provisions may allocate 2603
program costs across all classes of customers of the utility and 2604

those of electric distribution utilities in the same holding 2605
company system. 2606

(C) (1) The burden of proof in the proceeding shall be on 2607
the electric distribution utility. The commission shall issue an 2608
order under this division for an initial application under this 2609
section not later than one hundred fifty days after the 2610
application's filing date and, for any subsequent application by 2611
the utility under this section, not later than two hundred 2612
seventy-five days after the application's filing date. Subject 2613
to division (D) of this section, the commission by order shall 2614
approve or modify and approve an application filed under 2615
division (A) of this section if it finds that the electric 2616
security plan so approved, including its pricing and all other 2617
terms and conditions, including any deferrals and any future 2618
recovery of deferrals, is more favorable in the aggregate as 2619
compared to the expected results that would otherwise apply 2620
under section 4928.142 of the Revised Code. Additionally, if the 2621
commission so approves an application that contains a surcharge 2622
under division (B) (2) (b) or (c) of this section, the commission 2623
shall ensure that the benefits derived for any purpose for which 2624
the surcharge is established are reserved and made available to 2625
those that bear the surcharge. Otherwise, the commission by 2626
order shall disapprove the application. 2627

(2) (a) If the commission modifies and approves an 2628
application under division (C) (1) of this section, the electric 2629
distribution utility may withdraw the application, thereby 2630
terminating it, and may file a new standard service offer under 2631
this section or a standard service offer under section 4928.142 2632
of the Revised Code. 2633

(b) If the utility terminates an application pursuant to 2634

division (C) (2) (a) of this section or if the commission 2635
disapproves an application under division (C) (1) of this 2636
section, the commission shall issue such order as is necessary 2637
to continue the provisions, terms, and conditions of the 2638
utility's most recent standard service offer, along with any 2639
expected increases or decreases in fuel costs from those 2640
contained in that offer, until a subsequent offer is authorized 2641
pursuant to this section or section 4928.142 of the Revised 2642
Code, respectively. 2643

(D) Regarding the rate plan requirement of division (A) of 2644
section 4928.141 of the Revised Code, if an electric 2645
distribution utility that has a rate plan that extends beyond 2646
December 31, 2008, files an application under this section for 2647
the purpose of its compliance with division (A) of section 2648
4928.141 of the Revised Code, that rate plan and its terms and 2649
conditions are hereby incorporated into its proposed electric 2650
security plan and shall continue in effect until the date 2651
scheduled under the rate plan for its expiration, and that 2652
portion of the electric security plan shall not be subject to 2653
commission approval or disapproval under division (C) of this 2654
section, and the earnings test provided for in division (F) of 2655
this section shall not apply until after the expiration of the 2656
rate plan. However, that utility may include in its electric 2657
security plan under this section, and the commission may 2658
approve, modify and approve, or disapprove subject to division 2659
(C) of this section, provisions for the incremental recovery or 2660
the deferral of any costs that are not being recovered under the 2661
rate plan and that the utility incurs during that continuation 2662
period to comply with section 4928.141, ~~division (B) of section~~ 2663
~~4928.64, the Revised Code~~ or division (A) of section 4928.66 of 2664
the Revised Code. 2665

(E) If an electric security plan approved under division 2666
(C) of this section, except one withdrawn by the utility as 2667
authorized under that division, has a term, exclusive of phase- 2668
ins or deferrals, that exceeds three years from the effective 2669
date of the plan, the commission shall test the plan in the 2670
fourth year, and if applicable, every fourth year thereafter, to 2671
determine whether the plan, including its then-existing pricing 2672
and all other terms and conditions, including any deferrals and 2673
any future recovery of deferrals, continues to be more favorable 2674
in the aggregate and during the remaining term of the plan as 2675
compared to the expected results that would otherwise apply 2676
under section 4928.142 of the Revised Code. The commission shall 2677
also determine the prospective effect of the electric security 2678
plan to determine if that effect is substantially likely to 2679
provide the electric distribution utility with a return on 2680
common equity that is significantly in excess of the return on 2681
common equity that is likely to be earned by publicly traded 2682
companies, including utilities, that face comparable business 2683
and financial risk, with such adjustments for capital structure 2684
as may be appropriate. The burden of proof for demonstrating 2685
that significantly excessive earnings will not occur shall be on 2686
the electric distribution utility. If the test results are in 2687
the negative or the commission finds that continuation of the 2688
electric security plan will result in a return on equity that is 2689
significantly in excess of the return on common equity that is 2690
likely to be earned by publicly traded companies, including 2691
utilities, that will face comparable business and financial 2692
risk, with such adjustments for capital structure as may be 2693
appropriate, during the balance of the plan, the commission may 2694
terminate the electric security plan, but not until it shall 2695
have provided interested parties with notice and an opportunity 2696
to be heard. The commission may impose such conditions on the 2697

plan's termination as it considers reasonable and necessary to 2698
accommodate the transition from an approved plan to the more 2699
advantageous alternative. In the event of an electric security 2700
plan's termination pursuant to this division, the commission 2701
shall permit the continued deferral and phase-in of any amounts 2702
that occurred prior to that termination and the recovery of 2703
those amounts as contemplated under that electric security plan. 2704

