

As Introduced

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S. B. No. 34

Senator Jordan

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A B I L L

To amend sections 4928.142, 4928.143, 4928.20, 1
4928.61, 4928.62, 5501.311, and 5727.75 and to 2
repeal sections 4928.64 and 4928.65 of the Revised 3
Code to repeal the requirement that electric 4
distribution utilities and electric services 5
companies provide 25% of their retail power 6
supplies from advanced and renewable energy 7
resources by 2025. 8

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

Section 1. That sections 4928.142, 4928.143, 4928.20, 9
4928.61, 4928.62, 5501.311, and 5727.75 be amended to read as 10
follows: 11

Sec. 4928.142. (A) For the purpose of complying with section 12
4928.141 of the Revised Code and subject to division (D) of this 13
section and, as applicable, subject to the rate plan requirement 14
of division (A) of section 4928.141 of the Revised Code, an 15
electric distribution utility may establish a standard service 16
offer price for retail electric generation service that is 17
delivered to the utility under a market-rate offer. 18

(1) The market-rate offer shall be determined through a 19
competitive bidding process that provides for all of the 20

following:	21
(a) Open, fair, and transparent competitive solicitation;	22
(b) Clear product definition;	23
(c) Standardized bid evaluation criteria;	24
(d) Oversight by an independent third party that shall design the solicitation, administer the bidding, and ensure that the criteria specified in division <u>divisions</u> (A)(1)(a) to (c) of this section are met;	25 26 27 28
(e) Evaluation of the submitted bids prior to the selection of the least-cost bid winner or winners.	29 30
No generation supplier shall be prohibited from participating in the bidding process.	31 32
(2) The public utilities commission shall modify rules, or adopt new rules as necessary, concerning the conduct of the competitive bidding process and the qualifications of bidders, which rules shall foster supplier participation in the bidding process and shall be consistent with the requirements of division (A)(1) of this section.	33 34 35 36 37 38
(B) Prior to initiating a competitive bidding process for a market-rate offer under division (A) of this section, the electric distribution utility shall file an application with the commission. An electric distribution utility may file its application with the commission prior to the effective date of the commission rules required under division (A)(2) of this section, and, as the commission determines necessary, the utility shall immediately conform its filing to the rules upon their taking effect.	39 40 41 42 43 44 45 46 47
An application under this division shall detail the electric distribution utility's proposed compliance with the requirements of division (A)(1) of this section and with commission rules under	48 49 50

division (A)(2) of this section and demonstrate that all of the 51
following requirements are met: 52

(1) The electric distribution utility or its transmission 53
service affiliate belongs to at least one regional transmission 54
organization that has been approved by the federal energy 55
regulatory commission; or there otherwise is comparable and 56
nondiscriminatory access to the electric transmission grid. 57

(2) Any such regional transmission organization has a 58
market-monitor function and the ability to take actions to 59
identify and mitigate market power or the electric distribution 60
utility's market conduct; or a similar market monitoring function 61
exists with commensurate ability to identify and monitor market 62
conditions and mitigate conduct associated with the exercise of 63
market power. 64

(3) A published source of information is available publicly 65
or through subscription that identifies pricing information for 66
traded electricity on- and off-peak energy products that are 67
contracts for delivery beginning at least two years from the date 68
of the publication and is updated on a regular basis. 69

The commission shall initiate a proceeding and, within ninety 70
days after the application's filing date, shall determine by order 71
whether the electric distribution utility and its market-rate 72
offer meet all of the foregoing requirements. If the finding is 73
positive, the electric distribution utility may initiate its 74
competitive bidding process. If the finding is negative as to one 75
or more requirements, the commission in the order shall direct the 76
electric distribution utility regarding how any deficiency may be 77
remedied in a timely manner to the commission's satisfaction; 78
otherwise, the electric distribution utility shall withdraw the 79
application. However, if such remedy is made and the subsequent 80
finding is positive and also if the electric distribution utility 81
made a simultaneous filing under this section and section 4928.143 82

of the Revised Code, the utility shall not initiate its 83
competitive bid until at least one hundred fifty days after the 84
filing date of those applications. 85

(C) Upon the completion of the competitive bidding process 86
authorized by divisions (A) and (B) of this section, including for 87
the purpose of division (D) of this section, the commission shall 88
select the least-cost bid winner or winners of that process, and 89
such selected bid or bids, as prescribed as retail rates by the 90
commission, shall be the electric distribution utility's standard 91
service offer unless the commission, by order issued before the 92
third calendar day following the conclusion of the competitive 93
bidding process for the market rate offer, determines that one or 94
more of the following criteria were not met: 95

(1) Each portion of the bidding process was oversubscribed, 96
such that the amount of supply bid upon was greater than the 97
amount of the load bid out. 98

(2) There were four or more bidders. 99

(3) At least twenty-five per cent of the load is bid upon by 100
one or more persons other than the electric distribution utility. 101

All costs incurred by the electric distribution utility as a 102
result of or related to the competitive bidding process or to 103
procuring generation service to provide the standard service 104
offer, including the costs of energy and capacity and the costs of 105
all other products and services procured as a result of the 106
competitive bidding process, shall be timely recovered through the 107
standard service offer price, and, for that purpose, the 108
commission shall approve a reconciliation mechanism, other 109
recovery mechanism, or a combination of such mechanisms for the 110
utility. 111

(D) The first application filed under this section by an 112
electric distribution utility that, as of July 31, 2008, directly 113

owns, in whole or in part, operating electric generating 114
facilities that had been used and useful in this state shall 115
require that a portion of that utility's standard service offer 116
load for the first five years of the market rate offer be 117
competitively bid under division (A) of this section as follows: 118
ten per cent of the load in year one, not more than twenty per 119
cent in year two, thirty per cent in year three, forty per cent in 120
year four, and fifty per cent in year five. Consistent with those 121
percentages, the commission shall determine the actual percentages 122
for each year of years one through five. The standard service 123
offer price for retail electric generation service under this 124
first application shall be a proportionate blend of the bid price 125
and the generation service price for the remaining standard 126
service offer load, which latter price shall be equal to the 127
electric distribution utility's most recent standard service offer 128
price, adjusted upward or downward as the commission determines 129
reasonable, relative to the jurisdictional portion of any known 130
and measurable changes from the level of any one or more of the 131
following costs as reflected in that most recent standard service 132
offer price: 133

- (1) The electric distribution utility's prudently incurred 134
cost of fuel used to produce electricity; 135
- (2) Its prudently incurred purchased power costs; 136
- (3) Its prudently incurred costs of satisfying the ~~supply and~~ 137
demand portfolio requirements of this state, including, but not 138
limited to, ~~renewable energy resource and~~ energy efficiency 139
requirements; 140
- (4) Its costs prudently incurred to comply with environmental 141
laws and regulations, with consideration of the derating of any 142
facility associated with those costs. 143

In making any adjustment to the most recent standard service 144

offer price on the basis of costs described in division (D) of 145
this section, the commission shall include the benefits that may 146
become available to the electric distribution utility as a result 147
of or in connection with the costs included in the adjustment, 148
including, but not limited to, the utility's receipt of emissions 149
credits or its receipt of tax benefits or of other benefits, and, 150
accordingly, the commission may impose such conditions on the 151
adjustment to ensure that any such benefits are properly aligned 152
with the associated cost responsibility. The commission shall also 153
determine how such adjustments will affect the electric 154
distribution utility's return on common equity that may be 155
achieved by those adjustments. The commission shall not apply its 156
consideration of the return on common equity to reduce any 157
adjustments authorized under this division unless the adjustments 158
will cause the electric distribution utility to earn a return on 159
common equity that is significantly in excess of the return on 160
common equity that is earned by publicly traded companies, 161
including utilities, that face comparable business and financial 162
risk, with such adjustments for capital structure as may be 163
appropriate. The burden of proof for demonstrating that 164
significantly excessive earnings will not occur shall be on the 165
electric distribution utility. 166

