

**As Pending in the Senate Public Utilities Committee**

**130th General Assembly  
Regular Session  
2013-2014**

**Sub. S. B. No. 58**

**Senator Seitz**

—

**A B I L L**

To amend sections 717.25, 1710.061, 3706.25, 4905.31, 1  
4928.01, 4928.143, 4928.20, 4928.61, 4928.65, 2  
5501.311, and 5727.75; to amend section 4928.64 3  
and to recodify it by subdividing it into sections 4  
4928.641, 4928.642, 4928.643, 4928.644, 4928.645, 5  
4928.646, 4928.647, 4928.648, and 4928.649; to 6  
amend section 4928.66 and to recodify it by 7  
subdividing it into sections 4928.661, 4928.662, 8  
4928.665, 4928.666, 4928.667, 4928.668, 4928.6625, 9  
4928.6626, 4928.6627, 4928.6650, 4928.6651, 10  
4928.6655, 4928.6656, 4928.6657, and 4928.6658; to 11  
enact new section 4928.66 and sections 4928.6410, 12  
4928.6610, 4928.6611, 4928.6612, 4928.6613, 13  
4928.6615, 4928.6616, 4928.6617, 4928.6618, 14  
4928.6619, 4928.6620, 4928.6621, 4928.6622, 15  
4928.6623, 4928.6630, 4928.6631, 4928.6632, 16  
4928.6633, 4928.6634, 4928.6635, 4928.6636, 17  
4928.6640, 4928.6641, 4928.6642, 4928.6645, 18  
4928.6646, 4928.6647, 4928.6659, and 4928.6660 of 19  
the Revised Code to modify the alternative energy 20  
resource, energy efficiency, and peak demand 21  
reduction law. 22

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

**Section 1.** That sections 717.25, 1710.061, 3706.25, 4905.31, 23  
4928.01, 4928.143, 4928.20, 4928.61, 4928.65, 5501.311, and 24  
5727.75 be amended; section 4928.64 be amended and recodified by 25  
subdividing it into sections 4928.641, 4928.642, 4928.643, 26  
4928.644, 4928.645, 4928.646, 4928.647, 4928.648, and 4928.649; 27  
section 4928.66 be amended and recodified by subdividing it into 28  
sections 4928.661, 4928.662, 4928.665, 4928.666, 4928.667, 29  
4928.668, 4928.6625, 4928.6626, 4928.6627, 4928.6650, 4928.6651, 30  
4928.6655, 4928.6656, 4928.6657, and 4928.6658; that new section 31  
4928.66 and sections 4928.6410, 4928.6610, 4928.6611, 4928.6612, 32  
4928.6613, 4928.6615, 4928.6616, 4928.6617, 4928.6618, 4928.6619, 33  
4928.6620, 4928.6621, 4928.6622, 4928.6623, 4928.6630, 4928.6631, 34  
4928.6632, 4928.6633, 4928.6634, 4928.6635, 4928.6636, 4928.6640, 35  
4928.6641, 4928.6642, 4928.6645, 4928.6646, 4928.6647, 4928.6659, 36  
and 4928.6660 of the Revised Code be enacted to read as follows: 37

**Sec. 717.25.** (A) As used in this section: 38

(1) "Customer-generated energy project" means a wind, 39  
biomass, or gasification facility for the generation of 40  
electricity that meets either of the following requirements: 41

(a) The facility is designed to have a generating capacity of 42  
two hundred fifty kilowatts of electricity or less. 43

(b) The facility is: 44

(i) Designed to have a generating capacity of more than two 45  
hundred fifty kilowatts of electricity; 46

(ii) Operated in parallel with electric transmission and 47  
distribution facilities serving the real property at the site of 48  
the customer-generated energy project; 49

(iii) Intended primarily to offset part or all of the 50  
facility owner's requirements for electricity at the site of the 51  
customer-generated energy project and is located on the facility 52

owner's real property; and	53
(iv) Not producing energy for direct sale by the facility owner to the public.	54 55
(2) "Electric distribution utility" and "mercantile customer" have the same meanings as in section 4928.01 of the Revised Code.	56 57
(3) "Reduction in demand" has the same meaning as in section 1710.01 of the Revised Code.	58 59
(B) The legislative authority of a municipal corporation may establish a low-cost alternative energy revolving loan program to assist owners of real property within the municipal corporation with installing and implementing either of the following on their real property:	60 61 62 63 64
(1) Alternative energy technologies limited to solar photovoltaic projects, solar thermal energy projects, geothermal energy projects, and customer-generated energy projects;	65 66 67
(2) Energy efficiency technologies, products, and activities that reduce or support the reduction of energy consumption, allow for the reduction in demand, or support the production of clean, renewable energy.	68 69 70 71
(C) If the legislative authority decides to establish such a program, the legislative authority shall adopt an ordinance that provides for the following:	72 73 74
(1) Creation in the municipal treasury of an alternative energy revolving loan fund;	75 76
(2) A source of money, such as gifts, bond issues, real property assessments, or federal subsidies, to seed the alternative energy revolving loan fund;	77 78 79
(3) Facilities for making loans from the alternative energy revolving loan fund, including an explanation of how owners of real property within the municipal corporation may qualify for	80 81 82

loans from the fund, a description of the alternative energy and 83  
energy efficiency technologies and related equipment for which a 84  
loan can be made from the fund, authorization of a municipal 85  
agency to process applications for loans and otherwise to 86  
administer the low-cost alternative energy revolving loan program, 87  
a procedure whereby loans can be applied for, criteria for 88  
reviewing and accepting or denying applications for loans, 89  
criteria for determining the appropriate amount of a loan, the 90  
interest rate to be charged, the repayment schedule, and other 91  
terms and conditions of a loan, and procedures for collecting 92  
loans that are not repaid according to the repayment schedule; 93

(4) A specification that repayments of loans from the 94  
alternative energy revolving loan fund may be made in installments 95  
and, at the option of the real property owner repaying the loan, 96  
the installments may be paid and collected as if they were special 97  
assessments paid and collected in the manner specified in Chapter 98  
727. of the Revised Code and as specified in the ordinance; 99

(5) A specification that repayments of loans from the 100  
alternative energy revolving loan fund are to be credited to the 101  
fund, that the money in the fund is to be invested pending its 102  
being lent out, and that investment earnings on the money in the 103  
fund are to be credited to the fund; and 104

(6) Other matters necessary and proper for efficient 105  
operation of the low-cost alternative energy revolving loan 106  
program as a means of encouraging use of alternative energy and 107  
energy efficiency technologies. 108

The interest rate charged on a loan from the alternative 109  
energy revolving loan fund shall be below prevailing market rates. 110  
The legislative authority may specify the interest rate in the 111  
ordinance or may, after establishing a standard in the ordinance 112  
whereby the interest rate can be specified, delegate authority to 113  
specify the interest rate to the administrator of loans from the 114

alternative energy revolving loan fund. 115

The alternative energy revolving loan fund shall be seeded 116  
with sufficient money to enable loans to be made until the fund 117  
accumulates sufficient reserves through investment and repayment 118  
of loans for revolving operation. 119

(D) Except as provided in division (E) of this section, an 120  
electric distribution utility may count toward its compliance with 121  
the energy efficiency and peak demand reduction requirements of 122  
~~section~~ sections 4928.66 to 4928.6660 of the Revised Code any 123  
energy efficiency savings or any reduction in demand that is 124  
produced by projects utilizing alternative energy technologies or 125  
energy efficiency technologies, products, and activities that are 126  
located in its certified territory and for which a loan has been 127  
made under this section. 128

(E) A mercantile customer that realizes energy efficiency 129  
savings or reduction in demand produced by alternative energy 130  
technologies or energy efficiency technologies, products, or 131  
activities that it owns and for which a loan has been made under 132  
this section may elect to commit the savings or reduction to the 133  
electric distribution utility in exchange for an exemption from an 134  
energy efficiency cost recovery mechanism permitted under ~~section~~ 135  
sections 4928.66 to 4928.6660 of the Revised Code, approved by the 136  
public utilities commission. 137

(F) The legislative authority shall submit a quarterly report 138  
to the electric distribution utility that includes, but is not 139  
limited to, both of the following: 140

(1) The number and a description of each new and ongoing 141  
project utilizing alternative energy technologies or energy 142  
efficiency technologies, products, or activities located in the 143  
utility's certified territory that produces energy efficiency 144  
savings or reduction in demand and for which a loan has been made 145

under this section; 146

(2) Any additional information that the electric distribution 147  
utility needs in order to obtain credit under ~~section~~ sections 148  
4928.66 to 4928.6660 of the Revised Code for energy efficiency 149  
savings or reduction in demand from such projects. 150

**Sec. 1710.061.** (A) Except as provided in division (B) of this 151  
section, an electric distribution utility may count toward its 152  
compliance with the energy efficiency and peak demand reduction 153  
requirements of ~~section~~ sections 4928.66 to 4928.6660 of the 154  
Revised Code any efficiency savings or reduction in demand 155  
produced by a special energy improvement project located in its 156  
certified territory. 157

(B) A mercantile customer that realizes energy efficiency 158  
savings or reduction in demand produced by a special energy 159  
improvement project that it owns may elect to commit the savings 160  
or reduction to the electric distribution utility in exchange for 161  
an exemption from an energy efficiency cost recovery mechanism 162  
permitted under ~~section~~ sections 4928.66 to 4928.6660 of the 163  
Revised Code, approved by the public utilities commission. 164

(C) The board of directors of a special improvement district 165  
shall submit a quarterly report to the electric distribution 166  
utility that includes, but is not limited to, both of the 167  
following: 168

(1) The total number and a description of each new and 169  
ongoing special energy improvement project located within the 170  
special improvement district that produces energy efficiency 171  
savings or reduction in demand; 172

(2) Any additional information that the electric distribution 173  
utility needs in order to obtain credit under ~~section~~ sections 174  
4928.66 to 4928.6660 of the Revised Code for energy efficiency 175

savings or reduction in demand from such projects. 176

**Sec. 3706.25.** As used in sections 3706.25 to 3706.30 of the 177  
Revised Code: 178

(A) "Advanced energy project" means any technologies, 179  
products, activities, or management practices or strategies that 180  
facilitate the generation or use of electricity or any type of 181  
energy and that reduce or support the reduction of energy 182  
consumption or support the production of clean, renewable energy 183  
for industrial, distribution, commercial, institutional, 184  
governmental, research, not-for-profit, or residential energy 185  
users including, but not limited to, advanced energy resources and 186  
renewable energy resources. "Advanced energy project" includes any 187  
project described in division (A), (B), or (C) of section 4928.621 188  
of the Revised Code. 189

(B) "Advanced energy resource" means any of the following: 190

(1) Any method or any modification or replacement of any 191  
property, process, device, structure, or equipment that increases 192  
the generation output of an electric generating facility to the 193  
extent such efficiency is achieved without additional carbon 194  
dioxide emissions by that facility; 195

(2) Any distributed generation system consisting of customer 196  
cogeneration technology, primarily to meet the energy needs of the 197  
customer's facilities; 198

(3) Advanced nuclear energy technology consisting of 199  
generation III technology as defined by the nuclear regulatory 200  
commission; other, later technology; or significant improvements 201  
to existing facilities; 202

(4) Any fuel cell used in the generation of electricity, 203  
including, but not limited to, a proton exchange membrane fuel 204  
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 205

solid oxide fuel cell;	206
(5) Advanced solid waste or construction and demolition debris conversion technology, including, but not limited to, advanced stoker technology, and advanced fluidized bed gasification technology, that results in measurable greenhouse gas emissions reductions as calculated pursuant to the United States environmental protection agency's waste reduction model (WARM).	207 208 209 210 211 212
(C) "Air contaminant source" has the same meaning as in section 3704.01 of the Revised Code.	213 214
(D) "Cogeneration technology" means technology that produces electricity and useful thermal output simultaneously.	215 216
(E) "Renewable energy resource" means solar photovoltaic or solar thermal energy, <u>regardless of whether electricity is produced</u> , wind energy, power produced by a hydroelectric facility, geothermal energy, <u>regardless of whether electricity is produced</u> , fuel derived from solid wastes, as defined in section 3734.01 of the Revised Code, through fractionation, biological decomposition, or other process that does not principally involve combustion, biomass energy, energy produced by cogeneration technology that is placed into service on or before December 31, 2015, and for which more than ninety per cent of the total annual energy input is from combustion of a waste or byproduct gas from an air contaminant source in this state, which source has been in operation since on or before January 1, 1985, provided that the cogeneration technology is a part of a facility located in a county having a population of more than three hundred sixty-five thousand but less than three hundred seventy thousand according to the most recent federal decennial census, biologically derived methane gas, or energy derived from nontreated by-products of the pulping process or wood manufacturing process, including bark, wood chips, sawdust, and lignin in spent pulping liquors. "Renewable energy resource" includes, but is not limited to, any <u>energy derived from</u>	217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237

a fuel cell used in the generation of electricity, including, but 238  
not limited to, a proton exchange membrane fuel cell, phosphoric 239  
acid fuel cell, molten carbonate fuel cell, or solid oxide fuel 240  
cell; wind turbine located in the state's territorial waters of 241  
Lake Erie; methane gas emitted from an abandoned coal mine; 242  
storage facility that will promote the better utilization of a 243  
renewable energy resource that primarily generates off peak; or 244  
distributed generation system used by a customer to generate 245  
electricity from any such energy. As used in this division, 246  
"hydroelectric facility" means a hydroelectric generating facility 247  
that is located at a dam on a river, or on any water discharged to 248  
a river or lake, that is within or bordering this state ~~or~~, within 249  
or bordering an adjoining state, or within the Canadian provinces 250  
of Ontario or Quebec, and meets all of the following standards: 251

(1) The facility provides for river flows that are not 252  
detrimental for fish, wildlife, and water quality, including 253  
seasonal flow fluctuations as defined by the applicable licensing 254  
agency for the facility. 255

(2) The facility demonstrates that it complies with the water 256  
quality standards of this state, which compliance may consist of 257  
certification under Section 401 of the "Clean Water Act of 1977," 258  
91 Stat. 1598, 1599, 33 U.S.C. 1341, and demonstrates that it has 259  
not contributed to a finding by this state that the river has 260  
impaired water quality under Section 303(d) of the "Clean Water 261  
Act of 1977," 114 Stat. 870, 33 U.S.C. 1313. 262

(3) The facility complies with mandatory prescriptions 263  
regarding fish passage as required by the federal energy 264  
regulatory commission license issued for the project, regarding 265  
fish protection for riverine, anadromous, and catadromous fish. 266

(4) The facility complies with the recommendations of the 267  
Ohio environmental protection agency and with the terms of its 268  
federal energy regulatory commission license regarding watershed 269

protection, mitigation, or enhancement, to the extent of each 270  
agency's respective jurisdiction over the facility. 271

(5) The facility complies with provisions of the "Endangered 272  
Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 to 1544, as 273  
amended. 274

(6) The facility does not harm cultural resources of the 275  
area. This can be shown through compliance with the terms of its 276  
federal energy regulatory commission license or, if the facility 277  
is not regulated by that commission, through development of a plan 278  
approved by the Ohio historic preservation office, to the extent 279  
it has jurisdiction over the facility. 280

(7) The facility complies with the terms of its federal 281  
energy regulatory commission license or exemption that are related 282  
to recreational access, accommodation, and facilities or, if the 283  
facility is not regulated by that commission, the facility 284  
complies with similar requirements as are recommended by resource 285  
agencies, to the extent they have jurisdiction over the facility; 286  
and the facility provides access to water to the public without 287  
fee or charge. 288

(8) The facility is not recommended for removal by any 289  
federal agency or agency of any state, to the extent the 290  
particular agency has jurisdiction over the facility. 291