(F) With regard to the provisions that are included in an 2705
electric security plan under this section, the commission shall 2706
consider, following the end of each annual period of the plan, 2707
if any such adjustments resulted in excessive earnings as 2708
measured by whether the earned return on common equity of the 2709
electric distribution utility is significantly in excess of the 2710
return on common equity that was earned during the same period 2711
by publicly traded companies, including utilities, that face 2712
comparable business and financial risk, with such adjustments 2713
for capital structure as may be appropriate. Consideration also 2714
shall be given to the capital requirements of future committed 2715
investments in this state. The burden of proof for demonstrating 2716
that significantly excessive earnings did not occur shall be on 2717
the electric distribution utility. If the commission finds that 2718
such adjustments, in the aggregate, did result in significantly 2719
excessive earnings, it shall require the electric distribution 2720
utility to return to consumers the amount of the excess by 2721
prospective adjustments; provided that, upon making such 2722
prospective adjustments, the electric distribution utility shall 2723
have the right to terminate the plan and immediately file an 2724
application pursuant to section 4928.142 of the Revised Code. 2725
Upon termination of a plan under this division, rates shall be 2726
set on the same basis as specified in division (C) (2) (b) of this 2727
section, and the commission shall permit the continued deferral 2728

and phase-in of any amounts that occurred prior to that 2729
termination and the recovery of those amounts as contemplated 2730
under that electric security plan. In making its determination 2731
of significantly excessive earnings under this division, the 2732
commission shall not consider, directly or indirectly, the 2733
revenue, expenses, or earnings of any affiliate or parent 2734
company. 2735

Sec. 4928.20. (A) The legislative authority of a municipal 2736
corporation may adopt an ordinance, or the board of township 2737
trustees of a township or the board of county commissioners of a 2738
county may adopt a resolution, under which, on or after the 2739
starting date of competitive retail electric service, it may 2740
aggregate in accordance with this section the retail electrical 2741
loads located, respectively, within the municipal corporation, 2742
township, or unincorporated area of the county and, for that 2743
purpose, may enter into service agreements to facilitate for 2744
those loads the sale and purchase of electricity. The 2745
legislative authority or board also may exercise such authority 2746
jointly with any other such legislative authority or board. For 2747
customers that are not mercantile customers, an ordinance or 2748
resolution under this division shall specify whether the 2749
aggregation will occur only with the prior, affirmative consent 2750
of each person owning, occupying, controlling, or using an 2751
electric load center proposed to be aggregated or will occur 2752
automatically for all such persons pursuant to the opt-out 2753
requirements of division (D) of this section. The aggregation of 2754
mercantile customers shall occur only with the prior, 2755
affirmative consent of each such person owning, occupying, 2756
controlling, or using an electric load center proposed to be 2757
aggregated. Nothing in this division, however, authorizes the 2758
aggregation of the retail electric loads of an electric load 2759

center, as defined in section 4933.81 of the Revised Code, that 2760
is located in the certified territory of a nonprofit electric 2761
supplier under sections 4933.81 to 4933.90 of the Revised Code 2762
or an electric load center served by transmission or 2763
distribution facilities of a municipal electric utility. 2764

(B) If an ordinance or resolution adopted under division 2765
(A) of this section specifies that aggregation of customers that 2766
are not mercantile customers will occur automatically as 2767
described in that division, the ordinance or resolution shall 2768
direct the board of elections to submit the question of the 2769
authority to aggregate to the electors of the respective 2770
municipal corporation, township, or unincorporated area of a 2771
county at a special election on the day of the next primary or 2772
general election in the municipal corporation, township, or 2773
county. The legislative authority or board shall certify a copy 2774
of the ordinance or resolution to the board of elections not 2775
less than ninety days before the day of the special election. No 2776
ordinance or resolution adopted under division (A) of this 2777
section that provides for an election under this division shall 2778
take effect unless approved by a majority of the electors voting 2779
upon the ordinance or resolution at the election held pursuant 2780
to this division. 2781

(C) Upon the applicable requisite authority under 2782
divisions (A) and (B) of this section, the legislative authority 2783
or board shall develop a plan of operation and governance for 2784
the aggregation program so authorized. Before adopting a plan 2785
under this division, the legislative authority or board shall 2786
hold at least two public hearings on the plan. Before the first 2787
hearing, the legislative authority or board shall publish notice 2788
of the hearings once a week for two consecutive weeks in a 2789
newspaper of general circulation in the jurisdiction or as 2790

provided in section 7.16 of the Revised Code. The notice shall 2791
summarize the plan and state the date, time, and location of 2792
each hearing. 2793

(D) No legislative authority or board, pursuant to an 2794
ordinance or resolution under divisions (A) and (B) of this 2795
section that provides for automatic aggregation of customers 2796
that are not mercantile customers as described in division (A) 2797
of this section, shall aggregate the electrical load of any 2798
electric load center located within its jurisdiction unless it 2799
in advance clearly discloses to the person owning, occupying, 2800
controlling, or using the load center that the person will be 2801
enrolled automatically in the aggregation program and will 2802
remain so enrolled unless the person affirmatively elects by a 2803
stated procedure not to be so enrolled. The disclosure shall 2804
state prominently the rates, charges, and other terms and 2805
conditions of enrollment. The stated procedure shall allow any 2806
person enrolled in the aggregation program the opportunity to 2807
opt out of the program every three years, without paying a 2808
switching fee. Any such person that opts out before the 2809
commencement of the aggregation program pursuant to the stated 2810
procedure shall default to the standard service offer provided 2811
under section 4928.14 or division (D) of section 4928.35 of the 2812
Revised Code until the person chooses an alternative supplier. 2813