Additionally, the commission may adjust the electric 167
distribution utility's most recent standard service offer price by 168
such just and reasonable amount that the commission determines 169
necessary to address any emergency that threatens the utility's 170
financial integrity or to ensure that the resulting revenue 171
available to the utility for providing the standard service offer 172
is not so inadequate as to result, directly or indirectly, in a 173
taking of property without compensation pursuant to Section 19 of 174
Article I, Ohio Constitution. The electric distribution utility 175
has the burden of demonstrating that any adjustment to its most 176
recent standard service offer price is proper in accordance with 177

this division. 178

(E) Beginning in the second year of a blended price under 179
division (D) of this section and notwithstanding any other 180
requirement of this section, the commission may alter 181
prospectively the proportions specified in that division to 182
mitigate any effect of an abrupt or significant change in the 183
electric distribution utility's standard service offer price that 184
would otherwise result in general or with respect to any rate 185
group or rate schedule but for such alteration. Any such 186
alteration shall be made not more often than annually, and the 187
commission shall not, by altering those proportions and in any 188
event, including because of the length of time, as authorized 189
under division (C) of this section, taken to approve the market 190
rate offer, cause the duration of the blending period to exceed 191
ten years as counted from the effective date of the approved 192
market rate offer. Additionally, any such alteration shall be 193
limited to an alteration affecting the prospective proportions 194
used during the blending period and shall not affect any blending 195
proportion previously approved and applied by the commission under 196
this division. 197

(F) An electric distribution utility that has received 198
commission approval of its first application under division (C) of 199
this section shall not, nor ever shall be authorized or required 200
by the commission to, file an application under section 4928.143 201
of the Revised Code. 202

Sec. 4928.143. (A) For the purpose of complying with section 203
4928.141 of the Revised Code, an electric distribution utility may 204
file an application for public utilities commission approval of an 205
electric security plan as prescribed under division (B) of this 206
section. The utility may file that application prior to the 207
effective date of any rules the commission may adopt for the 208

purpose of this section, and, as the commission determines 209
necessary, the utility immediately shall conform its filing to 210
those rules upon their taking effect. 211

(B) Notwithstanding any other provision of Title XLIX of the 212
Revised Code to the contrary except division (D) of this section, 213
divisions (I), (J), and (K) of section 4928.20, ~~division (E) of~~ 214
~~section 4928.64,~~ and section 4928.69 of the Revised Code: 215

(1) An electric security plan shall include provisions 216
relating to the supply and pricing of electric generation service. 217
In addition, if the proposed electric security plan has a term 218
longer than three years, it may include provisions in the plan to 219
permit the commission to test the plan pursuant to division (E) of 220
this section and any transitional conditions that should be 221
adopted by the commission if the commission terminates the plan as 222
authorized under that division. 223

(2) The plan may provide for or include, without limitation, 224
any of the following: 225

(a) Automatic recovery of any of the following costs of the 226
electric distribution utility, provided the cost is prudently 227
incurred: the cost of fuel used to generate the electricity 228
supplied under the offer; the cost of purchased power supplied 229
under the offer, including the cost of energy and capacity, and 230
including purchased power acquired from an affiliate; the cost of 231
emission allowances; and the cost of federally mandated carbon or 232
energy taxes; 233

(b) A reasonable allowance for construction work in progress 234
for any of the electric distribution utility's cost of 235
constructing an electric generating facility or for an 236
environmental expenditure for any electric generating facility of 237
the electric distribution utility, provided the cost is incurred 238
or the expenditure occurs on or after January 1, 2009. Any such 239

allowance shall be subject to the construction work in progress 240
allowance limitations of division (A) of section 4909.15 of the 241
Revised Code, except that the commission may authorize such an 242
allowance upon the incurrence of the cost or occurrence of the 243
expenditure. No such allowance for generating facility 244
construction shall be authorized, however, unless the commission 245
first determines in the proceeding that there is need for the 246
facility based on resource planning projections submitted by the 247
electric distribution utility. Further, no such allowance shall be 248
authorized unless the facility's construction was sourced through 249
a competitive bid process, regarding which process the commission 250
may adopt rules. An allowance approved under division (B)(2)(b) of 251
this section shall be established as a nonbypassable surcharge for 252
the life of the facility. 253

(c) The establishment of a nonbypassable surcharge for the 254
life of an electric generating facility that is owned or operated 255
by the electric distribution utility, was sourced through a 256
competitive bid process subject to any such rules as the 257
commission adopts under division (B)(2)(b) of this section, and is 258
newly used and useful on or after January 1, 2009, which surcharge 259
shall cover all costs of the utility specified in the application, 260
excluding costs recovered through a surcharge under division 261
(B)(2)(b) of this section. However, no surcharge shall be 262
authorized unless the commission first determines in the 263
proceeding that there is need for the facility based on resource 264
planning projections submitted by the electric distribution 265
utility. Additionally, if a surcharge is authorized for a facility 266
pursuant to plan approval under division (C) of this section and 267
as a condition of the continuation of the surcharge, the electric 268
distribution utility shall dedicate to Ohio consumers the capacity 269
and energy and the rate associated with the cost of that facility. 270
Before the commission authorizes any surcharge pursuant to this 271
division, it may consider, as applicable, the effects of any 272

decommissioning, deratings, and retirements.	273
(d) Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service;	274 275 276 277 278 279 280
(e) Automatic increases or decreases in any component of the standard service offer price;	281 282
(f) Consistent with sections 4928.23 to 4928.2318 of the Revised Code, both of the following:	283 284
(i) Provisions for the electric distribution utility to securitize any phase-in, inclusive of carrying charges, of the utility's standard service offer price, which phase-in is authorized in accordance with section 4928.144 of the Revised Code;	285 286 287 288 289
(ii) Provisions for the recovery of the utility's cost of securitization.	290 291
(g) Provisions relating to transmission, ancillary, congestion, or any related service required for the standard service offer, including provisions for the recovery of any cost of such service that the electric distribution utility incurs on or after that date pursuant to the standard service offer;	292 293 294 295 296
(h) Provisions regarding the utility's distribution service, including, without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary, provisions regarding single issue ratemaking, a revenue decoupling mechanism or any other incentive ratemaking, and provisions regarding distribution infrastructure and modernization incentives for the electric distribution utility. The latter may include a long-term	297 298 299 300 301 302 303

energy delivery infrastructure modernization plan for that utility 304
or any plan providing for the utility's recovery of costs, 305
including lost revenue, shared savings, and avoided costs, and a 306
just and reasonable rate of return on such infrastructure 307
modernization. As part of its determination as to whether to allow 308
in an electric distribution utility's electric security plan 309
inclusion of any provision described in division (B)(2)(h) of this 310
section, the commission shall examine the reliability of the 311
electric distribution utility's distribution system and ensure 312
that customers' and the electric distribution utility's 313
expectations are aligned and that the electric distribution 314
utility is placing sufficient emphasis on and dedicating 315
sufficient resources to the reliability of its distribution 316
system. 317

