

**As Reported by the House Alternative Energy Committee
(CORRECTED VERSION)**

**128th General Assembly
Regular Session
2009-2010**

Sub. H. B. No. 301

Representative Foley

**Cosponsors: Representatives Celeste, Skindell, Hagan, Stewart, Letson,
Murray, Harris, Pryor, Yuko, Domenick, Ujvagi, Yates, Harwood, Winburn,
Williams, S., Evans, Pillich, Phillips**

—

A B I L L

To amend sections 4928.58, 4928.61, and 4928.62 of
the Revised Code to extend the imposition of the
current Advanced Energy Fund revenue rider on
retail electric distribution service rates by
three years and to clarify how Advanced Energy
Fund grant amounts are to be determined.

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

Section 1. That sections 4928.58, 4928.61, and 4928.62 of the
Revised Code be amended to read as follows:

Sec. 4928.58. (A) There is hereby created the public benefits
advisory board, which has the purpose of ensuring that energy
services be provided to low-income consumers in this state in an
affordable manner consistent with the policy specified in section
4928.02 of the Revised Code. The advisory board shall consist of
twenty-one members as follows: the director of development, the
chairperson of the public utilities commission, the consumers'
counsel, and the director of the air quality development

authority, each serving ex officio and represented by a designee 17
at the official's discretion; two members of the house of 18
representatives appointed by the speaker of the house of 19
representatives, neither of the same political party, and two 20
members of the senate appointed by the president of the senate, 21
neither of the same political party; and thirteen members 22
appointed by the governor with the advice and consent of the 23
senate, consisting of one representative of suppliers of 24
competitive retail electric service; one representative of the 25
residential class of electric utility customers; one 26
representative of the industrial class of electric utility 27
customers; one representative of the commercial class of electric 28
utility customers; one representative of agricultural or rural 29
customers of an electric utility; two customers receiving 30
assistance under one or more of the low-income customer assistance 31
programs, to represent customers eligible for any such assistance, 32
including senior citizens; one representative of the general 33
public; one representative of local intake agencies; one 34
representative of a community-based organization serving 35
low-income customers; one representative of environmental 36
protection interests; one representative of lending institutions; 37
and one person considered an expert in energy efficiency or 38
renewables technology. Initial appointments shall be made not 39
later than November 1, 1999. 40

(B) Initial terms of six of the appointed members shall end 41
on June 30, 2003, and initial terms of the remaining seven 42
appointed members shall end on June 30, 2004. Thereafter, terms of 43
appointed members shall be for three years, with each term ending 44
on the same day of the same month as the term it succeeds. Each 45
member shall hold office from the date of the member's appointment 46
until the end of the term for which the member was appointed. 47
Members may be reappointed. 48

Vacancies shall be filled in the manner provided for original 49
appointments. Any member appointed to fill a vacancy occurring 50
prior to the expiration date of the term for which the member's 51
predecessor was appointed shall hold office as a member for the 52
remainder of that term. A member shall continue in office after 53
the expiration date of the member's term until the member's 54
successor takes office or until a period of sixty days has 55
elapsed, whichever occurs first. 56

(C) Board members shall be reimbursed for their actual and 57
necessary expenses incurred in the performance of board duties. 58
The reimbursements constitute, as applicable, administrative costs 59
of the low-income customer assistance programs for the purpose of 60
division (A) of section 4928.51 of the Revised Code or 61
administrative costs of the advanced energy program for the 62
purpose of division (A) of section 4528.61 of the Revised Code. 63

(D) The advisory board shall select a chairperson from among 64
its members. Only board members appointed by the governor with the 65
advice and consent of the senate shall be voting members of the 66
board; each shall have one vote in all deliberations of the board. 67
A majority of the voting members constitute a quorum. 68

(E) The duties of the advisory board shall be as follows: 69

(1) Advise the director in the administration of the 70
universal service fund and the low-income customer assistance 71
programs and advise the director on the director's recommendation 72
to the commission regarding the appropriate level of the universal 73
service rider; 74

(2) Advise the director on the administration of the advanced 75
energy program and the advanced energy fund under sections 4928.61 76
to 4928.63 of the Revised Code, including grant award levels under 77
section 4928.62 of the Revised Code; 78

(3) Hold public hearings to carry out the requirements of 79

division (E)(2) of this section. 80

(F) The advisory board is not an agency for purposes of 81
sections 101.82 to 101.87 of the Revised Code. 82

Sec. 4928.61. (A) There is hereby established in the state 83
treasury the advanced energy fund, into which shall be deposited 84
all advanced energy revenues remitted to the director of 85
development under division (B) of this section, for the exclusive 86
purposes of funding the advanced energy program created under 87
section 4928.62 of the Revised Code and paying the program's 88
administrative costs. Interest on the fund shall be credited to 89
the fund. 90

(B) Advanced energy revenues shall include all of the 91
following: 92

(1) Revenues remitted to the director after collection by 93
each electric distribution utility in this state of a temporary 94
rider on retail electric distribution service rates as such rates 95
are determined by the public utilities commission pursuant to this 96
chapter. The rider shall be a uniform amount statewide, determined 97
by the director of development, after consultation with the public 98
benefits advisory board created by section 4928.58 of the Revised 99
Code. The amount shall be determined by dividing an aggregate 100
revenue target for a given year as determined by the director, 101
after consultation with the advisory board, by the number of 102
customers of electric distribution utilities in this state in the 103
prior year. Such aggregate revenue target shall not exceed more 104
than fifteen million dollars in any year through 2005 and shall 105
not exceed more than five million dollars in any year after 2005. 106
The rider shall be imposed beginning on the effective date of the 107
amendment of this section by Sub. H.B. 251 of the 126th general 108
assembly, January 4, 2007, and shall terminate at the end of ~~ten~~ 109
thirteen years following the starting date of competitive retail 110