(E) (1) With respect to a governmental aggregation for a 2814
municipal corporation that is authorized pursuant to divisions 2815
(A) to (D) of this section, resolutions may be proposed by 2816
initiative or referendum petitions in accordance with sections 2817
731.28 to 731.41 of the Revised Code. 2818

(2) With respect to a governmental aggregation for a 2819
township or the unincorporated area of a county, which 2820

aggregation is authorized pursuant to divisions (A) to (D) of 2821
this section, resolutions may be proposed by initiative or 2822
referendum petitions in accordance with sections 731.28 to 2823
731.40 of the Revised Code, except that: 2824

(a) The petitions shall be filed, respectively, with the 2825
township fiscal officer or the board of county commissioners, 2826
who shall perform those duties imposed under those sections upon 2827
the city auditor or village clerk. 2828

(b) The petitions shall contain the signatures of not less 2829
than ten per cent of the total number of electors in, 2830
respectively, the township or the unincorporated area of the 2831
county who voted for the office of governor at the preceding 2832
general election for that office in that area. 2833

(F) A governmental aggregator under division (A) of this 2834
section is not a public utility engaging in the wholesale 2835
purchase and resale of electricity, and provision of the 2836
aggregated service is not a wholesale utility transaction. A 2837
governmental aggregator shall be subject to supervision and 2838
regulation by the public utilities commission only to the extent 2839
of any competitive retail electric service it provides and 2840
commission authority under this chapter. 2841

(G) This section does not apply in the case of a municipal 2842
corporation that supplies such aggregated service to electric 2843
load centers to which its municipal electric utility also 2844
supplies a noncompetitive retail electric service through 2845
transmission or distribution facilities the utility singly or 2846
jointly owns or operates. 2847

(H) A governmental aggregator shall not include in its 2848
aggregation the accounts of any of the following: 2849

(1) A customer that has opted out of the aggregation; 2850

(2) A customer in contract with a certified electric 2851
services company; 2852

(3) A customer that has a special contract with an 2853
electric distribution utility; 2854

(4) A customer that is not located within the governmental 2855
aggregator's governmental boundaries; 2856

(5) Subject to division (C) of section 4928.21 of the 2857
Revised Code, a customer who appears on the "do not aggregate" 2858
list maintained under that section. 2859

(I) Customers that are part of a governmental aggregation 2860
under this section shall be responsible only for such portion of 2861
a surcharge under section 4928.144 of the Revised Code that is 2862
proportionate to the benefits, as determined by the commission, 2863
that electric load centers within the jurisdiction of the 2864
governmental aggregation as a group receive. The proportionate 2865
surcharge so established shall apply to each customer of the 2866
governmental aggregation while the customer is part of that 2867
aggregation. If a customer ceases being such a customer, the 2868
otherwise applicable surcharge shall apply. Nothing in this 2869
section shall result in less than full recovery by an electric 2870
distribution utility of any surcharge authorized under section 2871
4928.144 of the Revised Code. Nothing in this section shall 2872
result in less than the full and timely imposition, charging, 2873
collection, and adjustment by an electric distribution utility, 2874
its assignee, or any collection agent, of the phase-in-recovery 2875
charges authorized pursuant to a final financing order issued 2876
pursuant to sections 4928.23 to 4928.2318 of the Revised Code. 2877

(J) On behalf of the customers that are part of a 2878

governmental aggregation under this section and by filing 2879
written notice with the public utilities commission, the 2880
legislative authority that formed or is forming that 2881
governmental aggregation may elect not to receive standby 2882
service within the meaning of division (B) (2) (d) of section 2883
4928.143 of the Revised Code from an electric distribution 2884
utility in whose certified territory the governmental 2885
aggregation is located and that operates under an approved 2886
electric security plan under that section. Upon the filing of 2887
that notice, the electric distribution utility shall not charge 2888
any such customer to whom competitive retail electric generation 2889
service is provided by another supplier under the governmental 2890
aggregation for the standby service. Any such consumer that 2891
returns to the utility for competitive retail electric service 2892
shall pay the market price of power incurred by the utility to 2893
serve that consumer ~~plus any amount attributable to the~~ 2894
~~utility's cost of compliance with the renewable energy resource~~ 2895
~~provisions of section 4928.64 of the Revised Code to serve the~~ 2896
~~consumer~~. Such market price shall include, but not be limited 2897
to, capacity and energy charges; all charges associated with the 2898
provision of that power supply through the regional transmission 2899
organization, including, but not limited to, transmission, 2900
ancillary services, congestion, and settlement and 2901
administrative charges; and all other costs incurred by the 2902
utility that are associated with the procurement, provision, and 2903
administration of that power supply, as such costs may be 2904
approved by the commission. The period of time during which the 2905
market price ~~and renewable energy resource amount~~ shall be so 2906
assessed on the consumer shall be from the time the consumer so 2907
returns to the electric distribution utility until the 2908
expiration of the electric security plan. However, if that 2909
period of time is expected to be more than two years, the 2910

commission may reduce the time period to a period of not less 2911
than two years. 2912