**Sec. 4905.31.** Chapters 4901., 4903., 4905., 4907., 4909., 292  
4921., 4923., 4927., 4928., and 4929. of the Revised Code do not 293  
prohibit a public utility from filing a schedule or establishing 294  
or entering into any reasonable arrangement with another public 295  
utility or with one or more of its customers, consumers, or 296  
employees, and do not prohibit a mercantile customer of an 297  
electric distribution utility as those terms are defined in 298  
section 4928.01 of the Revised Code or a group of those customers 299  
from establishing a reasonable arrangement with that utility or 300

another public utility electric light company, providing for any 301  
of the following: 302

(A) The division or distribution of its surplus profits; 303

(B) A sliding scale of charges, including variations in rates 304  
based upon stipulated variations in cost as provided in the 305  
schedule or arrangement. 306

(C) A minimum charge for service to be rendered unless such 307  
minimum charge is made or prohibited by the terms of the 308  
franchise, grant, or ordinance under which such public utility is 309  
operated; 310

(D) A classification of service based upon the quantity used, 311  
the time when used, the purpose for which used, the duration of 312  
use, and any other reasonable consideration; 313

(E) Any other financial device that may be practicable or 314  
advantageous to the parties interested. In the case of a schedule 315  
or arrangement concerning a public utility electric light company, 316  
such other financial device may include a device to recover costs 317  
incurred in conjunction with any economic development and job 318  
retention program of the utility within its certified territory, 319  
including recovery of revenue foregone as a result of any such 320  
program; any development and implementation of peak demand 321  
reduction and energy efficiency programs under ~~section~~ sections 322  
4928.66 to 4928.6660 of the Revised Code; any acquisition and 323  
deployment of advanced metering, including the costs of any meters 324  
prematurely retired as a result of the advanced metering 325  
implementation; and compliance with any government mandate. 326

No such schedule or arrangement is lawful unless it is filed 327  
with and approved by the commission pursuant to an application 328  
that is submitted by the public utility or the mercantile customer 329  
or group of mercantile customers of an electric distribution 330  
utility and is posted on the commission's docketing information 331

system and is accessible through the internet. 332

Every such public utility is required to conform its 333  
schedules of rates, tolls, and charges to such arrangement, 334  
sliding scale, classification, or other device, and where variable 335  
rates are provided for in any such schedule or arrangement, the 336  
cost data or factors upon which such rates are based and fixed 337  
shall be filed with the commission in such form and at such times 338  
as the commission directs. 339

Every such schedule or reasonable arrangement shall be under 340  
the supervision and regulation of the commission, and is subject 341  
to change, alteration, or modification by the commission. 342

**Sec. 4928.01.** (A) As used in this chapter: 343

(1) "Ancillary service" means any function necessary to the 344  
provision of electric transmission or distribution service to a 345  
retail customer and includes, but is not limited to, scheduling, 346  
system control, and dispatch services; reactive supply from 347  
generation resources and voltage control service; reactive supply 348  
from transmission resources service; regulation service; frequency 349  
response service; energy imbalance service; operating 350  
reserve-spinning reserve service; operating reserve-supplemental 351  
reserve service; load following; back-up supply service; 352  
real-power loss replacement service; dynamic scheduling; system 353  
black start capability; and network stability service. 354

(2) "Billing and collection agent" means a fully independent 355  
agent, not affiliated with or otherwise controlled by an electric 356  
utility, electric services company, electric cooperative, or 357  
governmental aggregator subject to certification under section 358  
4928.08 of the Revised Code, to the extent that the agent is under 359  
contract with such utility, company, cooperative, or aggregator 360  
solely to provide billing and collection for retail electric 361  
service on behalf of the utility company, cooperative, or 362

aggregator.	363
(3) "Certified territory" means the certified territory established for an electric supplier under sections 4933.81 to 4933.90 of the Revised Code.	364 365 366
(4) "Competitive retail electric service" means a component of retail electric service that is competitive as provided under division (B) of this section.	367 368 369
(5) "Electric cooperative" means a not-for-profit electric light company that both is or has been financed in whole or in part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 7 U.S.C. 901, and owns or operates facilities in this state to generate, transmit, or distribute electricity, or a not-for-profit successor of such company.	370 371 372 373 374 375
(6) "Electric distribution utility" means an electric utility that supplies at least retail electric distribution service.	376 377
(7) "Electric light company" has the same meaning as in section 4905.03 of the Revised Code and includes an electric services company, but excludes any self-generator to the extent that it consumes electricity it so produces, sells that electricity for resale, or obtains electricity from a generating facility it hosts on its premises.	378 379 380 381 382 383
(8) "Electric load center" has the same meaning as in section 4933.81 of the Revised Code.	384 385
(9) "Electric services company" means an electric light company that is engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of only a competitive retail electric service in this state. "Electric services company" includes a power marketer, power broker, aggregator, or independent power producer but excludes an electric cooperative, municipal electric utility, governmental aggregator, or billing and collection agent.	386 387 388 389 390 391 392 393

(10) "Electric supplier" has the same meaning as in section 394  
4933.81 of the Revised Code. 395

(11) "Electric utility" means an electric light company that 396  
has a certified territory and is engaged on a for-profit basis 397  
either in the business of supplying a noncompetitive retail 398  
electric service in this state or in the businesses of supplying 399  
both a noncompetitive and a competitive retail electric service in 400  
this state. "Electric utility" excludes a municipal electric 401  
utility or a billing and collection agent. 402

(12) "Firm electric service" means electric service other 403  
than nonfirm electric service. 404

(13) "Governmental aggregator" means a legislative authority 405  
of a municipal corporation, a board of township trustees, or a 406  
board of county commissioners acting as an aggregator for the 407  
provision of a competitive retail electric service under authority 408  
conferred under section 4928.20 of the Revised Code. 409

(14) A person acts "knowingly," regardless of the person's 410  
purpose, when the person is aware that the person's conduct will 411  
probably cause a certain result or will probably be of a certain 412  
nature. A person has knowledge of circumstances when the person is 413  
aware that such circumstances probably exist. 414

(15) "Level of funding for low-income customer energy 415  
efficiency programs provided through electric utility rates" means 416  
the level of funds specifically included in an electric utility's 417  
rates on October 5, 1999, pursuant to an order of the public 418  
utilities commission issued under Chapter 4905. or 4909. of the 419  
Revised Code and in effect on October 4, 1999, for the purpose of 420  
improving the energy efficiency of housing for the utility's 421  
low-income customers. The term excludes the level of any such 422  
funds committed to a specific nonprofit organization or 423  
organizations pursuant to a stipulation or contract. 424

(16) "Low-income customer assistance programs" means the 425  
percentage of income payment plan program, the home energy 426  
assistance program, the home weatherization assistance program, 427  
and the targeted energy efficiency and weatherization program. 428

(17) "Market development period" for an electric utility 429  
means the period of time beginning on the starting date of 430  
competitive retail electric service and ending on the applicable 431  
date for that utility as specified in section 4928.40 of the 432  
Revised Code, irrespective of whether the utility applies to 433  
receive transition revenues under this chapter. 434

(18) "Market power" means the ability to impose on customers 435  
a sustained price for a product or service above the price that 436  
would prevail in a competitive market. 437

(19) "Mercantile customer" means a commercial or industrial 438  
customer if the electricity consumed is for nonresidential use and 439  
the customer consumes more than seven hundred thousand kilowatt 440  
hours per year or is part of a national account involving multiple 441  
facilities in one or more states. 442

(20) "Municipal electric utility" means a municipal 443  
corporation that owns or operates facilities to generate, 444  
transmit, or distribute electricity. 445

(21) "Noncompetitive retail electric service" means a 446  
component of retail electric service that is noncompetitive as 447  
provided under division (B) of this section. 448

(22) "Nonfirm electric service" means electric service 449  
provided pursuant to a schedule filed under section 4905.30 of the 450  
Revised Code or pursuant to an arrangement under section 4905.31 451  
of the Revised Code, which schedule or arrangement includes 452  
conditions that may require the customer to curtail or interrupt 453  
electric usage during nonemergency circumstances upon notification 454  
by an electric utility. 455

(23) "Percentage of income payment plan arrears" means funds 456  
eligible for collection through the percentage of income payment 457  
plan rider, but uncollected as of July 1, 2000. 458

(24) "Person" has the same meaning as in section 1.59 of the 459  
Revised Code. 460

(25) "Advanced energy project" means any technologies, 461  
products, activities, or management practices or strategies that 462  
facilitate the generation or use of electricity or any type of 463  
energy and that reduce or support the reduction of energy 464  
consumption or support the production of clean, renewable energy 465  
for industrial, distribution, commercial, institutional, 466  
governmental, research, not-for-profit, or residential energy 467  
users, including, but not limited to, advanced energy resources 468  
and renewable energy resources. "Advanced energy project" also 469  
includes any project described in division (A), (B), or (C) of 470  
section 4928.621 of the Revised Code. 471

(26) "Regulatory assets" means the unamortized net regulatory 472  
assets that are capitalized or deferred on the regulatory books of 473  
the electric utility, pursuant to an order or practice of the 474  
public utilities commission or pursuant to generally accepted 475  
accounting principles as a result of a prior commission 476  
rate-making decision, and that would otherwise have been charged 477  
to expense as incurred or would not have been capitalized or 478  
otherwise deferred for future regulatory consideration absent 479  
commission action. "Regulatory assets" includes, but is not 480  
limited to, all deferred demand-side management costs; all 481  
deferred percentage of income payment plan arrears; 482  
post-in-service capitalized charges and assets recognized in 483  
connection with statement of financial accounting standards no. 484  
109 (receivables from customers for income taxes); future nuclear 485  
decommissioning costs and fuel disposal costs as those costs have 486  
been determined by the commission in the electric utility's most 487

recent rate or accounting application proceeding addressing such 488  
costs; the undepreciated costs of safety and radiation control 489  
equipment on nuclear generating plants owned or leased by an 490  
electric utility; and fuel costs currently deferred pursuant to 491  
the terms of one or more settlement agreements approved by the 492  
commission. 493

(27) "Retail electric service" means any service involved in 494  
supplying or arranging for the supply of electricity to ultimate 495  
consumers in this state, from the point of generation to the point 496  
of consumption. For the purposes of this chapter, retail electric 497  
service includes one or more of the following "service 498  
components": generation service, aggregation service, power 499  
marketing service, power brokerage service, transmission service, 500  
distribution service, ancillary service, metering service, and 501  
billing and collection service. 502

(28) "Starting date of competitive retail electric service" 503  
means January 1, 2001. 504

(29) "Customer-generator" means a user of a net metering 505  
system. 506

(30) "Net metering" means measuring the difference in an 507  
applicable billing period between the electricity supplied by an 508  
electric service provider and the electricity generated by a 509  
customer-generator that is fed back to the electric service 510  
provider. 511

(31) "Net metering system" means a facility for the 512  
production of electrical energy that does all of the following: 513

(a) Uses as its fuel either solar, wind, biomass, landfill 514  
gas, or hydropower, or uses a microturbine or a fuel cell; 515

(b) Is located on a customer-generator's premises; 516

(c) Operates in parallel with the electric utility's 517

transmission and distribution facilities; 518

(d) Is intended primarily to offset part or all of the 519  
customer-generator's requirements for electricity. 520

(32) "Self-generator" means an entity in this state that owns 521  
or hosts on its premises an electric generation facility that 522  
produces electricity primarily for the owner's consumption and 523  
that may provide any such excess electricity to another entity, 524  
whether the facility is installed or operated by the owner or by 525  
an agent under a contract. 526

(33) "Rate plan" means the standard service offer in effect 527  
on the effective date of the amendment of this section by S.B. 221 528  
of the 127th general assembly, July 31, 2008. 529

(34) "Advanced energy resource" means any of the following: 530

(a) Any method or any modification or replacement of any 531  
property, process, device, structure, or equipment that increases 532  
the one of the following: 533

(i) The generation output of an electric generating facility 534  
to the extent such efficiency is achieved without additional 535  
carbon dioxide emissions by that facility; 536

(ii) The rated capacity of a transmission or distribution 537  
line; 538

(b) Any distributed generation system consisting of customer 539  
cogeneration technology; 540

(c) Clean coal technology that includes a carbon-based 541  
product that is chemically altered before combustion to 542  
demonstrate a reduction, as expressed as ash, in emissions of 543  
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 544  
sulfur trioxide in accordance with the American society of testing 545  
and materials standard D1757A or a reduction of metal oxide 546  
emissions in accordance with standard D5142 of that society, or 547

clean coal technology that includes the design capability to 548  
control or prevent the emission of carbon dioxide, which design 549  
capability the commission shall adopt by rule and shall be based 550  
on economically feasible best available technology or, in the 551  
absence of a determined best available technology, shall be of the 552  
highest level of economically feasible design capability for which 553  
there exists generally accepted scientific opinion; 554

(d) Advanced nuclear energy technology consisting of 555  
generation III technology as defined by the nuclear regulatory 556  
commission; other, later technology; or significant improvements 557  
to existing facilities; 558

(e) Any fuel cell used in the generation of electricity, 559  
including, but not limited to, a proton exchange membrane fuel 560  
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 561  
solid oxide fuel cell; 562

(f) Advanced solid waste or construction and demolition 563  
debris conversion technology, including, but not limited to, 564  
advanced stoker technology, and advanced fluidized bed 565  
gasification technology, that results in measurable greenhouse gas 566  
emissions reductions as calculated pursuant to the United States 567  
environmental protection agency's waste reduction model (WARM); 568

(g) Demand-side management and any energy efficiency 569  
improvement; 570

(h) Any new, retrofitted, refueled, or repowered generating 571  
facility located in Ohio, including a simple or combined-cycle 572  
natural gas generating facility or a generating facility that uses 573  
biomass, coal, modular nuclear, or any other fuel as its input; 574

(i) Any uprated capacity of an existing electric generating 575  
facility if the uprated capacity results from the deployment of 576  
advanced technology; i 577

~~"Advanced energy resource" does not include a waste energy~~ 578

~~recovery system that is, or has been, included in an energy 579  
efficiency program of an electric distribution utility pursuant to 580  
requirements under section 4928.66 of the Revised Code (j) Any 581  
mercantile customer or supplier method or any modification or 582  
replacement of any property, process, device, structure, or 583  
equipment that reduces the energy intensity of any water supply 584  
function or water treatment function. 585~~

(35) "Air contaminant source" has the same meaning as in 586  
section 3704.01 of the Revised Code. 587

(36) "Cogeneration technology" means technology that produces 588  
electricity and useful thermal output simultaneously. 589

(37)(a) "Renewable energy resource" means any of the 590  
following: 591

(i) Solar photovoltaic or solar thermal energy, regardless of 592  
whether electricity is produced; 593

(ii) Wind energy; 594

(iii) Power produced by a hydroelectric facility; 595

(iv) Geothermal energy, regardless of whether electricity is 596  
produced; 597

(v) Fuel derived from solid wastes, as defined in section 598  
3734.01 of the Revised Code, through fractionation, biological 599  
decomposition, or other process that does not principally involve 600  
combustion; 601

(vi) Biomass energy; 602

(vii) Energy produced by cogeneration technology that is 603  
placed into service on or before December 31, 2015, and for which 604  
more than ninety per cent of the total annual energy input is from 605  
combustion of a waste or byproduct gas from an air contaminant 606  
source in this state, which source has been in operation since on 607  
or before January 1, 1985, provided that the cogeneration 608

technology is a part of a facility located in a county having a population of more than three hundred sixty-five thousand but less than three hundred seventy thousand according to the most recent federal decennial census;

(viii) Biologically derived methane gas;

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

"Renewable energy resource" includes, but is not limited to, any energy derived from a fuel cell used in the generation of electricity, including, but not limited to, a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell; wind turbine located in the state's territorial waters of Lake Erie; methane gas emitted from an abandoned coal mine; waste energy recovery system placed into service or retrofitted on or after the effective date of the amendment of this section by S.B. 315 of the 129th general assembly, September 10, 2012, except that a waste energy recovery system described in division (A)(38)(b) of this section may be included only if it was placed into service between January 1, 2002, and December 31, 2004; storage facility that will promote the better utilization of a renewable energy resource; or distributed generation system used by a customer to generate electricity from any such energy.