(i) Provisions under which the electric distribution utility 318
may implement economic development, job retention, and energy 319
efficiency programs, which provisions may allocate program costs 320
across all classes of customers of the utility and those of 321
electric distribution utilities in the same holding company 322
system. 323

(C)(1) The burden of proof in the proceeding shall be on the 324
electric distribution utility. The commission shall issue an order 325
under this division for an initial application under this section 326
not later than one hundred fifty days after the application's 327
filing date and, for any subsequent application by the utility 328
under this section, not later than two hundred seventy-five days 329
after the application's filing date. Subject to division (D) of 330
this section, the commission by order shall approve or modify and 331
approve an application filed under division (A) of this section if 332
it finds that the electric security plan so approved, including 333
its pricing and all other terms and conditions, including any 334
deferrals and any future recovery of deferrals, is more favorable 335

in the aggregate as compared to the expected results that would 336
otherwise apply under section 4928.142 of the Revised Code. 337
Additionally, if the commission so approves an application that 338
contains a surcharge under division (B)(2)(b) or (c) of this 339
section, the commission shall ensure that the benefits derived for 340
any purpose for which the surcharge is established are reserved 341
and made available to those that bear the surcharge. Otherwise, 342
the commission by order shall disapprove the application. 343

(2)(a) If the commission modifies and approves an application 344
under division (C)(1) of this section, the electric distribution 345
utility may withdraw the application, thereby terminating it, and 346
may file a new standard service offer under this section or a 347
standard service offer under section 4928.142 of the Revised Code. 348

(b) If the utility terminates an application pursuant to 349
division (C)(2)(a) of this section or if the commission 350
disapproves an application under division (C)(1) of this section, 351
the commission shall issue such order as is necessary to continue 352
the provisions, terms, and conditions of the utility's most recent 353
standard service offer, along with any expected increases or 354
decreases in fuel costs from those contained in that offer, until 355
a subsequent offer is authorized pursuant to this section or 356
section 4928.142 of the Revised Code, respectively. 357

(D) Regarding the rate plan requirement of division (A) of 358
section 4928.141 of the Revised Code, if an electric distribution 359
utility that has a rate plan that extends beyond December 31, 360
2008, files an application under this section for the purpose of 361
its compliance with division (A) of section 4928.141 of the 362
Revised Code, that rate plan and its terms and conditions are 363
hereby incorporated into its proposed electric security plan and 364
shall continue in effect until the date scheduled under the rate 365
plan for its expiration, and that portion of the electric security 366
plan shall not be subject to commission approval or disapproval 367

under division (C) of this section, and the earnings test provided 368
for in division (F) of this section shall not apply until after 369
the expiration of the rate plan. However, that utility may include 370
in its electric security plan under this section, and the 371
commission may approve, modify and approve, or disapprove subject 372
to division (C) of this section, provisions for the incremental 373
recovery or the deferral of any costs that are not being recovered 374
under the rate plan and that the utility incurs during that 375
continuation period to comply with section 4928.141, ~~division (B)~~ 376
~~of section 4928.64, of the Revised Code~~ or division (A) of section 377
4928.66 of the Revised Code. 378

(E) If an electric security plan approved under division (C) 379
of this section, except one withdrawn by the utility as authorized 380
under that division, has a term, exclusive of phase-ins or 381
deferrals, that exceeds three years from the effective date of the 382
plan, the commission shall test the plan in the fourth year, and 383
if applicable, every fourth year thereafter, to determine whether 384
the plan, including its then-existing pricing and all other terms 385
and conditions, including any deferrals and any future recovery of 386
deferrals, continues to be more favorable in the aggregate and 387
during the remaining term of the plan as compared to the expected 388
results that would otherwise apply under section 4928.142 of the 389
Revised Code. The commission shall also determine the prospective 390
effect of the electric security plan to determine if that effect 391
is substantially likely to provide the electric distribution 392
utility with a return on common equity that is significantly in 393
excess of the return on common equity that is likely to be earned 394
by publicly traded companies, including utilities, that face 395
comparable business and financial risk, with such adjustments for 396
capital structure as may be appropriate. The burden of proof for 397
demonstrating that significantly excessive earnings will not occur 398
shall be on the electric distribution utility. If the test results 399
are in the negative or the commission finds that continuation of 400

the electric security plan will result in a return on equity that 401
is significantly in excess of the return on common equity that is 402
likely to be earned by publicly traded companies, including 403
utilities, that will face comparable business and financial risk, 404
with such adjustments for capital structure as may be appropriate, 405
during the balance of the plan, the commission may terminate the 406
electric security plan, but not until it shall have provided 407
interested parties with notice and an opportunity to be heard. The 408
commission may impose such conditions on the plan's termination as 409
it considers reasonable and necessary to accommodate the 410
transition from an approved plan to the more advantageous 411
alternative. In the event of an electric security plan's 412
termination pursuant to this division, the commission shall permit 413
the continued deferral and phase-in of any amounts that occurred 414
prior to that termination and the recovery of those amounts as 415
contemplated under that electric security plan. 416

(F) With regard to the provisions that are included in an 417
electric security plan under this section, the commission shall 418
consider, following the end of each annual period of the plan, if 419
any such adjustments resulted in excessive earnings as measured by 420
whether the earned return on common equity of the electric 421
distribution utility is significantly in excess of the return on 422
common equity that was earned during the same period by publicly 423
traded companies, including utilities, that face comparable 424
business and financial risk, with such adjustments for capital 425
structure as may be appropriate. Consideration also shall be given 426
to the capital requirements of future committed investments in 427
this state. The burden of proof for demonstrating that 428
significantly excessive earnings did not occur shall be on the 429
electric distribution utility. If the commission finds that such 430
adjustments, in the aggregate, did result in significantly 431
excessive earnings, it shall require the electric distribution 432
utility to return to consumers the amount of the excess by 433

prospective adjustments; provided that, upon making such 434
prospective adjustments, the electric distribution utility shall 435
have the right to terminate the plan and immediately file an 436
application pursuant to section 4928.142 of the Revised Code. Upon 437
termination of a plan under this division, rates shall be set on 438
the same basis as specified in division (C)(2)(b) of this section, 439
and the commission shall permit the continued deferral and 440
phase-in of any amounts that occurred prior to that termination 441
and the recovery of those amounts as contemplated under that 442
electric security plan. In making its determination of 443
significantly excessive earnings under this division, the 444
commission shall not consider, directly or indirectly, the 445
revenue, expenses, or earnings of any affiliate or parent company. 446

Sec. 4928.20. (A) The legislative authority of a municipal 447
corporation may adopt an ordinance, or the board of township 448
trustees of a township or the board of county commissioners of a 449
county may adopt a resolution, under which, on or after the 450
starting date of competitive retail electric service, it may 451
aggregate in accordance with this section the retail electrical 452
loads located, respectively, within the municipal corporation, 453
township, or unincorporated area of the county and, for that 454
purpose, may enter into service agreements to facilitate for those 455
loads the sale and purchase of electricity. The legislative 456
authority or board also may exercise such authority jointly with 457
any other such legislative authority or board. For customers that 458
are not mercantile customers, an ordinance or resolution under 459
this division shall specify whether the aggregation will occur 460
only with the prior, affirmative consent of each person owning, 461
occupying, controlling, or using an electric load center proposed 462
to be aggregated or will occur automatically for all such persons 463
pursuant to the opt-out requirements of division (D) of this 464
section. The aggregation of mercantile customers shall occur only 465

with the prior, affirmative consent of each such person owning, 466
occupying, controlling, or using an electric load center proposed 467
to be aggregated. Nothing in this division, however, authorizes 468
the aggregation of the retail electric loads of an electric load 469
center, as defined in section 4933.81 of the Revised Code, that is 470
located in the certified territory of a nonprofit electric 471
supplier under sections 4933.81 to 4933.90 of the Revised Code or 472
an electric load center served by transmission or distribution 473
facilities of a municipal electric utility. 474