(K) The commission shall adopt rules to encourage and 2913
promote large-scale governmental aggregation in this state. For 2914
that purpose, the commission shall conduct an immediate review 2915
of any rules it has adopted for the purpose of this section that 2916
are in effect on the effective date of the amendment of this 2917
section by S.B. 221 of the 127th general assembly, July 31, 2918
2008. Further, within the context of an electric security plan 2919
under section 4928.143 of the Revised Code, the commission shall 2920
consider the effect on large-scale governmental aggregation of 2921
any nonbypassable generation charges, however collected, that 2922
would be established under that plan, except any nonbypassable 2923
generation charges that relate to any cost incurred by the 2924
electric distribution utility, the deferral of which has been 2925
authorized by the commission prior to the effective date of the 2926
amendment of this section by S.B. 221 of the 127th general 2927
assembly, July 31, 2008. 2928

Sec. 4928.61. (A) There is hereby established in the state 2929
treasury the advanced energy fund, into which shall be deposited 2930
all advanced energy revenues remitted to the director of 2931
development under division (B) of this section, for the 2932
exclusive purposes of funding the advanced energy program 2933
created under section 4928.62 of the Revised Code and paying the 2934
program's administrative costs. Interest on the fund shall be 2935
credited to the fund. 2936

(B) Advanced energy revenues shall include all of the 2937
following: 2938

(1) Revenues remitted to the director after collection by 2939
each electric distribution utility in this state of a temporary 2940

rider on retail electric distribution service rates as such 2941
rates are determined by the public utilities commission pursuant 2942
to this chapter. The rider shall be a uniform amount statewide, 2943
determined by the director of development, after consultation 2944
with the public benefits advisory board created by section 2945
4928.58 of the Revised Code. The amount shall be determined by 2946
dividing an aggregate revenue target for a given year as 2947
determined by the director, after consultation with the advisory 2948
board, by the number of customers of electric distribution 2949
utilities in this state in the prior year. Such aggregate 2950
revenue target shall not exceed more than fifteen million 2951
dollars in any year through 2005 and shall not exceed more than 2952
five million dollars in any year after 2005. The rider shall be 2953
imposed beginning on the effective date of the amendment of this 2954
section by Sub. H.B. 251 of the 126th general assembly, January 2955
4, 2007, and shall terminate at the end of ten years following 2956
the starting date of competitive retail electric service or 2957
until the advanced energy fund, including interest, reaches one 2958
hundred million dollars, whichever is first. 2959

(2) Revenues from payments, repayments, and collections 2960
under the advanced energy program and from program income; 2961

(3) Revenues remitted to the director after collection by 2962
a municipal electric utility or electric cooperative in this 2963
state upon the utility's or cooperative's decision to 2964
participate in the advanced energy fund; 2965

~~(4) Revenues from renewable energy compliance payments as~~ 2966
~~provided under division (C) (2) of section 4928.64 of the Revised~~ 2967
~~Code;~~ 2968

~~(5) Revenue from forfeitures under division (C) of section~~ 2969
4928.66 of the Revised Code; 2970

~~(6)~~ (5) Funds transferred pursuant to division (B) of 2971
Section 512.10 of S.B. 315 of the 129th general assembly; 2972

~~(7)~~ (6) Interest earnings on the advanced energy fund. 2973

(C) (1) Each electric distribution utility in this state 2974
shall remit to the director on a quarterly basis the revenues 2975
described in divisions (B) (1) and (2) of this section. Such 2976
remittances shall occur within thirty days after the end of each 2977
calendar quarter. 2978

(2) Each participating electric cooperative and 2979
participating municipal electric utility shall remit to the 2980
director on a quarterly basis the revenues described in division 2981
(B) (3) of this section. Such remittances shall occur within 2982
thirty days after the end of each calendar quarter. For the 2983
purpose of division (B) (3) of this section, the participation of 2984
an electric cooperative or municipal electric utility in the 2985
energy efficiency revolving loan program as it existed 2986
immediately prior to the effective date of the amendment of this 2987
section by Sub. H.B. 251 of the 126th general assembly, January 2988
4, 2007, does not constitute a decision to participate in the 2989
advanced energy fund under this section as so amended. 2990

(3) All remittances under divisions (C) (1) and (2) of this 2991
section shall continue only until the end of ten years following 2992
the starting date of competitive retail electric service or 2993
until the advanced energy fund, including interest, reaches one 2994
hundred million dollars, whichever is first. 2995

(D) Any moneys collected in rates for non-low-income 2996
customer energy efficiency programs, as of October 5, 1999, and 2997
not contributed to the energy efficiency revolving loan fund 2998
authorized under this section prior to the effective date of its 2999

amendment by Sub. H.B. 251 of the 126th general assembly, 3000
January 4, 2007, shall be used to continue to fund cost- 3001
effective, residential energy efficiency programs, be 3002
contributed into the universal service fund as a supplement to 3003
that required under section 4928.53 of the Revised Code, or be 3004
returned to ratepayers in the form of a rate reduction at the 3005
option of the affected electric distribution utility. 3006

Sec. 4928.62. (A) There is hereby created the advanced 3007
energy program, which shall be administered by the director of 3008
development. Under the program, the director may authorize the 3009
use of moneys in the advanced energy fund for financial, 3010
technical, and related assistance for advanced energy projects 3011
in this state or for economic development assistance, in 3012
furtherance of the purposes set forth in section 4928.63 of the 3013
Revised Code. 3014