"Renewable energy resource" does not include a waste energy recovery system that is, or was, on or after January 1, 2012, included in an energy efficiency program of an electric distribution utility pursuant to requirements under ~~section~~ sections 4928.66 to 4928.6660 of the Revised Code.

(b) As used in division (A)(37) of this section, "hydroelectric facility" means a hydroelectric generating facility

that is located at a dam on a river, or on any water discharged to 640  
a river or lake, that is within or bordering this state ~~or~~, within 641  
or bordering an adjoining state, or within the Canadian provinces 642  
of Ontario or Quebec, and meets all of the following standards: 643

(i) The facility provides for river flows that are not 644  
detrimental for fish, wildlife, and water quality, including 645  
seasonal flow fluctuations as defined by the applicable licensing 646  
agency for the facility. 647

(ii) The facility demonstrates that it complies with the 648  
water quality standards of this state, which compliance may 649  
consist of certification under Section 401 of the "Clean Water Act 650  
of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and demonstrates 651  
that it has not contributed to a finding by this state that the 652  
river has impaired water quality under Section 303(d) of the 653  
"Clean Water Act of 1977," 114 Stat. 870, 33 U.S.C. 1313. 654

(iii) The facility complies with mandatory prescriptions 655  
regarding fish passage as required by the federal energy 656  
regulatory commission license issued for the project, regarding 657  
fish protection for riverine, anadromous, and catadromous fish. 658

(iv) The facility complies with the recommendations of the 659  
Ohio environmental protection agency and with the terms of its 660  
federal energy regulatory commission license regarding watershed 661  
protection, mitigation, or enhancement, to the extent of each 662  
agency's respective jurisdiction over the facility. 663

(v) The facility complies with provisions of the "Endangered 664  
Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 to 1544, as 665  
amended. 666

(vi) The facility does not harm cultural resources of the 667  
area. This can be shown through compliance with the terms of its 668  
federal energy regulatory commission license or, if the facility 669  
is not regulated by that commission, through development of a plan 670

approved by the Ohio historic preservation office, to the extent 671  
it has jurisdiction over the facility. 672

(vii) The facility complies with the terms of its federal 673  
energy regulatory commission license or exemption that are related 674  
to recreational access, accommodation, and facilities or, if the 675  
facility is not regulated by that commission, the facility 676  
complies with similar requirements as are recommended by resource 677  
agencies, to the extent they have jurisdiction over the facility; 678  
and the facility provides access to water to the public without 679  
fee or charge. 680

(viii) The facility is not recommended for removal by any 681  
federal agency or agency of any state, to the extent the 682  
particular agency has jurisdiction over the facility. 683

(38) "Waste energy recovery system" means either of the 684  
following: 685

(a) A facility that generates electricity through the 686  
conversion of energy from either of the following: 687

(i) Exhaust heat from engines or manufacturing, industrial, 688  
commercial, or institutional sites, except for exhaust heat from a 689  
facility whose primary purpose is the generation of electricity; 690

(ii) Reduction of pressure in gas pipelines before gas is 691  
distributed through the pipeline, provided that the conversion of 692  
energy to electricity is achieved without using additional fossil 693  
fuels. 694

(b) A facility at a state institution of higher education as 695  
defined in section 3345.011 of the Revised Code that recovers 696  
waste heat from electricity-producing engines or combustion 697  
turbines and that simultaneously uses the recovered heat to 698  
produce steam, provided that the facility was placed into service 699  
between January 1, 2002, and December 31, 2004. 700

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

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

(41) "Water supply function" means the functions associated with the following:

(a) Raw water collection, purification, treatment, and storage;

(b) Establishing or maintaining pressure to balance water supply and demand;

(c) Water delivery and transfer.

(42) "Water treatment function" means any of the preliminary, secondary, tertiary, and advanced activities, whether physical, biological, or chemical, associated with the removal of contaminants from, or conditioning of, wastewater prior to its return to the environment or recycled use;

(43) "Energy intensity" means the amount of energy used to produce a certain level of output or activity, measured by the quantity of energy needed to perform a particular activity, expressed as energy per unit of output, energy per unit of gross total floor space, or an activity measure of service.

(B) For the purposes of this chapter, a retail electric service component shall be deemed a competitive retail electric service if the service component is competitive pursuant to a

declaration by a provision of the Revised Code or pursuant to an 731  
order of the public utilities commission authorized under division 732  
(A) of section 4928.04 of the Revised Code. Otherwise, the service 733  
component shall be deemed a noncompetitive retail electric 734  
service. 735

**Sec. 4928.143.** (A) For the purpose of complying with section 736  
4928.141 of the Revised Code, an electric distribution utility may 737  
file an application for public utilities commission approval of an 738  
electric security plan as prescribed under division (B) of this 739  
section. The utility may file that application prior to the 740  
effective date of any rules the commission may adopt for the 741  
purpose of this section, and, as the commission determines 742  
necessary, the utility immediately shall conform its filing to 743  
those rules upon their taking effect. 744

(B) Notwithstanding any other provision of Title XLIX of the 745  
Revised Code to the contrary except division (D) of this section, 746  
divisions (I), (J), and (K) of section 4928.20, ~~division (E) of~~ 747  
section ~~4928.64~~ 4928.649, and section 4928.69 of the Revised Code: 748

(1) An electric security plan shall include provisions 749  
relating to the supply and pricing of electric generation service. 750  
In addition, if the proposed electric security plan has a term 751  
longer than three years, it may include provisions in the plan to 752  
permit the commission to test the plan pursuant to division (E) of 753  
this section and any transitional conditions that should be 754  
adopted by the commission if the commission terminates the plan as 755  
authorized under that division. 756

(2) The plan may provide for or include, without limitation, 757  
any of the following: 758

(a) Automatic recovery of any of the following costs of the 759  
electric distribution utility, provided the cost is prudently 760  
incurred: the cost of fuel used to generate the electricity 761

supplied under the offer; the cost of purchased power supplied 762  
under the offer, including the cost of energy and capacity, and 763  
including purchased power acquired from an affiliate; the cost of 764  
emission allowances; and the cost of federally mandated carbon or 765  
energy taxes; 766

(b) A reasonable allowance for construction work in progress 767  
for any of the electric distribution utility's cost of 768  
constructing an electric generating facility or for an 769  
environmental expenditure for any electric generating facility of 770  
the electric distribution utility, provided the cost is incurred 771  
or the expenditure occurs on or after January 1, 2009. Any such 772  
allowance shall be subject to the construction work in progress 773  
allowance limitations of division (A) of section 4909.15 of the 774  
Revised Code, except that the commission may authorize such an 775  
allowance upon the incurrence of the cost or occurrence of the 776  
expenditure. No such allowance for generating facility 777  
construction shall be authorized, however, unless the commission 778  
first determines in the proceeding that there is need for the 779  
facility based on resource planning projections submitted by the 780  
electric distribution utility. Further, no such allowance shall be 781  
authorized unless the facility's construction was sourced through 782  
a competitive bid process, regarding which process the commission 783  
may adopt rules. An allowance approved under division (B)(2)(b) of 784  
this section shall be established as a nonbypassable surcharge for 785  
the life of the facility. 786

(c) The establishment of a nonbypassable surcharge for the 787  
life of an electric generating facility that is owned or operated 788  
by the electric distribution utility, was sourced through a 789  
competitive bid process subject to any such rules as the 790  
commission adopts under division (B)(2)(b) of this section, and is 791  
newly used and useful on or after January 1, 2009, which surcharge 792  
shall cover all costs of the utility specified in the application, 793

excluding costs recovered through a surcharge under division 794  
(B)(2)(b) of this section. However, no surcharge shall be 795  
authorized unless the commission first determines in the 796  
proceeding that there is need for the facility based on resource 797  
planning projections submitted by the electric distribution 798  
utility. Additionally, if a surcharge is authorized for a facility 799  
pursuant to plan approval under division (C) of this section and 800  
as a condition of the continuation of the surcharge, the electric 801  
distribution utility shall dedicate to Ohio consumers the capacity 802  
and energy and the rate associated with the cost of that facility. 803  
Before the commission authorizes any surcharge pursuant to this 804  
division, it may consider, as applicable, the effects of any 805  
decommissioning, deratings, and retirements. 806

(d) Terms, conditions, or charges relating to limitations on 807  
customer shopping for retail electric generation service, 808  
bypassability, standby, back-up, or supplemental power service, 809  
default service, carrying costs, amortization periods, and 810  
accounting or deferrals, including future recovery of such 811  
deferrals, as would have the effect of stabilizing or providing 812  
certainty regarding retail electric service; 813

(e) Automatic increases or decreases in any component of the 814  
standard service offer price; 815

(f) Consistent with sections 4928.23 to 4928.2318 of the 816  
Revised Code, both of the following: 817

(i) Provisions for the electric distribution utility to 818  
securitize any phase-in, inclusive of carrying charges, of the 819  
utility's standard service offer price, which phase-in is 820  
authorized in accordance with section 4928.144 of the Revised 821  
Code; 822

(ii) Provisions for the recovery of the utility's cost of 823  
securitization. 824

(g) Provisions relating to transmission, ancillary, 825  
congestion, or any related service required for the standard 826  
service offer, including provisions for the recovery of any cost 827  
of such service that the electric distribution utility incurs on 828  
or after that date pursuant to the standard service offer; 829

(h) Provisions regarding the utility's distribution service, 830  
including, without limitation and notwithstanding any provision of 831  
Title XLIX of the Revised Code to the contrary, provisions 832  
regarding single issue ratemaking, a revenue decoupling mechanism 833  
or any other incentive ratemaking, and provisions regarding 834  
distribution infrastructure and modernization incentives for the 835  
electric distribution utility. The latter may include a long-term 836  
energy delivery infrastructure modernization plan for that utility 837  
or any plan providing for the utility's recovery of costs, 838  
including lost revenue, shared savings, and avoided costs, and a 839  
just and reasonable rate of return on such infrastructure 840  
modernization. As part of its determination as to whether to allow 841  
in an electric distribution utility's electric security plan 842  
inclusion of any provision described in division (B)(2)(h) of this 843  
section, the commission shall examine the reliability of the 844  
electric distribution utility's distribution system and ensure 845  
that customers' and the electric distribution utility's 846  
expectations are aligned and that the electric distribution 847  
utility is placing sufficient emphasis on and dedicating 848  
sufficient resources to the reliability of its distribution 849  
system. 850

(i) Provisions under which the electric distribution utility 851  
may implement economic development, job retention, and energy 852  
efficiency programs, which provisions may allocate program costs 853  
across all classes of customers of the utility and those of 854  
electric distribution utilities in the same holding company 855  
system. 856

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

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

(b) If the utility terminates an application pursuant to division (C)(2)(a) of this section or if the commission disapproves an application under division (C)(1) of this section, the commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer, until

a subsequent offer is authorized pursuant to this section or 889  
section 4928.142 of the Revised Code, respectively. 890

(D) Regarding the rate plan requirement of division (A) of 891  
section 4928.141 of the Revised Code, if an electric distribution 892  
utility that has a rate plan that extends beyond December 31, 893  
2008, files an application under this section for the purpose of 894  
its compliance with division (A) of section 4928.141 of the 895  
Revised Code, that rate plan and its terms and conditions are 896  
hereby incorporated into its proposed electric security plan and 897  
shall continue in effect until the date scheduled under the rate 898  
plan for its expiration, and that portion of the electric security 899  
plan shall not be subject to commission approval or disapproval 900  
under division (C) of this section, and the earnings test provided 901  
for in division (F) of this section shall not apply until after 902  
the expiration of the rate plan. However, that utility may include 903  
in its electric security plan under this section, and the 904  
commission may approve, modify and approve, or disapprove subject 905  
to division (C) of this section, provisions for the incremental 906  
recovery or the deferral of any costs that are not being recovered 907  
under the rate plan and that the utility incurs during that 908  
continuation period to comply with section 4928.141, ~~division (B)~~ 909  
~~of section 4928.64 4928.641~~, or ~~division (A) of section sections~~ 910  
4928.66 to 4928.6660 of the Revised Code. 911

(E) If an electric security plan approved under division (C) 912  
of this section, except one withdrawn by the utility as authorized 913  
under that division, has a term, exclusive of phase-ins or 914  
deferrals, that exceeds three years from the effective date of the 915  
plan, the commission shall test the plan in the fourth year, and 916  
if applicable, every fourth year thereafter, to determine whether 917  
the plan, including its then-existing pricing and all other terms 918  
and conditions, including any deferrals and any future recovery of 919  
deferrals, continues to be more favorable in the aggregate and 920

during the remaining term of the plan as compared to the expected 921  
results that would otherwise apply under section 4928.142 of the 922  
Revised Code. The commission shall also determine the prospective 923  
effect of the electric security plan to determine if that effect 924  
is substantially likely to provide the electric distribution 925  
utility with a return on common equity that is significantly in 926  
excess of the return on common equity that is likely to be earned 927  
by publicly traded companies, including utilities, that face 928  
comparable business and financial risk, with such adjustments for 929  
capital structure as may be appropriate. The burden of proof for 930  
demonstrating that significantly excessive earnings will not occur 931  
shall be on the electric distribution utility. If the test results 932  
are in the negative or the commission finds that continuation of 933  
the electric security plan will result in a return on equity that 934  
is significantly in excess of the return on common equity that is 935  
likely to be earned by publicly traded companies, including 936  
utilities, that will face comparable business and financial risk, 937  
with such adjustments for capital structure as may be appropriate, 938  
during the balance of the plan, the commission may terminate the 939  
electric security plan, but not until it shall have provided 940  
interested parties with notice and an opportunity to be heard. The 941  
commission may impose such conditions on the plan's termination as 942  
it considers reasonable and necessary to accommodate the 943  
transition from an approved plan to the more advantageous 944  
alternative. In the event of an electric security plan's 945  
termination pursuant to this division, the commission shall permit 946  
the continued deferral and phase-in of any amounts that occurred 947  
prior to that termination and the recovery of those amounts as 948  
contemplated under that electric security plan. 949

(F) With regard to the provisions that are included in an 950  
electric security plan under this section, the commission shall 951  
consider, following the end of each annual period of the plan, if 952  
any such adjustments resulted in excessive earnings as measured by 953

whether the earned return on common equity of the electric 954  
distribution utility is significantly in excess of the return on 955  
common equity that was earned during the same period by publicly 956  
traded companies, including utilities, that face comparable 957  
business and financial risk, with such adjustments for capital 958  
structure as may be appropriate. Consideration also shall be given 959  
to the capital requirements of future committed investments in 960  
this state. The burden of proof for demonstrating that 961  
significantly excessive earnings did not occur shall be on the 962  
electric distribution utility. If the commission finds that such 963  
adjustments, in the aggregate, did result in significantly 964  
excessive earnings, it shall require the electric distribution 965  
utility to return to consumers the amount of the excess by 966  
prospective adjustments; provided that, upon making such 967  
prospective adjustments, the electric distribution utility shall 968  
have the right to terminate the plan and immediately file an 969  
application pursuant to section 4928.142 of the Revised Code. Upon 970  
termination of a plan under this division, rates shall be set on 971  
the same basis as specified in division (C)(2)(b) of this section, 972  
and the commission shall permit the continued deferral and 973  
phase-in of any amounts that occurred prior to that termination 974  
and the recovery of those amounts as contemplated under that 975  
electric security plan. In making its determination of 976  
significantly excessive earnings under this division, the 977  
commission shall not consider, directly or indirectly, the 978  
revenue, expenses, or earnings of any affiliate or parent company. 979