(B) If an ordinance or resolution adopted under division (A) 475
of this section specifies that aggregation of customers that are 476
not mercantile customers will occur automatically as described in 477
that division, the ordinance or resolution shall direct the board 478
of elections to submit the question of the authority to aggregate 479
to the electors of the respective municipal corporation, township, 480
or unincorporated area of a county at a special election on the 481
day of the next primary or general election in the municipal 482
corporation, township, or county. The legislative authority or 483
board shall certify a copy of the ordinance or resolution to the 484
board of elections not less than ninety days before the day of the 485
special election. No ordinance or resolution adopted under 486
division (A) of this section that provides for an election under 487
this division shall take effect unless approved by a majority of 488
the electors voting upon the ordinance or resolution at the 489
election held pursuant to this division. 490

(C) Upon the applicable requisite authority under divisions 491
(A) and (B) of this section, the legislative authority or board 492
shall develop a plan of operation and governance for the 493
aggregation program so authorized. Before adopting a plan under 494
this division, the legislative authority or board shall hold at 495
least two public hearings on the plan. Before the first hearing, 496
the legislative authority or board shall publish notice of the 497

hearings once a week for two consecutive weeks in a newspaper of 498
general circulation in the jurisdiction or as provided in section 499
7.16 of the Revised Code. The notice shall summarize the plan and 500
state the date, time, and location of each hearing. 501

(D) No legislative authority or board, pursuant to an 502
ordinance or resolution under divisions (A) and (B) of this 503
section that provides for automatic aggregation of customers that 504
are not mercantile customers as described in division (A) of this 505
section, shall aggregate the electrical load of any electric load 506
center located within its jurisdiction unless it in advance 507
clearly discloses to the person owning, occupying, controlling, or 508
using the load center that the person will be enrolled 509
automatically in the aggregation program and will remain so 510
enrolled unless the person affirmatively elects by a stated 511
procedure not to be so enrolled. The disclosure shall state 512
prominently the rates, charges, and other terms and conditions of 513
enrollment. The stated procedure shall allow any person enrolled 514
in the aggregation program the opportunity to opt out of the 515
program every three years, without paying a switching fee. Any 516
such person that opts out before the commencement of the 517
aggregation program pursuant to the stated procedure shall default 518
to the standard service offer provided under section 4928.14 or 519
division (D) of section 4928.35 of the Revised Code until the 520
person chooses an alternative supplier. 521

(E)(1) With respect to a governmental aggregation for a 522
municipal corporation that is authorized pursuant to divisions (A) 523
to (D) of this section, resolutions may be proposed by initiative 524
or referendum petitions in accordance with sections 731.28 to 525
731.41 of the Revised Code. 526

(2) With respect to a governmental aggregation for a township 527
or the unincorporated area of a county, which aggregation is 528
authorized pursuant to divisions (A) to (D) of this section, 529

resolutions may be proposed by initiative or referendum petitions 530
in accordance with sections 731.28 to 731.40 of the Revised Code, 531
except that: 532

(a) The petitions shall be filed, respectively, with the 533
township fiscal officer or the board of county commissioners, who 534
shall perform those duties imposed under those sections upon the 535
city auditor or village clerk. 536

(b) The petitions shall contain the signatures of not less 537
than ten per cent of the total number of electors in, 538
respectively, the township or the unincorporated area of the 539
county who voted for the office of governor at the preceding 540
general election for that office in that area. 541

(F) A governmental aggregator under division (A) of this 542
section is not a public utility engaging in the wholesale purchase 543
and resale of electricity, and provision of the aggregated service 544
is not a wholesale utility transaction. A governmental aggregator 545
shall be subject to supervision and regulation by the public 546
utilities commission only to the extent of any competitive retail 547
electric service it provides and commission authority under this 548
chapter. 549

(G) This section does not apply in the case of a municipal 550
corporation that supplies such aggregated service to electric load 551
centers to which its municipal electric utility also supplies a 552
noncompetitive retail electric service through transmission or 553
distribution facilities the utility singly or jointly owns or 554
operates. 555

(H) A governmental aggregator shall not include in its 556
aggregation the accounts of any of the following: 557

(1) A customer that has opted out of the aggregation; 558

(2) A customer in contract with a certified electric services 559
company; 560

(3) A customer that has a special contract with an electric distribution utility; 561
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(4) A customer that is not located within the governmental aggregator's governmental boundaries; 563
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(5) Subject to division (C) of section 4928.21 of the Revised Code, a customer who appears on the "do not aggregate" list maintained under that section. 565
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(I) Customers that are part of a governmental aggregation under this section shall be responsible only for such portion of a surcharge under section 4928.144 of the Revised Code that is proportionate to the benefits, as determined by the commission, that electric load centers within the jurisdiction of the governmental aggregation as a group receive. The proportionate surcharge so established shall apply to each customer of the governmental aggregation while the customer is part of that aggregation. If a customer ceases being such a customer, the otherwise applicable surcharge shall apply. Nothing in this section shall result in less than full recovery by an electric distribution utility of any surcharge authorized under section 4928.144 of the Revised Code. Nothing in this section shall result in less than the full and timely imposition, charging, collection, and adjustment by an electric distribution utility, its assignee, or any collection agent, of the phase-in-recovery charges authorized pursuant to a final financing order issued pursuant to sections 4928.23 to 4928.2318 of the Revised Code. 568
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(J) On behalf of the customers that are part of a governmental aggregation under this section and by filing written notice with the public utilities commission, the legislative authority that formed or is forming that governmental aggregation may elect not to receive standby service within the meaning of division (B)(2)(d) of section 4928.143 of the Revised Code from an electric distribution utility in whose certified territory the 586
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governmental aggregation is located and that operates under an 593
approved electric security plan under that section. Upon the 594
filing of that notice, the electric distribution utility shall not 595
charge any such customer to whom competitive retail electric 596
generation service is provided by another supplier under the 597
governmental aggregation for the standby service. Any such 598
consumer that returns to the utility for competitive retail 599
electric service shall pay the market price of power incurred by 600
the utility to serve that consumer ~~plus any amount attributable to~~ 601
~~the utility's cost of compliance with the alternative energy~~ 602
~~resource provisions of section 4928.64 of the Revised Code to~~ 603
~~serve the consumer.~~ Such market price shall include, but not be 604
limited to, capacity and energy charges; all charges associated 605
with the provision of that power supply through the regional 606
transmission organization, including, but not limited to, 607
transmission, ancillary services, congestion, and settlement and 608
administrative charges; and all other costs incurred by the 609
utility that are associated with the procurement, provision, and 610
administration of that power supply, as such costs may be approved 611
by the commission. The period of time during which the market 612
price ~~and alternative energy resource amount~~ shall be so assessed 613
on the consumer shall be from the time the consumer so returns to 614
the electric distribution utility until the expiration of the 615
electric security plan. However, if that period of time is 616
expected to be more than two years, the commission may reduce the 617
time period to a period of not less than two years. 618

(K) The commission shall adopt rules to encourage and promote 619
large-scale governmental aggregation in this state. For that 620
purpose, the commission shall conduct an immediate review of any 621
rules it has adopted for the purpose of this section that are in 622
effect on the effective date of the amendment of this section by 623
S.B. 221 of the 127th general assembly, July 31, 2008. Further, 624
within the context of an electric security plan under section 625

4928.143 of the Revised Code, the commission shall consider the effect on large-scale governmental aggregation of any nonbypassable generation charges, however collected, that would be established under that plan, except any nonbypassable generation charges that relate to any cost incurred by the electric distribution utility, the deferral of which has been authorized by the commission prior to the effective date of the amendment of this section by S.B. 221 of the 127th general assembly, July 31, 2008.