(1) To the extent feasible given approved applications for 3015
assistance, the assistance shall be distributed among the 3016
certified territories of electric distribution utilities and 3017
participating electric cooperatives, and among the service areas 3018
of participating municipal electric utilities, in amounts 3019
proportionate to the remittances of each utility and cooperative 3020
under divisions (B) (1) and (3) of section 4928.61 of the Revised 3021
Code. 3022

(2) The funds described in division (B) ~~(6)~~ (5) of section 3023
4928.61 of the Revised Code shall not be subject to the 3024
territorial requirements of division (A) (1) of this section. 3025

(3) The director shall not authorize financial assistance 3026
for an advanced energy project under the program unless the 3027
director first determines that the project will create new jobs 3028
or preserve existing jobs in this state or use innovative 3029

technologies or materials. 3030

(B) In carrying out sections 4928.61 to 4928.63 of the 3031
Revised Code, the director may do all of the following to 3032
further the public interest in advanced energy projects and 3033
economic development: 3034

(1) Award grants, contracts, loans, loan participation 3035
agreements, linked deposits, and energy production incentives; 3036

(2) Acquire in the name of the director any property of 3037
any kind or character in accordance with this section, by 3038
purchase, purchase at foreclosure, or exchange, on such terms 3039
and in such manner as the director considers proper; 3040

(3) Make and enter into all contracts and agreements 3041
necessary or incidental to the performance of the director's 3042
duties and the exercise of the director's powers under sections 3043
4928.61 to 4928.63 of the Revised Code; 3044

(4) Employ or enter into contracts with financial 3045
consultants, marketing consultants, consulting engineers, 3046
architects, managers, construction experts, attorneys, technical 3047
monitors, energy evaluators, or other employees or agents as the 3048
director considers necessary, and fix their compensation; 3049

(5) Adopt rules prescribing the application procedures for 3050
financial assistance under the advanced energy program; the 3051
fees, charges, interest rates, payment schedules, local match 3052
requirements, and other terms and conditions of any grants, 3053
contracts, loans, loan participation agreements, linked 3054
deposits, and energy production incentives; criteria pertaining 3055
to the eligibility of participating lending institutions; and 3056
any other matters necessary for the implementation of the 3057
program; 3058

(6) Do all things necessary and appropriate for the 3059
operation of the program. 3060

(C) The department of development may hold ownership to 3061
any unclaimed energy efficiency and renewable energy emission 3062
allowances provided for in Chapter 3745-14 of the Administrative 3063
Code or otherwise, that result from advanced energy projects 3064
that receive funding from the advanced energy fund, and it may 3065
use the allowances to further the public interest in advanced 3066
energy projects or for economic development. 3067

(D) Financial statements, financial data, and trade 3068
secrets submitted to or received by the director from an 3069
applicant or recipient of financial assistance under sections 3070
4928.61 to 4928.63 of the Revised Code, or any information taken 3071
from those statements, data, or trade secrets for any purpose, 3072
are not public records for the purpose of section 149.43 of the 3073
Revised Code. 3074

(E) Nothing in the amendments of sections 4928.61, 3075
4928.62, and 4928.63 of the Revised Code by Sub. H.B. 251 of the 3076
126th general assembly shall affect any pending or effected 3077
assistance, pending or effected purchases or exchanges of 3078
property made, or pending or effected contracts or agreements 3079
entered into pursuant to division (A) or (B) of this section as 3080
the section existed prior to the effective date of those 3081
amendments, January 4, 2007, or shall affect the exemption 3082
provided under division (C) of this section as the section 3083
existed prior to that effective date. 3084

(F) Any assistance a school district receives for an 3085
advanced energy project, including a geothermal heating, 3086
ventilating, and air conditioning system, shall be in addition 3087
to any assistance provided under Chapter 3318. of the Revised 3088

Code and shall not be included as part of the district or state 3089
portion of the basic project cost under that chapter. 3090

Sec. 4928.641. (A) As used in this section, "net cost" 3091
means a charge or a credit and constitutes the ongoing costs 3092
including the charges incurred by the utility under each 3093
contract, including the annual renewable energy credit inventory 3094
amortization charge in division (E)(3) of this section, the 3095
carrying charges, less the revenue received by the utility as a 3096
result of liquidating into competitive markets the electrical 3097
and renewable products provided to the utility under the same 3098
contract, including capacity, ancillary services, and renewable 3099
energy credits. 3100

(B) All prudently incurred costs incurred by an electric 3101
distribution utility associated with contractual obligations 3102
that existed prior to the effective date of the amendments to 3103
this section by H.B. 6 of the 133rd general assembly to 3104
implement section 4928.64 of the Revised Code shall be 3105
recoverable from the utility's retail customers as a 3106
distribution expense if the money received from the Ohio clean 3107
air program fund, created under section 3706.46 of the Revised 3108
Code, is insufficient to offset those costs. Such costs are 3109
ongoing costs and shall include costs incurred to discontinue 3110
existing programs that were implemented by the electric 3111
distribution utility under section 4928.64 of the Revised Code. 3112