**Sec. 4928.20.** (A) The legislative authority of a municipal 980  
corporation may adopt an ordinance, or the board of township 981  
trustees of a township or the board of county commissioners of a 982  
county may adopt a resolution, under which, on or after the 983  
starting date of competitive retail electric service, it may 984  
aggregate in accordance with this section the retail electrical 985

loads located, respectively, within the municipal corporation, 986  
township, or unincorporated area of the county and, for that 987  
purpose, may enter into service agreements to facilitate for those 988  
loads the sale and purchase of electricity. The legislative 989  
authority or board also may exercise such authority jointly with 990  
any other such legislative authority or board. For customers that 991  
are not mercantile customers, an ordinance or resolution under 992  
this division shall specify whether the aggregation will occur 993  
only with the prior, affirmative consent of each person owning, 994  
occupying, controlling, or using an electric load center proposed 995  
to be aggregated or will occur automatically for all such persons 996  
pursuant to the opt-out requirements of division (D) of this 997  
section. The aggregation of mercantile customers shall occur only 998  
with the prior, affirmative consent of each such person owning, 999  
occupying, controlling, or using an electric load center proposed 1000  
to be aggregated. Nothing in this division, however, authorizes 1001  
the aggregation of the retail electric loads of an electric load 1002  
center, as defined in section 4933.81 of the Revised Code, that is 1003  
located in the certified territory of a nonprofit electric 1004  
supplier under sections 4933.81 to 4933.90 of the Revised Code or 1005  
an electric load center served by transmission or distribution 1006  
facilities of a municipal electric utility. 1007

(B) If an ordinance or resolution adopted under division (A) 1008  
of this section specifies that aggregation of customers that are 1009  
not mercantile customers will occur automatically as described in 1010  
that division, the ordinance or resolution shall direct the board 1011  
of elections to submit the question of the authority to aggregate 1012  
to the electors of the respective municipal corporation, township, 1013  
or unincorporated area of a county at a special election on the 1014  
day of the next primary or general election in the municipal 1015  
corporation, township, or county. The legislative authority or 1016  
board shall certify a copy of the ordinance or resolution to the 1017  
board of elections not less than ninety days before the day of the 1018

special election. No ordinance or resolution adopted under 1019  
division (A) of this section that provides for an election under 1020  
this division shall take effect unless approved by a majority of 1021  
the electors voting upon the ordinance or resolution at the 1022  
election held pursuant to this division. 1023

(C) Upon the applicable requisite authority under divisions 1024  
(A) and (B) of this section, the legislative authority or board 1025  
shall develop a plan of operation and governance for the 1026  
aggregation program so authorized. Before adopting a plan under 1027  
this division, the legislative authority or board shall hold at 1028  
least two public hearings on the plan. Before the first hearing, 1029  
the legislative authority or board shall publish notice of the 1030  
hearings once a week for two consecutive weeks in a newspaper of 1031  
general circulation in the jurisdiction or as provided in section 1032  
7.16 of the Revised Code. The notice shall summarize the plan and 1033  
state the date, time, and location of each hearing. 1034

(D) No legislative authority or board, pursuant to an 1035  
ordinance or resolution under divisions (A) and (B) of this 1036  
section that provides for automatic aggregation of customers that 1037  
are not mercantile customers as described in division (A) of this 1038  
section, shall aggregate the electrical load of any electric load 1039  
center located within its jurisdiction unless it in advance 1040  
clearly discloses to the person owning, occupying, controlling, or 1041  
using the load center that the person will be enrolled 1042  
automatically in the aggregation program and will remain so 1043  
enrolled unless the person affirmatively elects by a stated 1044  
procedure not to be so enrolled. The disclosure shall state 1045  
prominently the rates, charges, and other terms and conditions of 1046  
enrollment. The stated procedure shall allow any person enrolled 1047  
in the aggregation program the opportunity to opt out of the 1048  
program every three years, without paying a switching fee. Any 1049  
such person that opts out before the commencement of the 1050

aggregation program pursuant to the stated procedure shall default 1051  
to the standard service offer provided under section 4928.14 or 1052  
division (D) of section 4928.35 of the Revised Code until the 1053  
person chooses an alternative supplier. 1054

(E)(1) With respect to a governmental aggregation for a 1055  
municipal corporation that is authorized pursuant to divisions (A) 1056  
to (D) of this section, resolutions may be proposed by initiative 1057  
or referendum petitions in accordance with sections 731.28 to 1058  
731.41 of the Revised Code. 1059

(2) With respect to a governmental aggregation for a township 1060  
or the unincorporated area of a county, which aggregation is 1061  
authorized pursuant to divisions (A) to (D) of this section, 1062  
resolutions may be proposed by initiative or referendum petitions 1063  
in accordance with sections 731.28 to 731.40 of the Revised Code, 1064  
except that: 1065

(a) The petitions shall be filed, respectively, with the 1066  
township fiscal officer or the board of county commissioners, who 1067  
shall perform those duties imposed under those sections upon the 1068  
city auditor or village clerk. 1069

(b) The petitions shall contain the signatures of not less 1070  
than ten per cent of the total number of electors in, 1071  
respectively, the township or the unincorporated area of the 1072  
county who voted for the office of governor at the preceding 1073  
general election for that office in that area. 1074

(F) A governmental aggregator under division (A) of this 1075  
section is not a public utility engaging in the wholesale purchase 1076  
and resale of electricity, and provision of the aggregated service 1077  
is not a wholesale utility transaction. A governmental aggregator 1078  
shall be subject to supervision and regulation by the public 1079  
utilities commission only to the extent of any competitive retail 1080  
electric service it provides and commission authority under this 1081

chapter. 1082

(G) This section does not apply in the case of a municipal 1083  
corporation that supplies such aggregated service to electric load 1084  
centers to which its municipal electric utility also supplies a 1085  
noncompetitive retail electric service through transmission or 1086  
distribution facilities the utility singly or jointly owns or 1087  
operates. 1088

(H) A governmental aggregator shall not include in its 1089  
aggregation the accounts of any of the following: 1090

(1) A customer that has opted out of the aggregation; 1091

(2) A customer in contract with a certified electric services 1092  
company; 1093

(3) A customer that has a special contract with an electric 1094  
distribution utility; 1095

(4) A customer that is not located within the governmental 1096  
aggregator's governmental boundaries; 1097

(5) Subject to division (C) of section 4928.21 of the Revised 1098  
Code, a customer who appears on the "do not aggregate" list 1099  
maintained under that section. 1100

(I) Customers that are part of a governmental aggregation 1101  
under this section shall be responsible only for such portion of a 1102  
surcharge under section 4928.144 of the Revised Code that is 1103  
proportionate to the benefits, as determined by the commission, 1104  
that electric load centers within the jurisdiction of the 1105  
governmental aggregation as a group receive. The proportionate 1106  
surcharge so established shall apply to each customer of the 1107  
governmental aggregation while the customer is part of that 1108  
aggregation. If a customer ceases being such a customer, the 1109  
otherwise applicable surcharge shall apply. Nothing in this 1110  
section shall result in less than full recovery by an electric 1111

distribution utility of any surcharge authorized under section 1112  
4928.144 of the Revised Code. Nothing in this section shall result 1113  
in less than the full and timely imposition, charging, collection, 1114  
and adjustment by an electric distribution utility, its assignee, 1115  
or any collection agent, of the phase-in-recovery charges 1116  
authorized pursuant to a final financing order issued pursuant to 1117  
sections 4928.23 to 4928.2318 of the Revised Code. 1118

(J) On behalf of the customers that are part of a 1119  
governmental aggregation under this section and by filing written 1120  
notice with the public utilities commission, the legislative 1121  
authority that formed or is forming that governmental aggregation 1122  
may elect not to receive standby service within the meaning of 1123  
division (B)(2)(d) of section 4928.143 of the Revised Code from an 1124  
electric distribution utility in whose certified territory the 1125  
governmental aggregation is located and that operates under an 1126  
approved electric security plan under that section. Upon the 1127  
filing of that notice, the electric distribution utility shall not 1128  
charge any such customer to whom competitive retail electric 1129  
generation service is provided by another supplier under the 1130  
governmental aggregation for the standby service. Any such 1131  
consumer that returns to the utility for competitive retail 1132  
electric service shall pay the market price of power incurred by 1133  
the utility to serve that consumer plus any amount attributable to 1134  
the utility's cost of compliance with the alternative energy 1135  
resource provisions of ~~section~~ sections 4928.64 to 4928.6410 of 1136  
the Revised Code to serve the consumer. Such market price shall 1137  
include, but not be limited to, capacity and energy charges; all 1138  
charges associated with the provision of that power supply through 1139  
the regional transmission organization, including, but not limited 1140  
to, transmission, ancillary services, congestion, and settlement 1141  
and administrative charges; and all other costs incurred by the 1142  
utility that are associated with the procurement, provision, and 1143  
administration of that power supply, as such costs may be approved 1144

by the commission. The period of time during which the market 1145  
price and alternative energy resource amount shall be so assessed 1146  
on the consumer shall be from the time the consumer so returns to 1147  
the electric distribution utility until the expiration of the 1148  
electric security plan. However, if that period of time is 1149  
expected to be more than two years, the commission may reduce the 1150  
time period to a period of not less than two years. 1151

(K) The commission shall adopt rules to encourage and promote 1152  
large-scale governmental aggregation in this state. For that 1153  
purpose, the commission shall conduct an immediate review of any 1154  
rules it has adopted for the purpose of this section that are in 1155  
effect on the effective date of the amendment of this section by 1156  
S.B. 221 of the 127th general assembly, July 31, 2008. Further, 1157  
within the context of an electric security plan under section 1158  
4928.143 of the Revised Code, the commission shall consider the 1159  
effect on large-scale governmental aggregation of any 1160  
nonbypassable generation charges, however collected, that would be 1161  
established under that plan, except any nonbypassable generation 1162  
charges that relate to any cost incurred by the electric 1163  
distribution utility, the deferral of which has been authorized by 1164  
the commission prior to the effective date of the amendment of 1165  
this section by S.B. 221 of the 127th general assembly, July 31, 1166  
2008. 1167

**Sec. 4928.61.** (A) There is hereby established in the state 1168  
treasury the advanced energy fund, into which shall be deposited 1169  
all advanced energy revenues remitted to the director of 1170  
development under division (B) of this section, for the exclusive 1171  
purposes of funding the advanced energy program created under 1172  
section 4928.62 of the Revised Code and paying the program's 1173  
administrative costs. Interest on the fund shall be credited to 1174  
the fund. 1175

(B) Advanced energy revenues shall include all of the 1176  
following: 1177

(1) Revenues remitted to the director after collection by 1178  
each electric distribution utility in this state of a temporary 1179  
rider on retail electric distribution service rates as such rates 1180  
are determined by the public utilities commission pursuant to this 1181  
chapter. The rider shall be a uniform amount statewide, determined 1182  
by the director of development, after consultation with the public 1183  
benefits advisory board created by section 4928.58 of the Revised 1184  
Code. The amount shall be determined by dividing an aggregate 1185  
revenue target for a given year as determined by the director, 1186  
after consultation with the advisory board, by the number of 1187  
customers of electric distribution utilities in this state in the 1188  
prior year. Such aggregate revenue target shall not exceed more 1189  
than fifteen million dollars in any year through 2005 and shall 1190  
not exceed more than five million dollars in any year after 2005. 1191  
The rider shall be imposed beginning on the effective date of the 1192  
amendment of this section by Sub. H.B. 251 of the 126th general 1193  
assembly, January 4, 2007, and shall terminate at the end of ten 1194  
years following the starting date of competitive retail electric 1195  
service or until the advanced energy fund, including interest, 1196  
reaches one hundred million dollars, whichever is first. 1197

(2) Revenues from payments, repayments, and collections under 1198  
the advanced energy program and from program income; 1199

(3) Revenues remitted to the director after collection by a 1200  
municipal electric utility or electric cooperative in this state 1201  
upon the utility's or cooperative's decision to participate in the 1202  
advanced energy fund; 1203

(4) Revenues from renewable energy compliance payments as 1204  
provided under ~~division (C)(2) of section 4928.64~~ 4928.643 of the 1205  
Revised Code; 1206

(5) Revenue from forfeitures under <del>division (C)</del> of section	1207
<del>4928.66</del> <u>4928.6656</u> of the Revised Code;	1208
(6) Funds transferred pursuant to division (B) of Section	1209
512.10 of S.B. 315 of the 129th general assembly;	1210
(7) Interest earnings on the advanced energy fund.	1211
(C)(1) Each electric distribution utility in this state shall	1212
remit to the director on a quarterly basis the revenues described	1213
in divisions (B)(1) and (2) of this section. Such remittances	1214
shall occur within thirty days after the end of each calendar	1215
quarter.	1216
(2) Each participating electric cooperative and participating	1217
municipal electric utility shall remit to the director on a	1218
quarterly basis the revenues described in division (B)(3) of this	1219
section. Such remittances shall occur within thirty days after the	1220
end of each calendar quarter. For the purpose of division (B)(3)	1221
of this section, the participation of an electric cooperative or	1222
municipal electric utility in the energy efficiency revolving loan	1223
program as it existed immediately prior to the effective date of	1224
the amendment of this section by Sub. H.B. 251 of the 126th	1225
general assembly, January 4, 2007, does not constitute a decision	1226
to participate in the advanced energy fund under this section as	1227
so amended.	1228
(3) All remittances under divisions (C)(1) and (2) of this	1229
section shall continue only until the end of ten years following	1230
the starting date of competitive retail electric service or until	1231
the advanced energy fund, including interest, reaches one hundred	1232
million dollars, whichever is first.	1233
(D) Any moneys collected in rates for non-low-income customer	1234
energy efficiency programs, as of October 5, 1999, and not	1235
contributed to the energy efficiency revolving loan fund	1236
authorized under this section prior to the effective date of its	1237

amendment by Sub. H.B. 251 of the 126th general assembly, January 1238  
4, 2007, shall be used to continue to fund cost-effective, 1239  
residential energy efficiency programs, be contributed into the 1240  
universal service fund as a supplement to that required under 1241  
section 4928.53 of the Revised Code, or be returned to ratepayers 1242  
in the form of a rate reduction at the option of the affected 1243  
electric distribution utility. 1244

**Sec. 4928.64.** (A)~~(1)~~ As used in sections 4928.64 to 4928.6410 1245  
and 4928.65 of the Revised Code, "alternative energy resource" 1246  
means ~~an~~ the following: 1247

(1) An advanced energy resource or renewable energy resource, 1248  
as defined in section 4928.01 of the Revised Code that has a 1249  
placed-in-service date of January 1, 1998, or after; a 1250

(2) A renewable energy resource created on or after January 1251  
1, 1998, by the modification or retrofit of any facility placed in 1252  
service prior to January 1, 1998; ~~or a~~ 1253

(3) A mercantile customer-sited advanced energy resource or 1254  
renewable energy resource, whether new or existing, that the 1255  
mercantile customer contractually commits to an electric 1256  
distribution utility or an electric services company for purposes 1257  
of compliance with section 4928.641 of the Revised Code or 1258  
contractually commits to an electric distribution utility for 1259  
integration into the ~~electric distribution~~ utility's 1260  
demand-response, energy efficiency, or peak demand reduction 1261  
programs as provided under ~~division (A)(2)(c) of section 4928.66~~ 1262  
4928.6650 of the Revised Code, including, but not limited to, any 1263  
of the following: 1264

(a) A resource, behavior, or practice that ~~has~~ does any of 1265  
the following: 1266