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

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

(1) Revenues remitted to the director after collection by each electric distribution utility in this state of a temporary rider on retail electric distribution service rates as such rates are determined by the public utilities commission pursuant to this chapter. The rider shall be a uniform amount statewide, determined by the director of development, after consultation with the public benefits advisory board created by section 4928.58 of the Revised Code. The amount shall be determined by dividing an aggregate revenue target for a given year as determined by the director, after consultation with the advisory board, by the number of customers of electric distribution utilities in this state in the prior year. Such aggregate revenue target shall not exceed more

than fifteen million dollars in any year through 2005 and shall 657
not exceed more than five million dollars in any year after 2005. 658
The rider shall be imposed beginning on the effective date of the 659
amendment of this section by Sub. H.B. 251 of the 126th general 660
assembly, January 4, 2007, and shall terminate at the end of ten 661
years following the starting date of competitive retail electric 662
service or until the advanced energy fund, including interest, 663
reaches one hundred million dollars, whichever is first. 664

(2) Revenues from payments, repayments, and collections under 665
the advanced energy program and from program income; 666

(3) Revenues remitted to the director after collection by a 667
municipal electric utility or electric cooperative in this state 668
upon the utility's or cooperative's decision to participate in the 669
advanced energy fund; 670

~~(4) Revenues from renewable energy compliance payments as 671
provided under division (C)(2) of section 4928.64 of the Revised 672
Code;~~ 673

~~(5) Revenue from forfeitures under division (C) of section 674
4928.66 of the Revised Code;~~ 675

~~(6)~~(5) Funds transferred pursuant to division (B) of Section 676
512.10 of S.B. 315 of the 129th general assembly; 677

~~(7)~~(6) Interest earnings on the advanced energy fund. 678

(C)(1) Each electric distribution utility in this state shall 679
remit to the director on a quarterly basis the revenues described 680
in divisions (B)(1) and (2) of this section. Such remittances 681
shall occur within thirty days after the end of each calendar 682
quarter. 683

(2) Each participating electric cooperative and participating 684
municipal electric utility shall remit to the director on a 685
quarterly basis the revenues described in division (B)(3) of this 686

section. Such remittances shall occur within thirty days after the 687
end of each calendar quarter. For the purpose of division (B)(3) 688
of this section, the participation of an electric cooperative or 689
municipal electric utility in the energy efficiency revolving loan 690
program as it existed immediately prior to the effective date of 691
the amendment of this section by Sub. H.B. 251 of the 126th 692
general assembly, January 4, 2007, does not constitute a decision 693
to participate in the advanced energy fund under this section as 694
so amended. 695

(3) All remittances under divisions (C)(1) and (2) of this 696
section shall continue only until the end of ten years following 697
the starting date of competitive retail electric service or until 698
the advanced energy fund, including interest, reaches one hundred 699
million dollars, whichever is first. 700

(D) Any moneys collected in rates for non-low-income customer 701
energy efficiency programs, as of October 5, 1999, and not 702
contributed to the energy efficiency revolving loan fund 703
authorized under this section prior to the effective date of its 704
amendment by Sub. H.B. 251 of the 126th general assembly, January 705
4, 2007, shall be used to continue to fund cost-effective, 706
residential energy efficiency programs, be contributed into the 707
universal service fund as a supplement to that required under 708
section 4928.53 of the Revised Code, or be returned to ratepayers 709
in the form of a rate reduction at the option of the affected 710
electric distribution utility. 711

Sec. 4928.62. (A) There is hereby created the advanced energy 712
program, which shall be administered by the director of 713
development. Under the program, the director may authorize the use 714
of moneys in the advanced energy fund for financial, technical, 715
and related assistance for advanced energy projects in this state 716
or for economic development assistance, in furtherance of the 717

purposes set forth in section 4928.63 of the Revised Code. 718

(1) To the extent feasible given approved applications for 719
assistance, the assistance shall be distributed among the 720
certified territories of electric distribution utilities and 721
participating electric cooperatives, and among the service areas 722
of participating municipal electric utilities, in amounts 723
proportionate to the remittances of each utility and cooperative 724
under divisions (B)(1) and (3) of section 4928.61 of the Revised 725
Code. 726

(2) The funds described in division (B)~~(4)~~(5) of section 727
4928.61 of the Revised Code shall not be subject to the 728
territorial requirements of division (A)(1) of this section. 729

(3) The director shall not authorize financial assistance for 730
an advanced energy project under the program unless the director 731
first determines that the project will create new jobs or preserve 732
existing jobs in this state or use innovative technologies or 733
materials. 734

(B) In carrying out sections 4928.61 to 4928.63 of the 735
Revised Code, the director may do all of the following to further 736
the public interest in advanced energy projects and economic 737
development: 738

(1) Award grants, contracts, loans, loan participation 739
agreements, linked deposits, and energy production incentives; 740

(2) Acquire in the name of the director any property of any 741
kind or character in accordance with this section, by purchase, 742
purchase at foreclosure, or exchange, on such terms and in such 743
manner as the director considers proper; 744

(3) Make and enter into all contracts and agreements 745
necessary or incidental to the performance of the director's 746
duties and the exercise of the director's powers under sections 747
4928.61 to 4928.63 of the Revised Code; 748

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

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

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

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

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

(E) Nothing in the amendments of sections 4928.61, 4928.62, and 4928.63 of the Revised Code by Sub. H.B. 251 of the 126th general assembly shall affect any pending or effected assistance,

pending or effected purchases or exchanges of property made, or 780
pending or effected contracts or agreements entered into pursuant 781
to division (A) or (B) of this section as the section existed 782
prior to the effective date of those amendments, January 4, 2007, 783
or shall affect the exemption provided under division (C) of this 784
section as the section existed prior to that effective date. 785

(F) Any assistance a school district receives for an advanced 786
energy project, including a geothermal heating, ventilating, and 787
air conditioning system, shall be in addition to any assistance 788
provided under Chapter 3318. of the Revised Code and shall not be 789
included as part of the district or state portion of the basic 790
project cost under that chapter. 791

Sec. 5501.311. (A) As used in this section, "alternative 792
energy generating facility" means a facility that uses advanced 793
energy or renewable energy resources to produce electricity. 794
"Advanced energy resource" and "renewable energy resources" have 795
the same meaning as in section 4928.01 of the Revised Code. 796

(B) Notwithstanding sections 123.01 and 127.16 of the Revised 797
Code the director of transportation may lease or lease-purchase 798
all or any part of a transportation facility to or from one or 799
more persons, one or more governmental agencies, a transportation 800
improvement district, or any combination thereof, and may grant 801
leases, easements, or licenses for lands under the control of the 802
department of transportation. The director may adopt rules 803
necessary to give effect to this section. 804