(C) If an electric distribution utility has executed a 3113
contract before April 1, 2014, to procure renewable energy 3114
resources to implement section 4928.64 of the Revised Code and 3115
there are ongoing costs associated with that contract that are 3116
being recovered from customers through a bypassable charge as of 3117
the effective date of ~~S.B. 310~~ H.B. 6 of the ~~130th~~ 133rd general 3118

assembly, that cost recovery shall ~~continue on a bypassable-~~ 3119
~~basis-~~, upon final reconciliation, be replaced with the 3120
accounting mechanism permitted under this section. The 3121
accounting mechanism shall be effective for the remaining term 3122
of the contract and for a subsequent reconciliation period until 3123
all the prudently incurred costs associated with that contract 3124
are fully recovered. 3125

~~(B) Division (A) of this section applies only to costs-~~ 3126
~~associated with the original term of a contract described in-~~ 3127
~~that division and entered into before April 1, 2014. This-~~ 3128
~~section does not permit recovery of costs associated with an-~~ 3129
~~extension of such a contract. This section does not permit~~ 3130
~~recovery of costs associated with an amendment of such a-~~ 3131
~~contract if that amendment was made on or after April 1, 2014.~~ 3132

(D) Subject to the requirements for recovery of ongoing 3133
costs under section 4928.64 of the Revised Code, the public 3134
utilities commission shall, in accordance with division (E) of 3135
this section, approve an accounting mechanism for each electric 3136
distribution utility that demonstrates that it has incurred or 3137
will incur ongoing costs as described in division (B) of this 3138
section. 3139

(E) All of the following shall apply to the accounting 3140
mechanism: 3141

(1) Subject to division (F) of this section, the 3142
accounting mechanism shall reflect the forecasted annual net 3143
costs to be incurred by the utility under each contract 3144
described in division (C) of this section, subject to subsequent 3145
reconciliation to actual net costs. 3146

(2) The book value of an electric distribution utility's 3147

inventory of renewable energy credits, as of the effective date 3148
of the amendments to this section by H.B. 6 of the 133rd general 3149
assembly, shall be reflected in the accounting mechanism over an 3150
amortization period that is substantially similar to the 3151
remaining term of any contracts described in division (C) of 3152
this section. 3153

(3) The electric distribution utility shall, in a timely 3154
manner, liquidate the renewable energy credits in its inventory 3155
and apply the resulting revenue against such recovery. 3156

(F) Not later than ninety days after the effective date of 3157
the amendments to this section by H.B. 6 of the 133rd general 3158
assembly, the commission shall approve an appropriate accounting 3159
mechanism that is reasonable and appropriate to implement the 3160
requirements of this section and permits a full recovery of the 3161
utility's net costs, including the accounting authority for the 3162
utility to establish and adjust regulatory assets and regulatory 3163
liabilities consistent with this section. The electric 3164
distribution utility shall be entitled to collect a carrying 3165
charge on such regulatory assets on the effective date of the 3166
amendments to this section by H.B. 6 of the 133rd general 3167
assembly and continuing until the regulatory asset is completely 3168
recovered. Such carrying charge shall include the electric 3169
distribution utility's cost of capital including the most recent 3170
authorized rate of return on equity. The carrying charge shall 3171
also be applied to any regulatory liability created as a result 3172
of the cost recovery mechanism. In each subsequent rate 3173
proceeding under Chapter 4909. of the Revised Code or section 3174
4928.143 of the Revised Code involving the electric distribution 3175
utility, the commission shall permit recovery as a distribution 3176
expense of the regulatory assets existing at that time until the 3177
utility's net costs are fully recovered. Those costs shall be 3178

assigned to each customer class using the base distribution 3179
revenue allocation. 3180

(G) The electric distribution utility shall apply to the 3181
Ohio air quality development authority for reimbursement of its 3182
net costs, in accordance with section 3706.485 of the Revised 3183
Code. To facilitate the authority's consideration of the 3184
utility's application, the commission shall annually certify 3185
each electric distribution utility's forecasted net costs under 3186
this section to the authority. The commission shall credit any 3187
revenue received by the utility from the Ohio clean air program 3188
fund under section 3706.485 of the Revised Code against the net 3189
costs that would otherwise be recovered through the utility's 3190
rates. 3191

Sec. 4928.645. (A) An electric distribution utility or 3192
electric services company may use, ~~for the purpose of complying~~ 3193
~~with the requirements under divisions (B) (1) and (2) of section~~ 3194
~~4928.64 of the Revised Code,~~ renewable energy credits any time 3195
in the five calendar years following the date of their purchase 3196
or acquisition from any entity, including, but not limited to, 3197
the following: 3198

(1) A mercantile customer; 3199

(2) An owner or operator of a hydroelectric generating 3200
facility that is located at a dam on a river, or on any water 3201
discharged to a river, that is within or bordering this state or 3202
within or bordering an adjoining state, or that produces power 3203
that can be shown to be deliverable into this state; 3204