(i) Has the effect of improving the relationship between real 1267

and reactive power;	1268
(ii) <u>Reduces line losses;</u>	1269
(iii) <u>Reduces transformation losses.</u>	1270
(b) A resource, <u>behavior, or practice</u> that makes efficient use of waste heat or other thermal capabilities owned or controlled by a mercantile customer;	1271 1272 1273
(c) <u>Storage, behavior, practice, or</u> technology that allows a mercantile customer more flexibility to modify its demand or load and usage characteristics;	1274 1275 1276
(d) Electric generation equipment owned or controlled by a mercantile customer that uses an advanced energy resource or renewable energy resource;	1277 1278 1279
(e) <u>Any plan, policy, behavior, or practice that reduces the total energy intensity of a facility, pipeline, building, plant, or equipment regardless of the type of energy intensity reduction, provided that such plan, policy, behavior, or practice does not result in a substitution of an alternative form of energy use for the use of purchased electricity;</u>	1280 1281 1282 1283 1284 1285
(f) <u>Any plan, policy, behavior, or practice that reduces the energy intensity of any water supply function or water treatment function;</u>	1286 1287 1288
(g) Any advanced energy resource or renewable energy resource of the mercantile customer that can be utilized effectively as part of any advanced energy resource plan of an electric distribution utility and would otherwise qualify as an alternative energy resource if it were utilized directly by an electric distribution utility.	1289 1290 1291 1292 1293 1294
<del>(2)</del> (h) <u>Any energy intensity reduction that is achieved, in whole or in part, as a result of the funding provided from the universal service fund established under section 4928.51 of the</u>	1295 1296 1297

Revised Code. 1298

(B) For the purpose of ~~this section~~ sections 4928.641 to 1299  
4928.6410 of the Revised Code and as it considers appropriate, the 1300  
public utilities commission may classify any new technology as 1301  
such an advanced energy resource or a renewable energy resource. 1302

**Sec. 4928.641.** ~~(B)~~(A) By 2025 and thereafter, an electric 1303  
distribution utility shall provide from alternative energy 1304  
resources, including, at its discretion, alternative energy 1305  
resources obtained pursuant to an electricity supply contract, a 1306  
portion of the electricity supply required for its standard 1307  
service offer under section 4928.141 of the Revised Code, and an 1308  
electric services company shall provide a portion of its 1309  
electricity supply for retail consumers in this state from 1310  
alternative energy resources, including, at its discretion, 1311  
alternative energy resources obtained pursuant to an electricity 1312  
supply contract. That portion shall equal twenty-five per cent of 1313  
the total number of kilowatt hours of electricity sold by the 1314  
subject utility or company to any and all retail electric 1315  
consumers whose electric load centers are served by that utility 1316  
and are located within the utility's certified territory or, in 1317  
the case of an electric services company, are served by the 1318  
company and are located within this state. However, nothing in 1319  
this section precludes a utility or company from providing a 1320  
greater percentage. The baseline for a utility's or company's 1321  
compliance with the alternative energy resource requirements of 1322  
this section shall be the average of such total kilowatt hours it 1323  
sold in the preceding three calendar years, except that the public 1324  
utilities commission may reduce a utility's or company's baseline 1325  
to adjust for new economic growth in the utility's certified 1326  
territory or, in the case of an electric services company, in the 1327  
company's service area in this state. 1328

Of (B) Subject to the cost cap provisions of section 4928.644 of the Revised Code, of the alternative energy resources implemented by the subject utility or company by 2025 and thereafter:

(1) Half may be generated met from advanced energy resources and shall be counted towards compliance with this section in every year it is provided in order to meet compliance, beginning in 2009;

(2) At least half shall be generated from renewable energy resources, including one-half per cent from solar energy resources, in accordance with the following benchmarks:

By end of year	Renewable energy resources	Solar energy resources	
2009	0.25%	0.004%	1341
2010	0.50%	0.010%	1342
2011	1%	0.030%	1343
2012	1.5%	0.060%	1344
2013	2%	0.090%	1345
2014	2.5%	0.12%	1346
2015	3.5%	0.15%	1347
2016	4.5%	0.18%	1348
2017	5.5%	0.22%	1349
2018	6.5%	0.26%	1350
2019	7.5%	0.3%	1351
2020	8.5%	0.34%	1352
2021	9.5%	0.38%	1353
2022	10.5%	0.42%	1354
2023	11.5%	0.46%	1355
2024 and each calendar year thereafter	12.5%	0.5%	1356

(3) At least one-half of the renewable energy resources implemented by the utility or company shall be met through

~~facilities located in this state; the remainder shall be met with~~ 1359  
~~resources that can be shown to be deliverable into this state from~~ 1360  
~~renewable energy resources that are one of the following:~~ 1361

(a) Located in this state; 1362

(b) Eligible, or become eligible, to be provided as capacity, 1363  
energy, or ancillary services through or within the wholesale 1364  
electric market operated by the PJM interconnection regional 1365  
transmission organization or its successor, the midcontinent 1366  
independent system operator or its successor, or any regional 1367  
transmission entity performing the functions identified in section 1368  
4928.12 of the Revised Code and applicable to this state. 1369

**Sec. 4928.642.** ~~(C)(1)~~ The public utilities commission 1370  
annually shall review an electric distribution utility's or 1371  
electric services company's compliance with the most recent 1372  
applicable benchmark under division (B)(2) of ~~this~~ section 1373  
4928.641 of the Revised Code and, in the course of that review, 1374  
shall identify any undercompliance or noncompliance of the utility 1375  
or company that it determines is weather-related, related to 1376  
equipment or resource shortages for advanced energy or renewable 1377  
energy resources as applicable, or is otherwise outside the 1378  
utility's or company's control. 1379

**Sec. 4928.643.** ~~(2)~~ Subject to the cost cap provisions of 1380  
~~division (C)(3) of this~~ section 4928.644 of the Revised Code, if 1381  
the public utilities commission determines, after notice and 1382  
opportunity for hearing, and based upon its findings in that 1383  
review regarding avoidable undercompliance or noncompliance, but 1384  
subject to ~~division (C)(4) of this~~ section 4928.645 of the Revised 1385  
Code, that the utility or company has failed to comply with any 1386  
such benchmark, the commission ~~shall~~ may impose a renewable energy 1387  
compliance payment on the utility or company. 1388

~~(a)~~(A) The compliance payment pertaining to the solar energy resource benchmarks under division (B)(2) of ~~this~~ section 4928.641 of the Revised Code shall be an amount per megawatt hour of undercompliance or noncompliance in the period under review, starting at four hundred fifty dollars for 2009, four hundred dollars for 2010 and 2011, and similarly reduced every two years thereafter through 2024 by fifty dollars, to a minimum of fifty dollars.

~~(b)~~(B) The compliance payment pertaining to the renewable energy resource benchmarks under division (B)(2) of ~~this~~ section 4928.641 of the Revised Code shall equal the number of additional renewable energy credits that the electric distribution utility or electric services company would have needed to comply with the applicable benchmark in the period under review times an amount that shall begin at forty-five dollars and shall be adjusted annually by the commission to reflect any change in the consumer price index as defined in section 101.27 of the Revised Code, but shall not be less than forty-five dollars.

~~(e)~~(C) The compliance payment shall not be passed through by the electric distribution utility or electric services company to consumers. The compliance payment shall be remitted to the commission, for deposit to the credit of the advanced energy fund created under section 4928.61 of the Revised Code. Payment of the compliance payment shall be subject to such collection and enforcement procedures as apply to the collection of a forfeiture under sections 4905.55 to 4905.60 and 4905.64 of the Revised Code.

**Sec. 4928.644.** ~~(3)~~(A) An electric distribution utility or an electric services company ~~need not comply with a benchmark under division (B)(1) or (2) of this section to the extent that its reasonably expected cost of that compliance exceeds its reasonably expected cost of otherwise producing or acquiring the requisite~~

~~electricity by three per cent or more. The cost of compliance shall be calculated as though any exemption from taxes and assessments had not been granted under section 5727.75 of the Revised Code shall not continue to comply, or be subject to any obligation to continue to comply, in any year, with a benchmark under division (B)(1) or (2) of section 4928.641 of the Revised Code, if continued compliance for that year would exceed the cost cap calculated under division (B) of this section.~~

(B) The cost cap for each utility and company shall equal the product of three per cent multiplied by the sales supply amount. The sales supply amount is the product of the sales baseline multiplied by the generation supply dollar amount. For purposes of division (B) of this section:

(1) "Sales baseline" means the sales baseline in megawatt hours for the applicable compliance year, which consists of an average of the utility's or company's annual retail sales of electricity sold in the state from the three preceding years; and

(2) "Generation supply dollar amount" means the reasonably expected dollar amount per megawatt hour for the generation supply available to consumers pursuant to section 4928.141 of the Revised Code during the applicable compliance year, which consists of a weighted average of the cost of the standard service offer supply for the delivery during that compliance year, net of distribution losses. With respect to an electric services company, generation supply dollar amount means the average weighted cost of generation supply of the relevant electric distribution utility.

(C) In making the calculation under division (B) of this section, any exemption from taxes and assessments granted under section 5727.75 of the Revised Code shall be treated as if it had not been granted.

(D) Notwithstanding the cost cap established in this section,

ongoing costs associated with contracts executed by the electric 1451  
distribution utility to procure renewable energy resources that 1452  
are being recovered from customers through a bypassable charge as 1453  
of the effective date of S.B. 58 of the 130th general assembly 1454  
shall continue to be recovered for the term of the contract. 1455

**Sec. 4928.645.** ~~(4)(a)(A)~~ An electric distribution utility or 1456  
electric services company may request the public utilities 1457  
commission to make a force majeure determination pursuant to this 1458  
~~division~~ section regarding all or part of the utility's or 1459  
company's compliance with any ~~minimum~~ benchmark under division 1460  
(B)(2) of ~~this~~ section 4928.641 of the Revised Code during the 1461  
period of review occurring pursuant to ~~division (C)(2) of this~~ 1462  
section 4928.643 of the Revised Code. The commission may require 1463  
the electric distribution utility or electric services company to 1464  
make solicitations for renewable energy resource credits ~~as part~~ 1465  
~~of its default service~~ before the utility's or company's request 1466  
of force majeure under this division can be made. 1467

~~(b)(B)~~ Within ninety days after the filing of a request by an 1468  
electric distribution utility or electric services company under 1469  
division ~~(C)(4)(a)(A)~~ of this section, the commission shall 1470  
determine if renewable energy resources are reasonably available 1471  
in the marketplace in sufficient quantities for the utility or 1472  
company to comply with the subject ~~minimum~~ benchmark during the 1473  
review period. In making this determination, the commission shall 1474  
consider whether the electric distribution utility or electric 1475  
services company has made a good faith effort to acquire 1476  
sufficient renewable energy or, as applicable, solar energy 1477  
resources to so comply, including, but not limited to, by banking 1478  
or seeking renewable energy resource credits or by seeking the 1479  
resources through long-term contracts. Additionally, the 1480  
commission shall consider the availability of renewable energy or 1481  
solar energy resources in this state and other jurisdictions in 1482

the PJM interconnection regional transmission organization or its 1483  
successor and the ~~midwest~~ midcontinent independent system operator 1484  
or its successor. 1485

~~(e)~~(C) If, pursuant to division ~~(C)(4)(b)~~(B) of this section, 1486  
the commission determines that renewable energy or solar energy 1487  
resources are not reasonably available to permit the electric 1488  
distribution utility or electric services company to comply, 1489  
during the period of review, with the subject minimum benchmark 1490  
prescribed under division (B)(2) of ~~this~~ section 4928.641 of the 1491  
Revised Code, the commission shall modify that compliance 1492  
obligation of the utility or company as it determines appropriate 1493  
to accommodate the finding. Commission modification shall not 1494  
automatically reduce the obligation for the electric distribution 1495  
utility's or electric services company's compliance in subsequent 1496  
years. If it modifies the electric distribution utility or 1497  
electric services company obligation under division (C)~~(4)(e)~~ of 1498  
this section, the commission may require the utility or company, 1499  
if sufficient renewable energy resource credits exist in the 1500  
marketplace, to acquire additional renewable energy resource 1501  
credits in subsequent years equivalent to the utility's or 1502  
company's modified obligation under division (C)~~(4)(e)~~ of this 1503  
section. 1504

**Sec. 4928.646.** ~~(5)~~ The public utilities commission shall 1505  
establish a process to provide for at least an annual review of 1506  
the alternative energy resource market in this state and in the 1507  
service territories of the regional transmission organizations 1508  
that manage transmission systems located in this state. The 1509  
commission shall use the results of this study to identify any 1510  
needed changes to the amount of the renewable energy compliance 1511  
payment specified under divisions ~~(C)(2)(a)~~(A) and ~~(b)~~(B) of ~~this~~ 1512  
section 4928.643 of the Revised Code. Specifically, the commission 1513  
may increase the amount to ensure that payment of compliance 1514

payments is not used to achieve compliance with ~~this~~ section 1515  
4928.641 of the Revised Code in lieu of actually acquiring or 1516  
realizing energy derived from renewable energy resources. However, 1517  
if the commission finds that the amount of the compliance payment 1518  
should be otherwise changed, the commission shall present this 1519  
finding to the general assembly for legislative enactment. 1520

**Sec. 4928.647.** ~~(D)(1)(A)~~ The public utilities commission 1521  
annually shall submit to the general assembly in accordance with 1522  
section 101.68 of the Revised Code a report describing all of the 1523  
following: 1524

~~(a)(1)~~ The compliance of electric distribution utilities and 1525  
electric services companies with division (B) of ~~this~~ section 1526  
4928.641 of the Revised Code; 1527

~~(b)(2)~~ The average annual cost of renewable energy credits 1528  
purchased by utilities and companies for the year covered in the 1529  
report; 1530

~~(e)(3)~~ Any strategy for utility and company compliance or for 1531  
encouraging the use of alternative energy resources in supplying 1532  
this state's electricity needs in a manner that considers 1533  
available technology, costs, job creation, and economic impacts. 1534

(B) The commission shall begin providing the information 1535  
described in division ~~(D)(1)(b)(A)(2)~~ of this section in each 1536  
report submitted after ~~the effective date of the amendment of this~~ 1537  
~~section by S.B. 315 of the 129th general assembly~~ September 10, 1538  
2012. The commission shall allow and consider public comments on 1539  
the report prior to its submission to the general assembly. 1540  
Nothing in the report shall be binding on any person, including 1541  
any utility or company for the purpose of its compliance with any 1542  
benchmark under ~~division (B) of this~~ section 4928.641 of the 1543  
Revised Code, or the enforcement of that provision under ~~division~~ 1544

~~(C) of this section~~ sections 4928.642 to 4928.646 of the Revised 1545  
Code. 1546

**Sec. 4928.648.** ~~(2)~~ The governor, in consultation with the 1547  
~~commission~~ chairperson of the public utilities commission, shall 1548  
appoint an alternative energy advisory committee. The committee 1549  
shall examine available technology for and related timetables, 1550  
goals, and costs of the alternative energy resource requirements 1551  
under ~~division (B) of this section~~ 4928.641 of the Revised Code 1552  
and shall submit to the commission a semiannual report of its 1553  
recommendations. 1554

**Sec. 4928.649.** ~~(E)~~ All costs incurred by an electric 1555  
distribution utility in complying with the requirements of ~~this~~ 1556  
section 4928.641 of the Revised Code shall be bypassable by any 1557  
consumer that has exercised choice of supplier under section 1558  
4928.03 of the Revised Code. 1559

**Sec. 4928.6410.** The following shall be counted for purposes 1560  
of measuring compliance with the requirements of section 4928.641 1561  
of the Revised Code regardless of whether the resource or its 1562  
attributes may also be counted towards compliance with the 1563  
requirements of sections 4928.66 to 4928.6660 of the Revised Code: 1564

(A) Energy efficiency savings and demand reductions described 1565  
in division (E) of section 717.25 of the Revised Code and 1566  
divisions (A) and (B) of section 1710.061 of the Revised Code; 1567