~~(B)~~(C) Plans and specifications for the construction of a 805
transportation facility under a lease or lease-purchase agreement 806
are subject to approval of the director and must meet or exceed 807
all applicable standards of the department. 808

~~(C)~~(D) Any lease or lease-purchase agreement under which the 809
department is the lessee shall be for a period not exceeding the 810

then current two-year period for which appropriations have been 811
made by the general assembly to the department, and such agreement 812
may contain such other terms as the department and the other 813
parties thereto agree, notwithstanding any other provision of law, 814
including provisions that rental payments in amounts sufficient to 815
pay bond service charges payable during the current two-year lease 816
term shall be an absolute and unconditional obligation of the 817
department independent of all other duties under the agreement 818
without set-off or deduction or any other similar rights or 819
defenses. Any such agreement may provide for renewal of the 820
agreement at the end of each term for another term, not exceeding 821
two years, provided that no renewal shall be effective until the 822
effective date of an appropriation enacted by the general assembly 823
from which the department may lawfully pay rentals under such 824
agreement. Any such agreement may include, without limitation, any 825
agreement by the department with respect to any costs of 826
transportation facilities to be included prior to acquisition and 827
construction of such transportation facilities. Any such agreement 828
shall not constitute a debt or pledge of the faith and credit of 829
the state, or of any political subdivision of the state, and the 830
lessor shall have no right to have taxes or excises levied by the 831
general assembly, or the taxing authority of any political 832
subdivision of the state, for the payment of rentals thereunder. 833
Any such agreement shall contain a statement to that effect. 834

~~(D)~~(E) A municipal corporation, township, or county may use 835
service payments in lieu of taxes credited to special funds or 836
accounts pursuant to sections 5709.43, 5709.75, and 5709.80 of the 837
Revised Code to provide its contribution to the cost of a 838
transportation facility, provided such facility was among the 839
purposes for which such service payments were authorized. The 840
contribution may be in the form of a lump sum or periodic 841
payments. 842

~~(E)~~(F) Pursuant to the "Telecommunications Act of 1996," 110 843
Stat. 152, 47 U.S.C. 332 note, the director may grant a lease, 844
easement, or license in a transportation facility to a 845
telecommunications service provider for construction, placement, 846
or operation of a telecommunications facility. An interest granted 847
under this division is subject to all of the following conditions: 848

(1) The transportation facility is owned in fee simple or 849
easement by this state at the time the lease, easement, or license 850
is granted to the telecommunications provider. 851

(2) The lease, easement, or license shall be granted on a 852
competitive basis in accordance with policies and procedures to be 853
determined by the director. The policies and procedures may 854
include provisions for master leases for multiple sites. 855

(3) The telecommunications facility shall be designed to 856
accommodate the state's multi-agency radio communication system, 857
the intelligent transportation system, and the department's 858
communication system as the director may determine is necessary 859
for highway or other departmental purposes. 860

(4) The telecommunications facility shall be designed to 861
accommodate such additional telecommunications equipment as may 862
feasibly be co-located thereon as determined in the discretion of 863
the director. 864

(5) The telecommunications service providers awarded the 865
lease, easement, or license, agree to permit other 866
telecommunications service providers to co-locate on the 867
telecommunications facility, and agree to the terms and conditions 868
of the co-location as determined in the discretion of the 869
director. 870

(6) The director shall require indemnity agreements in favor 871
of the department as a condition of any lease, easement, or 872
license granted under this division. Each indemnity agreement 873

shall secure this state and its agents from liability for damages 874
arising out of safety hazards, zoning, and any other matter of 875
public interest the director considers necessary. 876

(7) The telecommunications service provider fully complies 877
with any permit issued under section 5515.01 of the Revised Code 878
pertaining to land that is the subject of the lease, easement, or 879
license. 880

(8) All plans and specifications shall meet with the 881
director's approval. 882

(9) Any other conditions the director determines necessary. 883

~~(F)~~(G) In accordance with section 5501.031 of the Revised 884
Code, to further efforts to promote energy conservation and energy 885
efficiency, the director may grant a lease, easement, or license 886
in a transportation facility to a utility service provider that 887
has received its certificate from the Ohio power siting board or 888
appropriate local entity for construction, placement, or operation 889
of an alternative energy generating facility ~~service provider as~~ 890
~~defined in section 4928.64 of the Revised Code.~~ An interest 891
granted under this division is subject to all of the following 892
conditions: 893

(1) The transportation facility is owned in fee simple or in 894
easement by this state at the time the lease, easement, or license 895
is granted to the utility service provider. 896

(2) The lease, easement, or license shall be granted on a 897
competitive basis in accordance with policies and procedures to be 898
determined by the director. The policies and procedures may 899
include provisions for master leases for multiple sites. 900

(3) The alternative energy generating facility shall be 901
designed to provide energy for the department's transportation 902
facilities with the potential for selling excess power on the 903
power grid, as the director may determine is necessary for highway 904

or other departmental purposes. 905

(4) The director shall require indemnity agreements in favor 906
of the department as a condition of any lease, easement, or 907
license granted under this division. Each indemnity agreement 908
shall secure this state from liability for damages arising out of 909
safety hazards, zoning, and any other matter of public interest 910
the director considers necessary. 911

(5) The alternative energy ~~service~~ generating facility and 912
utility service provider fully ~~complies~~ comply with any permit 913
issued by the Ohio power siting board under Chapter 4906. of the 914
Revised Code and ~~complies~~ comply with section 5515.01 of the 915
Revised Code pertaining to land that is the subject of the lease, 916
easement, or license. 917

(6) All plans and specifications shall meet with the 918
director's approval. 919

(7) Any other conditions the director determines necessary. 920

~~(G)~~(H) Money the department receives under divisions ~~(E)~~ and 921
(F) and (G) of this section shall be deposited into the state 922
treasury to the credit of the highway operating fund. 923

~~(H)~~(I) A lease, easement, or license granted under division 924
~~(E)~~ or (F) or (G) of this section, and any telecommunications 925
facility or alternative energy generating facility relating to 926
such interest in a transportation facility, is hereby deemed to 927
further the essential highway purpose of building and maintaining 928
a safe, energy-efficient, and accessible transportation system. 929

Sec. 5727.75. (A) For purposes of this section: 930

(1) "Qualified energy project" means an energy project 931
certified by the director of development pursuant to this section. 932

(2) "Energy project" means a project to provide electric 933
power through the construction, installation, and use of an energy 934

facility. 935

(3) "Alternative energy zone" means a county declared as such 936
by the board of county commissioners under division (E)(1)(b) or 937
(c) of this section. 938

(4) "Full-time equivalent employee" means the total number of 939
employee-hours for which compensation was paid to individuals 940
employed at a qualified energy project for services performed at 941
the project during the calendar year divided by two thousand 942
eighty hours. 943

(5) "Solar energy project" means an energy project composed 944
of an energy facility using solar panels to generate electricity. 945

(B)(1) Tangible personal property of a qualified energy 946
project using renewable energy resources is exempt from taxation 947
for tax years 2011, 2012, 2013, and 2014 if all of the following 948
conditions are satisfied: 949

(a) On or before December 31, 2013, the owner or a lessee 950
pursuant to a sale and leaseback transaction of the project 951
submits an application to the power siting board for a certificate 952
under section 4906.20 of the Revised Code, or if that section does 953
not apply, submits an application for any approval, consent, 954
permit, or certificate or satisfies any condition required by a 955
public agency or political subdivision of this state for the 956
construction or initial operation of an energy project. 957