electric service or until the advanced energy fund, including	111
interest, reaches one hundred million dollars, whichever is first.	112
(2) Revenues from payments, repayments, and collections under	113
the advanced energy program and from program income;	114
(3) Revenues remitted to the director after collection by a	115
municipal electric utility or electric cooperative in this state	116
upon the utility's or cooperative's decision to participate in the	117
advanced energy fund;	118
(4) Revenues from renewable energy compliance payments as	119
provided under division (C)(2) of section 4928.64 of the Revised	120
Code;	121
(5) Revenue from forfeitures under division (C) of section	122
4928.66 of the Revised Code;	123
(6) Interest earnings on the advanced energy fund.	124
(C)(1) Each electric distribution utility in this state shall	125
remit to the director on a quarterly basis the revenues described	126
in divisions (B)(1) and (2) of this section. Such remittances	127
shall occur within thirty days after the end of each calendar	128
quarter.	129
(2) Each participating electric cooperative and participating	130
municipal electric utility shall remit to the director on a	131
quarterly basis the revenues described in division (B)(3) of this	132
section. Such remittances shall occur within thirty days after the	133
end of each calendar quarter. For the purpose of division (B)(3)	134
of this section, the participation of an electric cooperative or	135
municipal electric utility in the energy efficiency revolving loan	136
program as it existed immediately prior to the effective date of	137
the amendment of this section by Sub. H.B. 251 of the 126th	138
general assembly, January 4, 2007, does not constitute a decision	139
to participate in the advanced energy fund under this section as	140
so amended.	141

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

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

Sec. 4928.62. (A) There is hereby created the advanced energy program, which shall be administered by the director of development. Under the program, the director may authorize the use of moneys in the advanced energy fund for financial, technical, and related assistance for advanced energy projects in this state or for economic development assistance, in furtherance of the purposes set forth in section 4928.63 of the Revised Code. To the extent feasible given approved applications for assistance, the assistance shall be distributed among the certified territories of electric distribution utilities and participating electric cooperatives, and among the service areas of participating municipal electric utilities, in amounts proportionate to the remittances of each utility and cooperative under divisions (B)(1) and (3) of section 4928.61 of the Revised Code.

The director shall determine the amount of each grant based

on the market price of energy and the advice of the public 173
benefits advisory board under division (E)(2) of section 4928.58 174
of the Revised Code. The amount of each grant shall decrease 175
annually in order to enable the program to fund an increasing 176
number of grants. 177

The director shall not authorize financial assistance for an 178
advanced energy project under the program unless the director 179
first determines that the project will create new jobs or preserve 180
existing jobs in this state or use innovative technologies or 181
materials. 182

(B) In carrying out sections 4928.61 to 4928.63 of the 183
Revised Code, the director may do all of the following to further 184
the public interest in advanced energy projects and economic 185
development: 186

(1) Award grants, contracts, loans, loan participation 187
agreements, linked deposits, and energy production incentives; 188

(2) Acquire in the name of the director any property of any 189
kind or character in accordance with this section, by purchase, 190
purchase at foreclosure, or exchange, on such terms and in such 191
manner as the director considers proper; 192

(3) Make and enter into all contracts and agreements 193
necessary or incidental to the performance of the director's 194
duties and the exercise of the director's powers under sections 195
4928.61 to 4928.63 of the Revised Code; 196

(4) Employ or enter into contracts with financial 197
consultants, marketing consultants, consulting engineers, 198
architects, managers, construction experts, attorneys, technical 199
monitors, energy evaluators, or other employees or agents as the 200
director considers necessary, and fix their compensation; 201

(5) Adopt rules prescribing the application procedures for 202
financial assistance under the advanced energy program; the terms 203

and conditions of any grants, contracts, loans, loan participation 204
agreements, linked deposits, and energy production incentives; 205
criteria pertaining to the eligibility of participating lending 206
institutions; and any other matters necessary for the 207
implementation of the program; 208

(6) Do all things necessary and appropriate for the operation 209
of the program. 210

(C) The department of development may hold ownership to any 211
unclaimed energy efficiency and renewable energy emission 212
allowances provided for in Chapter 3745-14 of the Administrative 213
Code or otherwise, that result from advanced energy projects that 214
receive funding from the advanced energy fund, and it may use the 215
allowances to further the public interest in advanced energy 216
projects or for economic development. 217

(D) Financial statements, financial data, and trade secrets 218
submitted to or received by the director from an applicant or 219
recipient of financial assistance under sections 4928.61 to 220
4928.63 of the Revised Code, or any information taken from those 221
statements, data, or trade secrets for any purpose, are not public 222
records for the purpose of section 149.43 of the Revised Code. 223

(E) Nothing in the amendments of sections 4928.61, 4928.62, 224
and 4928.63 of the Revised Code by Sub. H.B. 251 of the 126th 225
general assembly shall affect any pending or effected assistance, 226
pending or effected purchases or exchanges of property made, or 227
pending or effected contracts or agreements entered into pursuant 228
to division (A) or (B) of this section as the section existed 229
prior to the effective date of those amendments, January 4, 2007, 230
or shall affect the exemption provided under division (C) of this 231
section as the section existed prior to that effective date. 232

(F) Any assistance a school district receives for an advanced 233
energy project, including a geothermal heating, ventilating, and 234

air conditioning system, shall be in addition to any assistance 235
provided under Chapter 3318. of the Revised Code and shall not be 236
included as part of the district or state portion of the basic 237
project cost under that chapter. 238

Section 2. That existing sections 4928.58, 4928.61, and 239
4928.62 of the Revised Code are hereby repealed. 240