(B) Any advanced energy resource. 1568

**Sec. 4928.65.** An electric distribution utility or electric 1569  
services company may use renewable energy credits any time in the 1570  
five calendar years following the date of their purchase or 1571  
acquisition from any entity, including, but not limited to, a 1572  
mercantile customer or an owner or operator of a hydroelectric 1573

generating facility that is located at a dam on a river, or on any 1574  
water discharged to a river or lake, that is within or bordering 1575  
this state ~~or~~, within or bordering an adjoining state, or within 1576  
the Canadian provinces of Ontario or Quebec, for the purpose of 1577  
complying with the renewable energy and solar energy resource 1578  
requirements of division (B)(2) of section ~~4928.64~~ 4928.641 of the 1579  
Revised Code. The public utilities commission shall adopt rules 1580  
specifying that one unit of credit shall equal one megawatt hour 1581  
of electricity derived from renewable energy resources, except 1582  
that, for a generating facility of seventy-five megawatts or 1583  
greater that is situated within this state and has committed by 1584  
December 31, 2009, to modify or retrofit its generating unit or 1585  
units to enable the facility to generate principally from biomass 1586  
energy by June 30, 2013, each megawatt hour of electricity 1587  
generated principally from that biomass energy shall equal, in 1588  
units of credit, the product obtained by multiplying the actual 1589  
percentage of biomass feedstock heat input used to generate such 1590  
megawatt hour by the quotient obtained by dividing the then 1591  
existing unit dollar amount used to determine a renewable energy 1592  
compliance payment as provided under division ~~(C)(2)(b)~~ (B) of 1593  
section ~~4928.64~~ 4928.643 of the Revised Code by the then existing 1594  
market value of one renewable energy credit, but such megawatt 1595  
hour shall not equal less than one unit of credit. The rules also 1596  
shall provide for this state a system of registering renewable 1597  
energy credits by specifying which of any generally available 1598  
registries shall be used for that purpose and not by creating a 1599  
registry. That selected system of registering renewable energy 1600  
credits shall allow a hydroelectric generating facility to be 1601  
eligible for obtaining renewable energy credits and shall allow 1602  
customer-sited projects or actions the broadest opportunities to 1603  
be eligible for obtaining renewable energy credits. 1604

Sec. 4928.66. As used in sections 4928.66 to 4928.6660 of the 1605

<u>Revised Code:</u>	1606
<u>(A) "Energy efficiency program" may include the following:</u>	1607
<u>(1) A policy, behavior, practice, or program designed and implemented to comply with energy efficiency requirements;</u>	1608 1609
<u>(2) A combined heat and power system placed into service or retrofitted on or after the effective date of the amendment of this section by S.B. 315 of the 129th general assembly, September 10, 2012;</u>	1610 1611 1612 1613
<u>(3) A waste energy recovery system placed into service or retrofitted on or after September 10, 2012, except that a waste energy recovery system described in division (A)(38)(b) of section 4928.01 of the Revised Code may be included only if it was placed into service between January 1, 2002, and December 31, 2004;</u>	1614 1615 1616 1617 1618
<u>(4) Increased use of post-consumer recycled glass by a mercantile customer.</u>	1619 1620
<u>(B) "Energy efficiency requirements" means the savings requirements under section 4928.661 of the Revised Code.</u>	1621 1622
<u>(C) "Lost revenue mechanism" means a mechanism to recover either or both of the following based on kilowatt hours eliminated as a result of compliance with energy efficiency or peak demand reduction requirements:</u>	1623 1624 1625 1626
<u>(1) All lost, forgone, or eliminated distribution revenue;</u>	1627
<u>(2) All lost, forgone, or eliminated distribution and transmission revenue.</u>	1628 1629
<u>(D) "Peak demand reduction program" means a policy, practice, behavior, or program designed to comply with peak demand reduction requirements.</u>	1630 1631 1632
<u>(E) "Peak demand reduction requirements" means benchmark requirements under section 4928.662 of the Revised Code.</u>	1633 1634

(F) "Regional transmission organization" means the PJM interconnection regional transmission organization, L.L.C. or any entity performing the functions identified in section 4928.12 of the Revised Code within this state. 1635  
1636  
1637  
1638

(G) "Revenue decoupling mechanism" means a rate design or other cost recovery mechanism that provides recovery of the cost of distribution service irrespective of distribution service sales. 1639  
1640  
1641  
1642

(H) "Utility cost test" means a test to determine the net benefits of an energy efficiency or peak demand reduction program based on the costs and benefits of the program to the electric distribution utility, including incentive costs and excluding any net costs incurred by the customer participating in the program. The following apply for the purposes of a utility cost test: 1643  
1644  
1645  
1646  
1647  
1648

(1) "Benefits" means the following resulting from the program: 1649  
1650

(a) Avoided supply costs of energy and demand; 1651

(b) The reduction in transmission, distribution, generation, or capacity costs for the periods when load is reduced. 1652  
1653

(2) "Costs" means the electric distribution utility's costs of implementing the policy, behavior, practice, or program, including the incentives paid to customers, and the increased supply costs for the periods when load is not reduced through the operation of the policy, behavior, practice, or program. 1654  
1655  
1656  
1657  
1658

(3) "Net benefits" means the net present value of the difference between the benefits and costs as part of a utility cost test. 1659  
1660  
1661

**Sec. ~~4928.66~~ 4928.661.** (A)(1)(a) Beginning in 2009, an electric distribution utility shall implement energy efficiency programs that achieve energy efficiency savings that reduce the 1662  
1663  
1664

quantity of energy required to maintain or improve end-use or 1665  
utility system functionality. Such energy savings shall be 1666  
equivalent to at least three-tenths of one per cent of the total, 1667  
annual average, and normalized kilowatt-hour sales of the electric 1668  
distribution utility during the preceding three calendar years to 1669  
customers in this state. For a waste energy recovery or combined 1670  
heat and power system, the savings shall be as estimated by the 1671  
public utilities commission. The savings requirement, using such a 1672  
three-year average, shall increase to an additional five-tenths of 1673  
one per cent in 2010, seven-tenths of one per cent in 2011, 1674  
eight-tenths of one per cent in 2012, nine-tenths of one per cent 1675  
in 2013, one per cent from 2014 to 2018, ~~and~~ one and one-quarter 1676  
per cent in 2019, one and one-half per cent in 2020, one and 1677  
three-quarters per cent in 2021, two per cent each year thereafter 1678  
in 2022, two and one-quarter per cent in 2023, two and one-half 1679  
per cent in 2024, and two and three-quarters per cent in 2025, 1680  
achieving a cumulative, annual energy savings in excess of 1681  
twenty-two per cent by the end of 2025. For purposes of a waste 1682  
energy recovery or combined heat and power system, an electric 1683  
distribution utility shall not apply more than the total annual 1684  
percentage of the electric distribution utility's 1685  
industrial-customer load, relative to the electric distribution 1686  
utility's total load, to the annual energy savings requirement. 1687

**Sec. 4928.662.** ~~(b)~~(A) Beginning in 2009, an electric 1688  
distribution utility shall implement peak demand reduction 1689  
programs designed to achieve a one per cent reduction in peak 1690  
demand in 2009 and an additional seventy-five hundredths of one 1691  
per cent reduction each year through 2018. ~~It~~ Peak demand 1692  
reduction shall be measured relative to the measure of the peak 1693  
demand that is used by the applicable regional transmission 1694  
organization to establish a supplier's resource adequacy or 1695

capacity obligation. 1696

(B) In 2018, the standing committees in the house of 1697  
representatives and the senate primarily dealing with energy 1698  
issues shall make recommendations to the general assembly 1699  
regarding future peak demand reduction targets. 1700

**Sec. 4928.665.** ~~(2) For the purposes of divisions (A)(1)(a) 1701  
and (b) of this section:~~ 1702

~~(a) The baseline for energy savings under division (A)(1)(a) 1703  
of this section the energy efficiency requirements shall be the 1704  
average of the total kilowatt hours the electric distribution 1705  
utility sold in the preceding three calendar years, and the 1706  
baseline for a peak demand reduction under division (A)(1)(b) of 1707  
this section the peak demand reduction requirements shall be the 1708  
average peak demand on the utility in the preceding three calendar 1709  
years, except that the public utilities commission may shall 1710  
reduce either baseline the baselines to adjust for new economic 1711  
growth in the utility's certified territory and a downturn in the 1712  
economy. The commission shall exclude the following from the 1713  
baseline:~~ 1714

(A) The load and usage of customers for which reasonable 1715  
arrangements have been approved under section 4905.31 of the 1716  
Revised Code; 1717

(B) The load and usage of customers that have opted out of 1718  
participation in energy efficiency and peak demand reduction 1719  
programs under section 4928.6630 of the Revised Code. 1720

**Sec. 4928.666.** If a mercantile customer makes ~~such~~ existing 1721  
or new demand-response, energy efficiency, including waste energy 1722  
recovery and combined heat and power, or peak demand reduction 1723  
capability available to an electric distribution utility pursuant 1724

to ~~division (A)(2)(c) of this~~ section 4928.6650 of the Revised 1725  
Code, the electric utility's baseline under ~~division (A)(2)(a) of~~ 1726  
~~this~~ section 4928.665 of the Revised Code shall be adjusted to 1727  
exclude the effects of all such demand-response, energy 1728  
efficiency, including waste energy recovery and combined heat and 1729  
power, or peak demand reduction programs that may have existed 1730  
during the period used to establish the baseline. 1731

**Sec. 4928.667.** The baseline also shall be normalized for 1732  
changes in numbers of customers, sales, weather, peak demand, and 1733  
other appropriate factors so that the compliance measurement is 1734  
not unduly influenced by factors outside the control of the 1735  
electric distribution utility. 1736

**Sec. 4928.668.** ~~(b)~~ The public utilities commission may amend 1737  
the ~~benchmarks set forth in division (A)(1)(a) or (b) of this~~ 1738  
~~section~~ energy efficiency and peak demand reduction requirements 1739  
if, after application by the electric distribution utility, the 1740  
commission determines that the amendment is necessary because the 1741  
utility cannot reasonably achieve the benchmarks due to 1742  
regulatory, economic, or technological reasons beyond its 1743  
reasonable control. 1744

**Sec. 4928.6610.** Each electric distribution utility shall have 1745  
a compliance plan to meet the energy efficiency and peak demand 1746  
reduction requirements. Following the expiration of any compliance 1747  
plan filed with or approved by the public utilities commission 1748  
prior to the effective date of this section, each subsequent 1749  
compliance plan shall encompass at least a three-year period. 1750

**Sec. 4928.6611.** Each compliance plan approved by the public 1752  
utilities commission shall include: 1753

(A) Recovery from customers of all program costs incurred to 1754  
implement the measures adopted for compliance with the mandates; 1755

(B) At the choice of the electric distribution utility, for 1756  
each rate class of customer, compensation through either a lost 1757  
revenue mechanism or a revenue decoupling mechanism; and 1758

(C) A shared savings incentive mechanism that permits the 1759  
utility to retain one-third of the after-tax net benefits 1760  
associated with the approved programs as measured by a utility 1761  
cost test, provided that such incentive mechanism shall apply to 1762  
all compliance activities, including activities described in 1763  
sections 4928.6627 and 4928.6640 of the Revised Code, but 1764  
excluding the following: 1765

(1) Any programs adopted by the commission and described in 1766  
division (E)(1) of section 4928.58 of the Revised Code that are 1767  
not cost-effective; 1768

(2) Compliance that exceeds energy efficiency and peak demand 1769  
requirements. 1770

For purposes of calculating a shared savings incentive only, 1771  
the commission may modify the utility cost test to include 1772  
societal benefits that are validated by independent measurement 1773  
and verification protocols that meet the evidentiary standard as 1774  
specified by the United States supreme court in *Daubert v. Merrell* 1775  
*Dow Pharmaceuticals, Inc.*, (1993)509 U.S. 579. 1776

**Sec. 4928.6612.** In advance of the period during which the 1777  
electric distribution utility will be required to comply with the 1778  
energy efficiency and peak demand requirements, the public 1779  
utilities commission shall approve a compliance plan for each 1780  
electric distribution utility. 1781

**Sec. 4928.6613.** (A) If, on the effective date of S.B. 58 of 1782  
the 130th general assembly, an electric distribution utility has a 1783

compliance plan based on the energy efficiency savings and peak 1784  
demand reduction requirements under former section 4928.66 of the 1785  
Revised Code as it existed prior to the effective date of S.B. 58 1786  
of the 130th general assembly that was approved by the public 1787  
utilities commission or was filed with but not yet approved by the 1788  
commission, the electric distribution utility may, at its sole 1789  
discretion, continue or implement such compliance plan, including 1790  
any existing approved cost recovery and incentive mechanisms, 1791  
until such costs and incentives are fully recovered. All 1792  
provisions of sections 4928.66 to 4928.6660 of the Revised Code as 1793  
amended or enacted in S.B. 58 of the 130th general assembly shall 1794  
apply if the electric distribution utility continues or implements 1795  
such compliance plan. 1796

(B) At its sole discretion, an electric distribution utility 1797  
may elect not to be subject to a cost cap under sections 4928.6615 1798  
to 4928.6623 of the Revised Code as part of a compliance plan 1799  
described in division (A) of this section. 1800

(C) An electric distribution utility that continues or 1801  
implements a compliance plan under division (A) of this section 1802  
shall notify the public utilities commission if it elects not to 1803  
be subject to a cost cap under sections 4928.6615 to 4928.6623 of 1804  
the Revised Code while the plan is in effect. 1805

**Sec. 4928.6615.** Not later than ninety days after the 1806  
effective date of S.B. 58 of the 130th general assembly, each 1807  
electric distribution utility shall have a one-time irrevocable 1808  
option, exercised solely at the discretion of that electric 1809  
distribution utility, to select one of the cost caps under section 1810  
4928.6616 of the Revised Code, which cost cap shall apply to the 1811  
electric distribution utility's compliance plans approved after 1812  
the effective date of S.B. 58 of the 130th general assembly. 1813

Sec. 4928.6616. In order to minimize future rate impacts 1814  
associated with the energy efficiency and peak demand requirements 1815  
and as a consumer safeguard, beginning with calendar year 2014, an 1816  
electric distribution utility shall, pursuant to section 4928.6615 1817  
of the Revised Code, select one of the following cost cap methods 1818  
for compliance plans approved after the effective date of S.B. 58 1819  
of the 130th general assembly: 1820

(A) The electric distribution utility's costs for compliance 1821  
with the energy efficiency and peak demand reduction requirements 1822  
in any year shall not exceed the cost per kilowatt hour of energy 1823  
efficiency savings and cost per kilowatt of peak demand reduction 1824  
that was incurred in calendar year 2013; 1825

(B) The total annualized rate impact of program costs and 1826  
shared savings incentives associated with an electric distribution 1827  
utility's compliance in any year with the energy efficiency and 1828  
peak demand reduction requirements shall not exceed the program 1829  
costs approved for that electric distribution utility for the 1830  
calendar year 2013. 1831

Sec. 4928.6617. Once the applicable cost cap under section 1832  
4928.6616 of the Revised Code is met, an electric distribution 1833  
utility, by operation of law, is relieved of the following: 1834

(A) Making further expenditures to meet the energy efficiency 1835  
or peak demand reduction requirements for the remainder of the 1836  
calendar year; 1837

(B) Achieving the energy efficiency and peak demand reduction 1838  
requirements for the calendar year. 1839

Once either cost cap under section 4928.6616 of the Revised 1840  
Code is met, the electric distribution utility is deemed to have 1841  
met the energy efficiency and peak demand reduction requirements 1842  
for that calendar year. 1843

Sec. 4928.6618. An electric distribution utility shall notify 1844  
the public utilities commission when, if ever, the cost cap is met 1845  
under section 4928.6616 of the Revised Code. 1846

Sec. 4928.6619. Under either cost cap option described in 1847  
section 4928.6616 of the Revised Code, the public utilities 1848  
commission shall honor contractual obligations of an electric 1849  
distribution utility that existed prior to the effective date of 1850  
this section and shall ensure full recovery of costs relating to 1851  
actions taken under previously approved compliance plans. 1852