(3) A seller of compressed natural gas that has been 3205
produced from biologically derived methane gas, provided that 3206
the seller may only provide renewable energy credits for metered 3207

amounts of gas. 3208

(B) (1) The public utilities commission shall adopt rules 3209
specifying that one unit of credit shall equal one megawatt hour 3210
of electricity derived from renewable energy resources, except 3211
that, for a generating facility of seventy-five megawatts or 3212
greater that is situated within this state and has committed by 3213
December 31, 2009, to modify or retrofit its generating unit or 3214
units to enable the facility to generate principally from 3215
biomass energy by June 30, 2013, each megawatt hour of 3216
electricity generated principally from that biomass energy shall 3217
equal, in units of credit, the product obtained by multiplying 3218
the actual percentage of biomass feedstock heat input used to 3219
generate such megawatt hour by the quotient obtained by dividing 3220
the ~~then existing~~ unit dollar amount used, on December 31, 2019, 3221
to determine a renewable energy compliance payment as provided 3222
under former division (C) (2) (b) of section 4928.64 of the 3223
Revised Code by the then existing market value of one renewable 3224
energy credit, but such megawatt hour shall not equal less than 3225
one unit of credit. Renewable energy resources do not have to be 3226
converted to electricity in order to be eligible to receive 3227
renewable energy credits. The rules shall specify that, for 3228
purposes of converting the quantity of energy derived from 3229
biologically derived methane gas to an electricity equivalent, 3230
one megawatt hour equals 3,412,142 British thermal units. 3231

(2) The rules also shall provide for this state a system 3232
of registering renewable energy credits by specifying which of 3233
any generally available registries shall be used for that 3234
purpose and not by creating a registry. That selected system of 3235
registering renewable energy credits shall allow a hydroelectric 3236
generating facility to be eligible for obtaining renewable 3237
energy credits and shall allow customer-sited projects or 3238

actions the broadest opportunities to be eligible for obtaining 3239
renewable energy credits. 3240

Sec. 5501.311. (A) Notwithstanding sections 123.01 and 3241
127.16 of the Revised Code the director of transportation may 3242
lease or lease-purchase all or any part of a transportation 3243
facility to or from one or more persons, one or more 3244
governmental agencies, a transportation improvement district, or 3245
any combination thereof, and may grant leases, easements, or 3246
licenses for lands under the control of the department of 3247
transportation. The director may adopt rules necessary to give 3248
effect to this section. 3249

(B) Plans and specifications for the construction of a 3250
transportation facility under a lease or lease-purchase 3251
agreement are subject to approval of the director and must meet 3252
or exceed all applicable standards of the department. 3253

(C) Any lease or lease-purchase agreement under which the 3254
department is the lessee shall be for a period not exceeding the 3255
then current two-year period for which appropriations have been 3256
made by the general assembly to the department, and such 3257
agreement may contain such other terms as the department and the 3258
other parties thereto agree, notwithstanding any other provision 3259
of law, including provisions that rental payments in amounts 3260
sufficient to pay bond service charges payable during the 3261
current two-year lease term shall be an absolute and 3262
unconditional obligation of the department independent of all 3263
other duties under the agreement without set-off or deduction or 3264
any other similar rights or defenses. Any such agreement may 3265
provide for renewal of the agreement at the end of each term for 3266
another term, not exceeding two years, provided that no renewal 3267
shall be effective until the effective date of an appropriation 3268

enacted by the general assembly from which the department may 3269
lawfully pay rentals under such agreement. Any such agreement 3270
may include, without limitation, any agreement by the department 3271
with respect to any costs of transportation facilities to be 3272
included prior to acquisition and construction of such 3273
transportation facilities. Any such agreement shall not 3274
constitute a debt or pledge of the faith and credit of the 3275
state, or of any political subdivision of the state, and the 3276
lessor shall have no right to have taxes or excises levied by 3277
the general assembly, or the taxing authority of any political 3278
subdivision of the state, for the payment of rentals thereunder. 3279
Any such agreement shall contain a statement to that effect. 3280

(D) A municipal corporation, township, or county may use 3281
service payments in lieu of taxes credited to special funds or 3282
accounts pursuant to sections 5709.43, 5709.47, 5709.75, and 3283
5709.80 of the Revised Code to provide its contribution to the 3284
cost of a transportation facility, provided such facility was 3285
among the purposes for which such service payments were 3286
authorized. The contribution may be in the form of a lump sum or 3287
periodic payments. 3288

(E) Pursuant to the "Telecommunications Act of 1996," 110 3289
Stat. 152, 47 U.S.C. 332 note, the director may grant a lease, 3290
easement, or license in a transportation facility to a 3291
telecommunications service provider for construction, placement, 3292
or operation of a telecommunications facility. An interest 3293
granted under this division is subject to all of the following 3294
conditions: 3295

(1) The transportation facility is owned in fee simple or 3296
easement by this state at the time the lease, easement, or 3297
license is granted to the telecommunications provider. 3298

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

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

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

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

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

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

(8) All plans and specifications shall meet with the 3328
director's approval. 3329

(9) Any other conditions the director determines 3330
necessary. 3331

(F) In accordance with section 5501.031 of the Revised 3332
Code, to further efforts to promote energy conservation and 3333
energy efficiency, the director may grant a lease, easement, or 3334
license in a transportation facility to a utility service 3335
provider that has received its certificate from the Ohio power 3336
siting board or appropriate local entity for construction, 3337
placement, or operation of an alternative energy generating 3338
facility service provider as defined in section 4928.64 of the 3339
Revised Code as that section existed prior to January 1, 2020. 3340
An interest granted under this division is subject to all of the 3341
following conditions: 3342

(1) The transportation facility is owned in fee simple or 3343
in easement by this state at the time the lease, easement, or 3344
license is granted to the utility service provider. 3345