(b) Construction or installation of the energy facility 958
begins on or after January 1, 2009, and before January 1, 2014. 959
For the purposes of this division, construction begins on the 960
earlier of the date of application for a certificate or other 961
approval or permit described in division (B)(1)(a) of this 962
section, or the date the contract for the construction or 963
installation of the energy facility is entered into. 964

(c) For a qualified energy project with a nameplate capacity 965

of five megawatts or greater, a board of county commissioners of a 966
county in which property of the project is located has adopted a 967
resolution under division (E)(1)(b) or (c) of this section to 968
approve the application submitted under division (E) of this 969
section to exempt the property located in that county from 970
taxation. A board's adoption of a resolution rejecting an 971
application or its failure to adopt a resolution approving the 972
application does not affect the tax-exempt status of the qualified 973
energy project's property that is located in another county. 974

(2) If tangible personal property of a qualified energy 975
project using renewable energy resources was exempt from taxation 976
under this section beginning in any of tax years 2011, 2012, 2013, 977
or 2014, and the certification under division (E)(2) of this 978
section has not been revoked, the tangible personal property of 979
the qualified energy project is exempt from taxation for tax year 980
2015 and all ensuing tax years if the property was placed into 981
service before January 1, 2015, as certified in the construction 982
progress report required under division (F)(2) of this section. 983
Tangible personal property that has not been placed into service 984
before that date is taxable property subject to taxation. An 985
energy project for which certification has been revoked is 986
ineligible for further exemption under this section. Revocation 987
does not affect the tax-exempt status of the project's tangible 988
personal property for the tax year in which revocation occurs or 989
any prior tax year. 990

(C) Tangible personal property of a qualified energy project 991
using clean coal technology, advanced nuclear technology, or 992
cogeneration technology is exempt from taxation for the first tax 993
year that the property would be listed for taxation and all 994
subsequent years if all of the following circumstances are met: 995

(1) The property was placed into service before January 1, 996
2019. Tangible personal property that has not been placed into 997

service before that date is taxable property subject to taxation.	998
(2) For such a qualified energy project with a nameplate capacity of five megawatts or greater, a board of county commissioners of a county in which property of the qualified energy project is located has adopted a resolution under division (E)(1)(b) or (c) of this section to approve the application submitted under division (E) of this section to exempt the property located in that county from taxation. A board's adoption of a resolution rejecting the application or its failure to adopt a resolution approving the application does not affect the tax-exempt status of the qualified energy project's property that is located in another county.	999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009
(3) The certification for the qualified energy project issued under division (E)(2) of this section has not been revoked. An energy project for which certification has been revoked is ineligible for exemption under this section. Revocation does not affect the tax-exempt status of the project's tangible personal property for the tax year in which revocation occurs or any prior tax year.	1010 1011 1012 1013 1014 1015 1016
(D) Except as otherwise provided in <u>division (E)(1) of this section</u> , real property of a qualified energy project is exempt from taxation for any tax year for which the tangible personal property of the qualified energy project is exempted under this section.	1017 1018 1019 1020 1021
(E)(1)(a) A person may apply to the director of development for certification of an energy project as a qualified energy project on or before the following dates:	1022 1023 1024
(i) December 31, 2013, for an energy project using renewable energy resources;	1025 1026
(ii) December 31, 2015, for an energy project using clean coal technology, advanced nuclear technology, or cogeneration	1027 1028

technology. 1029

(b) The director shall forward a copy of each application for 1030
certification of an energy project with a nameplate capacity of 1031
five megawatts or greater to the board of county commissioners of 1032
each county in which the project is located and to each taxing 1033
unit with territory located in each of the affected counties. Any 1034
board that receives from the director a copy of an application 1035
submitted under this division shall adopt a resolution approving 1036
or rejecting the application unless it has adopted a resolution 1037
under division (E)(1)(c) of this section. A resolution adopted 1038
under division (E)(1)(b) or (c) of this section may require an 1039
annual service payment to be made in addition to the service 1040
payment required under division (G) of this section. The sum of 1041
the service payment required in the resolution and the service 1042
payment required under division (G) of this section shall not 1043
exceed nine thousand dollars per megawatt of nameplate capacity 1044
located in the county. The resolution shall specify the time and 1045
manner in which the payments required by the resolution shall be 1046
paid to the county treasurer. The county treasurer shall deposit 1047
the payment to the credit of the county's general fund to be used 1048
for any purpose for which money credited to that fund may be used. 1049

The board shall send copies of the resolution by certified 1050
mail to the owner of the facility and the director within thirty 1051
days after receipt of the application, or a longer period of time 1052
if authorized by the director. 1053

(c) A board of county commissioners may adopt a resolution 1054
declaring the county to be an alternative energy zone and 1055
declaring all applications submitted to the director of 1056
development under this division after the adoption of the 1057
resolution, and prior to its repeal, to be approved by the board. 1058

All tangible personal property and real property of an energy 1059
project with a nameplate capacity of five megawatts or greater is 1060

taxable if it is located in a county in which the board of county commissioners adopted a resolution rejecting the application submitted under this division or failed to adopt a resolution approving the application under division (E)(1)(b) or (c) of this section.

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

(a) The application was timely submitted.

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

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

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

(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 a certified 1091
construction progress report before the first day of March of each 1092
year during the energy facility's construction or installation 1093
indicating the percentage of the project completed, and the 1094
project's nameplate capacity, as of the preceding thirty-first day 1095
of December. Unless otherwise instructed by the director of 1096
development, the owner or lessee of an energy project shall file a 1097
report with the director on or before the first day of March each 1098
year after completion of the energy facility's construction or 1099
installation indicating the project's nameplate capacity as of the 1100
preceding thirty-first day of December. Not later than sixty days 1101
after June 17, 2010, the owner or lessee of an energy project, the 1102
construction of which was completed before June 17, 2010, shall 1103
file a certificate indicating the project's nameplate capacity. 1104

(3) File with the director of development, in a manner 1105
prescribed by the director, a report of the total number of 1106
full-time equivalent employees, and the total number of full-time 1107
equivalent employees domiciled in Ohio, who are employed in the 1108
construction or installation of the energy facility; 1109

(4) For energy projects with a nameplate capacity of five 1110
megawatts or greater, repair all roads, bridges, and culverts 1111
affected by construction as reasonably required to restore them to 1112
their preconstruction condition, as determined by the county 1113
engineer in consultation with the local jurisdiction responsible 1114
for the roads, bridges, and culverts. In the event that the county 1115
engineer deems any road, bridge, or culvert to be inadequate to 1116
support the construction or decommissioning of the energy 1117
facility, the road, bridge, or culvert shall be rebuilt or 1118
reinforced to the specifications established by the county 1119
engineer prior to the construction or decommissioning of the 1120
facility. The owner or lessee of the facility shall post a bond in 1121
an amount established by the county engineer and to be held by the 1122

board of county commissioners to ensure funding for repairs of 1123
roads, bridges, and culverts affected during the construction. The 1124
bond shall be released by the board not later than one year after 1125
the date the repairs are completed. The energy facility owner or 1126
lessee pursuant to a sale and leaseback transaction shall post a 1127
bond, as may be required by the Ohio power siting board in the 1128
certificate authorizing commencement of construction issued 1129
pursuant to section 4906.10 of the Revised Code, to ensure funding 1130
for repairs to roads, bridges, and culverts resulting from 1131
decommissioning of the facility. The energy facility owner or 1132
lessee and the county engineer may enter into an agreement 1133
regarding specific transportation plans, reinforcements, 1134
modifications, use and repair of roads, financial security to be 1135
provided, and any other relevant issue. 1136