Sec. 4928.6620. Nothing in sections 4928.6615 to 4928.6623 of 1853  
the Revised Code shall prevent the timely recovery of compliance 1854  
costs and incentives incurred by an electric distribution utility 1855  
prior to the effective date of S.B. 58 of the 130th general 1856  
assembly and costs or compensation under a lost revenue mechanism 1857  
or revenue decoupling mechanism or other approved incentive 1858  
mechanism as provided for in sections 4928.6611 or 4928.6651 of 1859  
the Revised Code. 1860

Sec. 4928.6621. The effects of lost revenue recovery or 1861  
revenue decoupling shall not be included in the cost cap under 1862  
sections 4928.6615 to 4928.6623 of the Revised Code. 1863

Sec. 4928.6622. (A) If the cost cap described in section 1864  
4928.6616 of the Revised Code is met, expenditure of program costs 1865  
shall be curtailed as soon as practicable but full recovery of 1866  
shared savings incentives earned on or before the date the cost 1867  
cap is met shall not be curtailed or otherwise limited. 1868

(B) An electric distribution utility shall be permitted to 1869  
recover all compliance costs, incentives, and related items 1870  
resulting from any temporary overcompliance resulting from 1871

sections 4928.665 to 4928.6640 of the Revised Code. 1872

Sec. 4928.6623. Any excess compliance with the energy 1873  
efficiency and peak demand reduction requirements achieved at the 1874  
time the cost cap is met may be banked for future use. 1875

Sec. 4928.6625. ~~(e)~~ Compliance with ~~divisions (A)(1)(a) and~~ 1876  
~~(b) of this section~~ the energy efficiency and peak demand 1877  
reduction requirements shall be measured by including the effects 1878  
of all demand-response ~~programs~~ capabilities for mercantile 1879  
customers of the subject electric distribution utility, all waste 1880  
energy recovery systems and all combined heat and power systems, 1881  
and all such mercantile customer-sited energy efficiency, 1882  
including waste energy recovery and combined heat and power, and 1883  
peak demand reduction programs, adjusted upward by the appropriate 1884  
loss factors. 1885

Sec. 4928.6626. ~~Division (A)(2)(c) of this section~~ Energy 1886  
efficiency and peak demand reduction requirements shall be applied 1887  
to include facilitating efforts by a mercantile customer or group 1888  
of those customers to offer customer-sited demand-response, energy 1889  
efficiency, including waste energy recovery and combined heat and 1890  
power, or peak demand reduction capabilities to the electric 1891  
distribution utility through a contractual commitment as part of a 1892  
reasonable arrangement submitted to the public utilities 1893  
commission pursuant to section 4905.31 of the Revised Code. 1894

Sec. 4928.6627. ~~(d)~~ ~~Programs (A)~~ Energy efficiency and peak 1895  
demand reduction programs implemented by a utility may include 1896  
demand-response programs, smart grid investment programs, provided 1897  
that such programs are demonstrated to be ~~cost-beneficial~~ cost 1898  
effective, and customer-sited programs, including waste energy 1899  
recovery and combined heat and power systems, ~~and transmission.~~ 1900

(B) The following shall also be counted toward meeting the energy efficiency and peak demand reduction requirements regardless of the intent or origin of the improvement: 1901  
1902  
1903

(1) Transmission and distribution infrastructure improvements that reduce line losses; 1904  
1905

(2) Energy savings and peak demand reduction that is achieved, in whole or in part, as a result of funding provided from the universal service fund established by section 4928.51 of the Revised Code. 1906  
1907  
1908  
1909

Sec. 4928.6630. Any retail customer of an electric distribution utility that receives service above the primary voltage level as determined by the utility's tariff classification, may opt out of both the opportunity and ability to obtain direct benefits from the utility's compliance plan. Such opt out shall extend to all of the customer's accounts, irrespective of the size or service voltage level, which are associated with the activities performed by the customer and which are located on or adjacent to the customer's premises that are served above the primary voltage level. 1910  
1911  
1912  
1913  
1914  
1915  
1916  
1917  
1918  
1919

Sec. 4928.6631. Any retail customer electing to opt out under sections 4928.6630 to 4928.6636 of the Revised Code shall do so by providing a written notice of intent to opt out to the electric distribution utility from which it receives service and submitting a complete copy of the opt-out notice to the secretary of the public utilities commission. 1920  
1921  
1922  
1923  
1924  
1925

(A) The notice provided to the utility shall include the following: 1926  
1927

(1) A statement indicating that the customer has elected to opt out; 1928  
1929

(2) The effective date of the election to opt out; 1930

(3) The customer's account numbers for each account related to the customer's premises that receives service above the primary voltage level as determined by the utility's tariff classification; 1931  
1932  
1933  
1934

(4) The physical location of the customer's load center. 1935

(B) The opt-out notice shall include a written election to opt out and a verified statement that affirms the following: 1936  
1937

(1) That the customer has adopted an ongoing energy management system that allows for identification and, in the customer's sole discretion, implementation of options to reasonably and cost effectively reduce the energy intensity of the organization; 1938  
1939  
1940  
1941  
1942

(2) That the customer's energy management system incorporates independent measurement and verification or includes measurement and verification protocols that meet or exceed measurement and verification protocols that are generally accepted within the customer's business sector. 1943  
1944  
1945  
1946  
1947

Sec. 4928.6632. Upon a retail customer's election to opt out under sections 4928.6630 to 4928.6636 of the Revised Code, no account properly identified in the customer's verified notice shall be subject to the cost recovery mechanisms established under sections 4928.66 to 4928.6660 of the Revised Code or eligible to participate in, or directly benefit from, programs arising from electric distribution utility compliance plans approved by the commission. 1948  
1949  
1950  
1951  
1952  
1953  
1954  
1955

Sec. 4928.6633. (A) A retail customer subsequently may opt in under section 4928.6634 of the Revised Code after a previous election to opt out under sections 4928.6630 and 4928.6631 of the Revised Code if both of the following apply: 1956  
1957  
1958  
1959

(1) The customer has previously opted out for a period of at 1960

least three consecutive calendar years. 1961

(2) The customer gives twelve months' advance notice of its intent to opt in to the public utilities commission and the electric distribution utility from which it receives service. 1962  
1963  
1964

(B) A retail customer that opts in under this section shall maintain its opt-in status for three consecutive calendar years before being eligible subsequently to exercise its right to opt out after giving the utility twelve months' advance notice. 1965  
1966  
1967  
1968

(C) A retail customer is not eligible to participate in a mercantile customer agreement under section 4928.6650 of the Revised Code during any period when it has an opt-out status. 1969  
1970  
1971

**Sec. 4928.6634.** Any retail customer electing to opt in under section 4928.6633 of the Revised Code shall do so by providing a written notice of intent to opt in to the electric distribution utility from which it receives service and submitting a complete copy of the opt-in notice to the secretary of the public utilities commission. The notice shall include the following: 1972  
1973  
1974  
1975  
1976  
1977

(A) A statement indicating that the customer has elected to opt in; 1978  
1979

(B) The effective date of the election to opt in; 1980

(C) The customer's account numbers for each account related to the customer's premises that receives service above the primary voltage level as determined by the utility's tariff classification; 1981  
1982  
1983  
1984

(D) The physical location of the customer's load center. 1985

**Sec. 4928.6635.** If the energy management system of a retail customer that elects to opt out under sections 4928.6630 to 4938.6633 of the Revised Code does not incorporate independent measurement and verification protocols, the public utilities 1986  
1987  
1988  
1989

commission may request information from the customer for the 1990  
limited purpose of determining if the customer's protocols are 1991  
reasonable compared to the protocols generally accepted within the 1992  
customer's business sector. If the commission determines that the 1993  
customer's protocols do not meet the protocols generally accepted 1994  
within the customer's business sector, the commission may provide 1995  
the customer with measurement and verification protocols that meet 1996  
the generally accepted protocols, and the customer shall either 1997  
adopt the protocols provided or adopt alternate protocols that 1998  
meet the protocols generally accepted within the customer's 1999  
business sector. However, in no event shall the commission have 2000  
any authority to supervise or regulate the customer's energy 2001  
management system or the customer's process for measurement and 2002  
verification. 2003

**Sec. 4928.6636.** Sections 4928.6630 to 4928.6635 of the 2004  
Revised Code shall apply to any accounts subject to the 2005  
self-assessing purchaser option under section 5727.81 of the 2006  
Revised Code. 2007

**Sec. 4928.6640.** For the purpose of measuring and determining 2008  
compliance with the energy efficiency and peak demand reduction 2009  
requirements, the public utilities commission shall count and 2010  
recognize compliance as follows: 2011

(A) Energy savings and peak demand reduction achieved through 2012  
actions taken by customers or through utility programs that comply 2013  
with federal standards for either or both energy efficiency and 2014  
peak demand reduction requirements, including resources associated 2015  
with such savings or reduction that are recognized as capacity 2016  
resources by a regional transmission organization shall count 2017  
toward compliance with the energy efficiency and peak demand 2018  
reduction requirements. 2019

(B) Energy savings and peak demand reduction shall be measured on the higher of an as found or deemed basis, achieved since 2006 and going forward. For new construction, the energy savings and peak demand reduction shall be counted based on 2008 federal standards, provided that when new construction replaces an existing facility, the difference in savings and reduction between the new and replaced facility shall be counted toward meeting the energy efficiency and peak demand reduction requirements.

(C) The commission shall count both the energy savings and peak demand reduction on an annualized basis.

(D) The commission shall count both the energy savings and peak demand reduction on a gross savings basis.

(E) The commission shall recognize and count energy savings or peak demand reductions, on a British thermal unit equivalent basis, that occur as a consequence of a compliance plan approved by the commission, except that a British thermal unit savings related to a reduction in gas usage or associated with switching equipment or processes from electric usage to gas usage shall not qualify.

(F) The commission shall recognize and count energy savings and peak demand reductions that occur as a consequence of consumer reductions in water usage or reductions and improvements in wastewater treatment.

(G) The commission shall recognize and count energy savings and peak demand reduction associated with heat rate and other efficiency or energy intensity improvements achieved since 2006 from electric generating plants that have existed as of January 1, 2013, and are located either within an electric distribution utility's certified territory, or owned and operated by an affiliate of the electric distribution utility as long as the generating plant was previously owned, in whole or in part, by an

electric distribution utility located in this state. Such energy 2051  
savings and peak demand reductions shall count as both energy 2052  
savings and peak demand reductions under this section and advanced 2053  
energy under sections 4928.64 to 4928.6410 of the Revised Code. 2054  
Payments or incentives paid to any such generating plant by an 2055  
electric distribution utility are solely within the discretion of 2056  
the utility, but shall not be recoverable as a cost of compliance 2057  
with the requirements of this section. 2058

(H) The commission shall recognize and count all energy 2059  
savings and peak demand reduction that is physically located 2060  
within the certified territory of the electric distribution 2061  
utility and is bid into regional transmission organization 2062  
capacity auctions as energy efficiency resources and demand 2063  
response resources toward the peak demand reduction requirements. 2064

(I) For purposes of measuring compliance, the commission 2065  
shall permit the energy efficiency and peak demand reduction 2066  
requirements to be met on an aggregated basis for electric 2067  
distribution utilities in the same holding company system. 2068

(J) Energy savings and peak demand reduction amounts approved 2069  
by the commission shall continue to be counted toward achieving 2070  
the energy efficiency and peak demand reduction requirements as 2071  
long as the requirements remain in effect. Any energy savings 2072  
achieved in excess of the requirements may, at the discretion of 2073  
the electric distribution utility, be banked and applied toward 2074  
achieving the energy efficiency requirements in future years. 2075

**Sec. 4928.6641.** An electric distribution utility annually 2076  
shall notify the public utilities commission regarding which 2077  
measurements described in section 4928.6640 of the Revised Code 2078  
will be included to determine compliance with the energy 2079  
efficiency and peak demand reduction requirements. 2080

Sec. 4928.6642. All energy efficiency savings and peak demand reductions, including energy efficiency savings and demand reductions described in division (E) of section 717.25 of the Revised Code and divisions (A) and (B) of section 1710.061 of the Revised Code, shall be counted toward compliance with the energy efficiency and peak demand reduction requirements, consistent with section 4928.6640 of the Revised Code, regardless of whether the savings or reductions may also be counted towards compliance with sections 4928.64 to 4928.6410 of the Revised Code.

Sec. 4928.6645. The public utilities commission shall not require that an electric distribution utility achieve energy savings or peak demand reduction in excess of the energy efficiency and peak demand reduction requirements.

Sec. 4928.6646. The public utilities commission shall liberally construe sections 4928.66 to 4928.6660 of the Revised Code in favor of counting energy savings and peak demand reduction achieved by customers or through utility programs in order to achieve the energy efficiency and peak demand reduction requirements, as further specified in section 4928.6640 of the Revised Code.

Sec. 4928.6647. The public utilities commission shall not impose a penalty, require any shortfall to be carried forward to a future compliance year, or compel the use of banked energy savings as a result of noncompliance or undercompliance resulting from the application of the cost cap under sections 4928.6615 to 4928.6623 of the Revised Code.

Sec. 4928.6650. Any mechanism designed to recover the cost of energy efficiency, including waste energy recovery and combined heat and power, and peak demand reduction programs under ~~divisions~~

~~(A)(1)(a) and (b) of this section may~~ the energy efficiency and 2110  
peak demand reduction requirements shall exempt any mercantile 2111  
customers that commit their demand-response or other 2112  
customer-sited capabilities, whether existing or new, for 2113  
integration into the electric distribution utility's 2114  
demand-response, energy efficiency, including waste energy 2115  
recovery and combined heat and power, or peak demand reduction 2116  
programs, ~~if the~~ provided that: 2117

(A) The exemption in each year shall be proportionate to the 2118  
annual compliance benchmark for such year compared to the 2119  
customer's annualized demand or energy usage for the applicable 2120  
baseline period; and 2121

(B) The public utilities commission determines that that 2122  
exemption reasonably encourages such customers to commit those 2123  
capabilities to those programs. 2124

**Sec. 4928.6651.** ~~(D)~~ The public utilities commission may 2125  
establish rules regarding the content of an application by an 2126  
electric distribution utility for commission approval of a revenue 2127  
decoupling mechanism under this division. Such an application 2128  
shall not be considered an application to increase rates and may 2129  
be included as part of a proposal to establish, continue, or 2130  
expand energy efficiency or conservation programs. The commission 2131  
by order may approve an application under this division if it 2132  
determines both that the revenue decoupling mechanism provides for 2133  
the recovery of revenue that otherwise may be forgone by the 2134  
utility as a result of or in connection with the implementation by 2135  
the electric distribution utility of any energy efficiency or 2136  
energy conservation programs and reasonably aligns the interests 2137  
of the utility and of its customers in favor of those programs. 2138

**Sec. 4928.6655.** ~~(B)~~ In accordance with rules it shall adopt, 2139

the public utilities commission shall produce and docket at the 2140  
commission an annual report containing the results of its 2141  
verification of the annual levels of energy efficiency and of peak 2142  
demand reductions achieved by each electric distribution utility 2143  
pursuant to ~~division (A) of this section~~ the energy efficiency and 2144  
peak demand reduction requirements. A copy of the report shall be 2145  
provided to the consumers' counsel. 2146