(2) The lease, easement, or license shall be granted on a 3346
competitive basis in accordance with policies and procedures to 3347
be determined by the director. The policies and procedures may 3348
include provisions for master leases for multiple sites. 3349

(3) The alternative energy generating facility shall be 3350
designed to provide energy for the department's transportation 3351
facilities with the potential for selling excess power on the 3352
power grid, as the director may determine is necessary for 3353
highway or other departmental purposes. 3354

(4) The director shall require indemnity agreements in 3355
favor of the department as a condition of any lease, easement, 3356

or license granted under this division. Each indemnity agreement 3357
shall secure this state from liability for damages arising out 3358
of safety hazards, zoning, and any other matter of public 3359
interest the director considers necessary. 3360

(5) The alternative energy service provider fully complies 3361
with any permit issued by the Ohio power siting board under 3362
Chapter 4906. of the Revised Code and complies with section 3363
5515.01 of the Revised Code pertaining to land that is the 3364
subject of the lease, easement, or license. 3365

(6) All plans and specifications shall meet with the 3366
director's approval. 3367

(7) Any other conditions the director determines 3368
necessary. 3369

(G) Money the department receives under this section shall 3370
be deposited into the state treasury to the credit of the 3371
highway operating fund. 3372

(H) A lease, easement, or license granted under division 3373
(E) or (F) of this section, and any telecommunications facility 3374
or alternative energy generating facility relating to such 3375
interest in a transportation facility, is hereby deemed to 3376
further the essential highway purpose of building and 3377
maintaining a safe, energy-efficient, and accessible 3378
transportation system. 3379

Section 6. That existing sections 1710.06, 4928.142, 3380
4928.143, 4928.20, 4928.61, 4928.62, 4928.641, 4928.645, and 3381
5501.311 of the Revised Code are hereby repealed. 3382

Section 7. That sections 1710.061, 4928.64, 4928.643, 3383
4928.644, and 4928.65 of the Revised Code are hereby repealed. 3384

Section 8. Sections 5, 6, and 7 of this act take effect 3385
January 1, 2020. 3386

Section 9. (A) Not earlier than two years after the 3387
effective date of this section, the Director of Environmental 3388
Protection may apply to the Administrator of the United States 3389
Environmental Protection Agency for an exemption from the 3390
requirement to implement the decentralized motor vehicle 3391
inspection and maintenance program established under section 3392
3704.14 of the Revised Code. In making the application and for 3393
purposes of complying with the "Federal Clean Air Act," the 3394
Director shall request the Administrator to authorize the 3395
implementation of the Ohio Clean Air Program established by this 3396
act as an alternative to the decentralized program in those 3397
areas of the state where the program is currently operating. 3398

(B) As used in this section, "Federal Clean Air Act" has 3399
the same meaning as in section 3704.01 of the Revised Code. 3400

Section 10. (A) In 2020, the Public Utilities Commission 3401
shall review an electric distribution utility's or electric 3402
services company's compliance with the benchmarks for 2019 under 3403
division (B) (2) of section 4928.64 of the Revised Code as that 3404
division existed on the effective date of this section, and in 3405
the course of that review, shall identify any undercompliance or 3406
noncompliance of the utility or company that it determines is 3407
weather-related, related to equipment or resource shortages for 3408
qualifying renewable energy resources as applicable, or is 3409
otherwise outside the utility's or company's control. 3410

(B) Subject to the cost cap provisions of division (C) (3) 3411
of section 4928.64 of the Revised Code as that section existed 3412
on the effective date of this section, if the commission 3413
determines, after notice and opportunity for hearing, and based 3414

upon its findings in the review under division (A) of this 3415
section regarding avoidable undercompliance or noncompliance, 3416
but subject to the force-majeure provisions of division (C) (4) 3417
(a) of section 4928.64 of the Revised Code as that section 3418
existed on the effective date of this section, that the utility 3419
or company has failed to comply with the benchmarks for 2019, 3420
the commission shall impose a renewable energy compliance 3421
payment on the utility or company. 3422

(1) The compliance payment pertaining to the solar energy 3423
resource benchmark for 2019 shall be two hundred dollars per 3424
megawatt hour of undercompliance or noncompliance in the period 3425
under review. 3426

(2) The compliance payment pertaining to the renewable 3427
energy resource benchmark for 2019 shall be assessed in 3428
accordance with division (C) (2) (b) of section 4928.64 of the 3429
Revised Code as that section existed on the effective date of 3430
this section. 3431

(C) Division (C) (2) (c) of section 4928.64 of the Revised 3432
Code as that section existed on the effective date of this 3433
section applies to compliance payments imposed under this 3434
section. 3435

Section 11. If any provisions of a section as amended or 3436
enacted by this act, or the application thereof to any person or 3437
circumstance is held invalid, the invalidity does not affect 3438
other provisions or applications of the section or related 3439
sections that can be given effect without the invalid provision 3440
or application, and to this end the provisions are severable. 3441

Section 12. The amendment by this act of section 5725.75 3442
of the Revised Code applies to both of the following: 3443

(A) Energy projects certified by the Director of	3444
Development Services on or after the effective date of this	3445
section;	3446
(B) Existing qualified energy projects that, on the	3447
effective date of this section, have a nameplate capacity of	3448
fewer than five megawatts.	3449