(5) Provide or facilitate training for fire and emergency 1137
responders for response to emergency situations related to the 1138
energy project and, for energy projects with a nameplate capacity 1139
of five megawatts or greater, at the person's expense, equip the 1140
fire and emergency responders with proper equipment as reasonably 1141
required to enable them to respond to such emergency situations; 1142

(6) Maintain a ratio of Ohio-domiciled full-time equivalent 1143
employees employed in the construction or installation of the 1144
energy project to total full-time equivalent employees employed in 1145
the construction or installation of the energy project of not less 1146
than eighty per cent in the case of a solar energy project, and 1147
not less than fifty per cent in the case of any other energy 1148
project. In the case of an energy project for which certification 1149
from the power siting board is required under section 4906.20 of 1150
the Revised Code, the number of full-time equivalent employees 1151
employed in the construction or installation of the energy project 1152
equals the number actually employed or the number projected to be 1153
employed in the certificate application, if such projection is 1154

required under regulations adopted pursuant to section 4906.03 of 1155
the Revised Code, whichever is greater. For all other energy 1156
projects, the number of full-time equivalent employees employed in 1157
the construction or installation of the energy project equals the 1158
number actually employed or the number projected to be employed by 1159
the director of development, whichever is greater. To estimate the 1160
number of employees to be employed in the construction or 1161
installation of an energy project, the director shall use a 1162
generally accepted job-estimating model in use for renewable 1163
energy projects, including but not limited to the job and economic 1164
development impact model. The director may adjust an estimate 1165
produced by a model to account for variables not accounted for by 1166
the model. 1167

(7) For energy projects with a nameplate capacity in excess 1168
of two megawatts, establish a relationship with a member of the 1169
university system of Ohio as defined in section 3345.011 of the 1170
Revised Code or with a person offering an apprenticeship program 1171
registered with the employment and training administration within 1172
the United States department of labor or with the apprenticeship 1173
council created by section 4139.02 of the Revised Code, to educate 1174
and train individuals for careers in the wind or solar energy 1175
industry. The relationship may include endowments, cooperative 1176
programs, internships, apprenticeships, research and development 1177
projects, and curriculum development. 1178

~~(8) Offer to sell power or renewable energy credits from the 1179
energy project to electric distribution utilities or electric 1180
service companies subject to renewable energy resource 1181
requirements under section 4928.64 of the Revised Code that have 1182
issued requests for proposal for such power or renewable energy 1183
credits. If no electric distribution utility or electric service 1184
company issues a request for proposal on or before December 31,
2010, or accepts an offer for power or renewable energy credits 1185
1186~~

~~within forty five days after the offer is submitted, power or 1187
renewable energy credits from the energy project may be sold to 1188
other persons. Division (F)(8) of this section does not apply if: 1189~~

~~(a) The owner or lessee is a rural electric company or a 1190
municipal power agency as defined in section 3734.058 of the 1191
Revised Code. 1192~~

~~(b) The owner or lessee is a person that, before completion 1193
of the energy project, contracted for the sale of power or 1194
renewable energy credits with a rural electric company or a 1195
municipal power agency. 1196~~

~~(c) The owner or lessee contracts for the sale of power or 1197
renewable energy credits from the energy project before June 17, 1198
2010. 1199~~

~~(9) Make annual service payments as required by division (G) 1200
of this section and as may be required in a resolution adopted by 1201
a board of county commissioners under division (E) of this 1202
section. 1203~~

(G) The owner or a lessee pursuant to a sale and leaseback 1204
transaction of a qualified energy project shall make annual 1205
service payments in lieu of taxes to the county treasurer on or 1206
before the final dates for payments of taxes on public utility 1207
personal property on the real and public utility personal property 1208
tax list for each tax year for which property of the energy 1209
project is exempt from taxation under this section. The county 1210
treasurer shall allocate the payment on the basis of the project's 1211
physical location. Upon receipt of a payment, or if timely payment 1212
has not been received, the county treasurer shall certify such 1213
receipt or non-receipt to the director of development and tax 1214
commissioner in a form determined by the director and 1215
commissioner, respectively. Each payment shall be in the following 1216
amount: 1217

(1) In the case of a solar energy project, seven thousand 1218
dollars per megawatt of nameplate capacity located in the county 1219
as of December 31, 2010, for tax year 2011, as of December 31, 1220
2011, for tax year 2012, as of December 31, 2012, for tax year 1221
2013, as of December 31, 2013, for tax year 2014, and as of 1222
December 31, 2014, for tax year 2015 and each tax year thereafter; 1223

(2) In the case of any other energy project using renewable 1224
energy resources, the following: 1225

(a) If the project maintains during the construction or 1226
installation of the energy facility a ratio of Ohio-domiciled 1227
full-time equivalent employees to total full-time equivalent 1228
employees of not less than seventy-five per cent, six thousand 1229
dollars per megawatt of nameplate capacity located in the county 1230
as of the thirty-first day of December of the preceding tax year; 1231

(b) If the project maintains during the construction or 1232
installation of the energy facility a ratio of Ohio-domiciled 1233
full-time equivalent employees to total full-time equivalent 1234
employees of less than seventy-five per cent but not less than 1235
sixty per cent, seven thousand dollars per megawatt of nameplate 1236
capacity located in the county as of the thirty-first day of 1237
December of the preceding tax year; 1238

(c) If the project maintains during the construction or 1239
installation of the energy facility a ratio of Ohio-domiciled 1240
full-time equivalent employees to total full-time equivalent 1241
employees of less than sixty per cent but not less than fifty per 1242
cent, eight thousand dollars per megawatt of nameplate capacity 1243
located in the county as of the thirty-first day of December of 1244
the preceding tax year. 1245

(3) In the case of an energy project using clean coal 1246
technology, advanced nuclear technology, or cogeneration 1247
technology, the following: 1248

(a) If the project maintains during the construction or 1249
installation of the energy facility a ratio of Ohio-domiciled 1250
full-time equivalent employees to total full-time equivalent 1251
employees of not less than seventy-five per cent, six thousand 1252
dollars per megawatt of nameplate capacity located in the county 1253
as of the thirty-first day of December of the preceding tax year; 1254

(b) If the project maintains during the construction or 1255
installation of the energy facility a ratio of Ohio-domiciled 1256
full-time equivalent employees to total full-time equivalent 1257
employees of less than seventy-five per cent but not less than 1258
sixty per cent, seven thousand dollars per megawatt of nameplate 1259
capacity located in the county as of the thirty-first day of 1260
December of the preceding tax year; 1261

(c) If the project maintains during the construction or 1262
installation of the energy facility a ratio of Ohio-domiciled 1263
full-time equivalent employees to total full-time equivalent 1264
employees of less than sixty per cent but not less than fifty per 1265
cent, eight thousand dollars per megawatt of nameplate capacity 1266
located in the county as of the thirty-first day of December of 1267
the preceding tax year. 1268

(H) The director of development in consultation with the tax 1269
commissioner shall adopt rules pursuant to Chapter 119. of the 1270
Revised Code to implement and enforce this section. 1271

Section 2. That existing sections 4928.142, 4928.143, 1272
4928.20, 4928.61, 4928.62, 5501.311, and 5727.75 and sections 1273
4928.64 and 4928.65 of the Revised Code are hereby repealed. 1274