**Sec. 4928.6656.** ~~(C) If~~ Except as provided in section 2147  
4928.6647 of the Revised Code, if the public utilities commission 2148  
determines, after notice and opportunity for hearing and based 2149  
upon its report under ~~division (B) of this section~~ 4928.6655 of 2150  
the Revised Code, that an electric distribution utility has failed 2151  
to comply with an energy efficiency or peak demand reduction 2152  
requirement ~~of division (A) of this section~~, the commission ~~shall~~ 2153  
may assess a forfeiture on the utility as provided under sections 2154  
4905.55 to 4905.60 and 4905.64 of the Revised Code, ~~either in the~~ 2155  
~~amount, per day per undercompliance or noncompliance, relative to~~ 2156  
~~the period of the report, equal to that prescribed for~~ 2157  
~~noncompliances under section 4905.54 of the Revised Code, or in an~~ 2158  
amount equal to the then existing market value of one renewable 2159  
energy credit per megawatt hour of undercompliance or 2160  
noncompliance. Revenue from any forfeiture assessed under this 2161  
division shall be deposited to the credit of the advanced energy 2162  
fund created under section 4928.61 of the Revised Code. 2163

**Sec. 4928.6657.** ~~(E)~~ The public utilities commission 2164  
~~additionally~~ shall adopt rules that require an electric 2165  
distribution utility to provide a customer upon request with two 2166  
years' consumption data in an accessible form. 2167

**Sec. 4928.6658.** ~~(e)~~ No programs or improvements ~~described in~~ 2168  
~~division (A)(2)(d) of this section~~ implemented or undertaken to 2169

meet the energy efficiency and peak demand reduction requirements 2170  
shall conflict with any statewide building code adopted by the 2171  
board of building standards. 2172

**Sec. 4928.6659.** The public utilities commission may require 2173  
an electric distribution utility to offer energy efficiency 2174  
resources and demand response resources into regional transmission 2175  
organization capacity auctions if: 2176

(A) The energy efficiency resources have been installed and 2177  
the electric distribution utility can demonstrate resource 2178  
ownership, provided that savings must be adjusted for regional 2179  
transmission organization measurement and verification standards, 2180  
have an approved measurement and verification plan approved by the 2181  
regional transmission organization, and are of sufficient scale; 2182  
and 2183

(B) The demand response resources are owned by the electric 2184  
distribution utility and will be available in the applicable 2185  
delivery year. 2186

The commission shall not, however, require an electric 2187  
distribution utility to offer projected energy efficiency 2188  
resources or demand response resources into regional transmission 2189  
organization capacity auctions. The commission shall not have any 2190  
authority to supervise or regulate ownership or use rights of 2191  
customer-sited capabilities which are not voluntarily committed to 2192  
an electric distribution utility. 2193

**Sec. 4928.6660.** The energy efficiency and peak demand 2194  
reduction requirements and any associated compliance requirements 2195  
shall not apply after the date that any federal benchmarks 2196  
requiring energy savings or peak demand reduction become effective 2197  
regardless of whether the federal benchmarks specify that they 2198  
have a preemptive effect on the energy efficiency and peak demand 2199

reduction requirements. 2200

**Sec. 5501.311.** (A) Notwithstanding sections 123.01 and 127.16 2201  
of the Revised Code the director of transportation may lease or 2202  
lease-purchase all or any part of a transportation facility to or 2203  
from one or more persons, one or more governmental agencies, a 2204  
transportation improvement district, or any combination thereof, 2205  
and may grant leases, easements, or licenses for lands under the 2206  
control of the department of transportation. The director may 2207  
adopt rules necessary to give effect to this section. 2208

(B) Plans and specifications for the construction of a 2210  
transportation facility under a lease or lease-purchase agreement 2211  
are subject to approval of the director and must meet or exceed 2212  
all applicable standards of the department. 2213

(C) Any lease or lease-purchase agreement under which the 2214  
department is the lessee shall be for a period not exceeding the 2215  
then current two-year period for which appropriations have been 2216  
made by the general assembly to the department, and such agreement 2217  
may contain such other terms as the department and the other 2218  
parties thereto agree, notwithstanding any other provision of law, 2219  
including provisions that rental payments in amounts sufficient to 2220  
pay bond service charges payable during the current two-year lease 2221  
term shall be an absolute and unconditional obligation of the 2222  
department independent of all other duties under the agreement 2223  
without set-off or deduction or any other similar rights or 2224  
defenses. Any such agreement may provide for renewal of the 2225  
agreement at the end of each term for another term, not exceeding 2226  
two years, provided that no renewal shall be effective until the 2227  
effective date of an appropriation enacted by the general assembly 2228  
from which the department may lawfully pay rentals under such 2229  
agreement. Any such agreement may include, without limitation, any 2230

agreement by the department with respect to any costs of 2231  
transportation facilities to be included prior to acquisition and 2232  
construction of such transportation facilities. Any such agreement 2233  
shall not constitute a debt or pledge of the faith and credit of 2234  
the state, or of any political subdivision of the state, and the 2235  
lessor shall have no right to have taxes or excises levied by the 2236  
general assembly, or the taxing authority of any political 2237  
subdivision of the state, for the payment of rentals thereunder. 2238  
Any such agreement shall contain a statement to that effect. 2239

(D) A municipal corporation, township, or county may use 2240  
service payments in lieu of taxes credited to special funds or 2241  
accounts pursuant to sections 5709.43, 5709.75, and 5709.80 of the 2242  
Revised Code to provide its contribution to the cost of a 2243  
transportation facility, provided such facility was among the 2244  
purposes for which such service payments were authorized. The 2245  
contribution may be in the form of a lump sum or periodic 2246  
payments. 2247

(E) Pursuant to the "Telecommunications Act of 1996," 110 2248  
Stat. 152, 47 U.S.C. 332 note, the director may grant a lease, 2249  
easement, or license in a transportation facility to a 2250  
telecommunications service provider for construction, placement, 2251  
or operation of a telecommunications facility. An interest granted 2252  
under this division is subject to all of the following conditions: 2253

(1) The transportation facility is owned in fee simple or 2254  
easement by this state at the time the lease, easement, or license 2255  
is granted to the telecommunications provider. 2256

(2) The lease, easement, or license shall be granted on a 2257  
competitive basis in accordance with policies and procedures to be 2258  
determined by the director. The policies and procedures may 2259  
include provisions for master leases for multiple sites. 2260

(3) The telecommunications facility shall be designed to 2261

accommodate the state's multi-agency radio communication system, 2262  
the intelligent transportation system, and the department's 2263  
communication system as the director may determine is necessary 2264  
for highway or other departmental purposes. 2265

(4) The telecommunications facility shall be designed to 2266  
accommodate such additional telecommunications equipment as may 2267  
feasibly be co-located thereon as determined in the discretion of 2268  
the director. 2269

(5) The telecommunications service providers awarded the 2270  
lease, easement, or license, agree to permit other 2271  
telecommunications service providers to co-locate on the 2272  
telecommunications facility, and agree to the terms and conditions 2273  
of the co-location as determined in the discretion of the 2274  
director. 2275

(6) The director shall require indemnity agreements in favor 2276  
of the department as a condition of any lease, easement, or 2277  
license granted under this division. Each indemnity agreement 2278  
shall secure this state and its agents from liability for damages 2279  
arising out of safety hazards, zoning, and any other matter of 2280  
public interest the director considers necessary. 2281

(7) The telecommunications service provider fully complies 2282  
with any permit issued under section 5515.01 of the Revised Code 2283  
pertaining to land that is the subject of the lease, easement, or 2284  
license. 2285

(8) All plans and specifications shall meet with the 2286  
director's approval. 2287

(9) Any other conditions the director determines necessary. 2288

(F) In accordance with section 5501.031 of the Revised Code, 2289  
to further efforts to promote energy conservation and energy 2290  
efficiency, the director may grant a lease, easement, or license 2291  
in a transportation facility to a utility service provider that 2292

has received its certificate from the Ohio power siting board or 2293  
appropriate local entity for construction, placement, or operation 2294  
of an alternative energy generating facility service provider as 2295  
defined in ~~section~~ sections 4928.64 to 4928.6410 of the Revised 2296  
Code. An interest granted under this division is subject to all of 2297  
the following conditions: 2298

(1) The transportation facility is owned in fee simple or in 2299  
easement by this state at the time the lease, easement, or license 2300  
is granted to the utility service provider. 2301

(2) The lease, easement, or license shall be granted on a 2302  
competitive basis in accordance with policies and procedures to be 2303  
determined by the director. The policies and procedures may 2304  
include provisions for master leases for multiple sites. 2305

(3) The alternative energy generating facility shall be 2306  
designed to provide energy for the department's transportation 2307  
facilities with the potential for selling excess power on the 2308  
power grid, as the director may determine is necessary for highway 2309  
or other departmental purposes. 2310

(4) The director shall require indemnity agreements in favor 2311  
of the department as a condition of any lease, easement, or 2312  
license granted under this division. Each indemnity agreement 2313  
shall secure this state from liability for damages arising out of 2314  
safety hazards, zoning, and any other matter of public interest 2315  
the director considers necessary. 2316

(5) The alternative energy service provider fully complies 2317  
with any permit issued by the Ohio power siting board under 2318  
Chapter 4906. of the Revised Code and complies with section 2319  
5515.01 of the Revised Code pertaining to land that is the subject 2320  
of the lease, easement, or license. 2321

(6) All plans and specifications shall meet with the 2322  
director's approval. 2323

(7) Any other conditions the director determines necessary.	2324
(G) Money the department receives under this section shall be deposited into the state treasury to the credit of the highway operating fund.	2325 2326 2327
(H) A lease, easement, or license granted under division (E) or (F) of this section, and any telecommunications facility or alternative energy generating facility relating to such interest in a transportation facility, is hereby deemed to further the essential highway purpose of building and maintaining a safe, energy-efficient, and accessible transportation system.	2328 2329 2330 2331 2332 2333
<b>Sec. 5727.75.</b> (A) For purposes of this section:	2334
(1) "Qualified energy project" means an energy project certified by the director of development services pursuant to this section.	2335 2336 2337
(2) "Energy project" means a project to provide electric power through the construction, installation, and use of an energy facility.	2338 2339 2340
(3) "Alternative energy zone" means a county declared as such by the board of county commissioners under division (E)(1)(b) or (c) of this section.	2341 2342 2343
(4) "Full-time equivalent employee" means the total number of employee-hours for which compensation was paid to individuals employed at a qualified energy project for services performed at the project during the calendar year divided by two thousand eighty hours.	2344 2345 2346 2347 2348
(5) "Solar energy project" means an energy project composed of an energy facility using solar panels to generate electricity.	2349 2350
(B)(1) Tangible personal property of a qualified energy project using renewable energy resources is exempt from taxation for tax years 2011 through 2016 if all of the following conditions	2351 2352 2353

are satisfied: 2354

(a) On or before December 31, 2015, the owner or a lessee 2355  
pursuant to a sale and leaseback transaction of the project 2356  
submits an application to the power siting board for a certificate 2357  
under section 4906.20 of the Revised Code, or if that section does 2358  
not apply, submits an application for any approval, consent, 2359  
permit, or certificate or satisfies any condition required by a 2360  
public agency or political subdivision of this state for the 2361  
construction or initial operation of an energy project. 2362

(b) Construction or installation of the energy facility 2363  
begins on or after January 1, 2009, and before January 1, 2016. 2364  
For the purposes of this division, construction begins on the 2365  
earlier of the date of application for a certificate or other 2366  
approval or permit described in division (B)(1)(a) of this 2367  
section, or the date the contract for the construction or 2368  
installation of the energy facility is entered into. 2369

(c) For a qualified energy project with a nameplate capacity 2370  
of five megawatts or greater, a board of county commissioners of a 2371  
county in which property of the project is located has adopted a 2372  
resolution under division (E)(1)(b) or (c) of this section to 2373  
approve the application submitted under division (E) of this 2374  
section to exempt the property located in that county from 2375  
taxation. A board's adoption of a resolution rejecting an 2376  
application or its failure to adopt a resolution approving the 2377  
application does not affect the tax-exempt status of the qualified 2378  
energy project's property that is located in another county. 2379

(2) If tangible personal property of a qualified energy 2380  
project using renewable energy resources was exempt from taxation 2381  
under this section beginning in any of tax years 2011, 2012, 2013, 2382  
2014, 2015, or 2016, and the certification under division (E)(2) 2383  
of this section has not been revoked, the tangible personal 2384  
property of the qualified energy project is exempt from taxation 2385

for tax year 2017 and all ensuing tax years if the property was placed into service before January 1, 2017, as certified in the construction progress report required under division (F)(2) of this section. Tangible personal property that has not been placed into service before that date is taxable property subject to taxation. An energy project for which certification has been revoked is ineligible for further 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.

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

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

(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.

(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 2418  
affect the tax-exempt status of the project's tangible personal 2419  
property for the tax year in which revocation occurs or any prior 2420  
tax year. 2421

(D) Except as otherwise provided in this section, real 2422  
property of a qualified energy project is exempt from taxation for 2423  
any tax year for which the tangible personal property of the 2424  
qualified energy project is exempted under this section. 2425

(E)(1)(a) A person may apply to the director of development 2426  
services for certification of an energy project as a qualified 2427  
energy project on or before the following dates: 2428

(i) December 31, 2015, for an energy project using renewable 2429  
energy resources; 2430

(ii) December 31, 2017, for an energy project using clean 2431  
coal technology, advanced nuclear technology, or cogeneration 2432  
technology. 2433

(b) The director shall forward a copy of each application for 2434  
certification of an energy project with a nameplate capacity of 2435  
five megawatts or greater to the board of county commissioners of 2436  
each county in which the project is located and to each taxing 2437  
unit with territory located in each of the affected counties. Any 2438  
board that receives from the director a copy of an application 2439  
submitted under this division shall adopt a resolution approving 2440  
or rejecting the application unless it has adopted a resolution 2441  
under division (E)(1)(c) of this section. A resolution adopted 2442  
under division (E)(1)(b) or (c) of this section may require an 2443  
annual service payment to be made in addition to the service 2444  
payment required under division (G) of this section. The sum of 2445  
the service payment required in the resolution and the service 2446  
payment required under division (G) of this section shall not 2447  
exceed nine thousand dollars per megawatt of nameplate capacity 2448

located in the county. The resolution shall specify the time and 2449  
manner in which the payments required by the resolution shall be 2450  
paid to the county treasurer. The county treasurer shall deposit 2451  
the payment to the credit of the county's general fund to be used 2452  
for any purpose for which money credited to that fund may be used. 2453

The board shall send copies of the resolution by certified 2454  
mail to the owner of the facility and the director within thirty 2455  
days after receipt of the application, or a longer period of time 2456  
if authorized by the director. 2457

(c) A board of county commissioners may adopt a resolution 2458  
declaring the county to be an alternative energy zone and 2459  
declaring all applications submitted to the director of 2460  
development services under this division after the adoption of the 2461  
resolution, and prior to its repeal, to be approved by the board. 2462

All tangible personal property and real property of an energy 2463  
project with a nameplate capacity of five megawatts or greater is 2464  
taxable if it is located in a county in which the board of county 2465  
commissioners adopted a resolution rejecting the application 2466  
submitted under this division or failed to adopt a resolution 2467  
approving the application under division (E)(1)(b) or (c) of this 2468  
section. 2469

(2) The director shall certify an energy project if all of 2470  
the following circumstances exist: 2471

(a) The application was timely submitted. 2472

(b) For an energy project with a nameplate capacity of five 2473  
megawatts or greater, a board of county commissioners of at least 2474  
one county in which the project is located has adopted a 2475  
resolution approving the application under division (E)(1)(b) or 2476  
(c) of this section. 2477

(c) No portion of the project's facility was used to supply 2478  
electricity before December 31, 2009. 2479

(3) The director shall deny a certification application if 2480  
the director determines the person has failed to comply with any 2481  
requirement under this section. The director may revoke a 2482  
certification if the director determines the person, or subsequent 2483  
owner or lessee pursuant to a sale and leaseback transaction of 2484  
the qualified energy project, has failed to comply with any 2485  
requirement under this section. Upon certification or revocation, 2486  
the director shall notify the person, owner, or lessee, the tax 2487  
commissioner, and the county auditor of a county in which the 2488  
project is located of the certification or revocation. Notice 2489  
shall be provided in a manner convenient to the director. 2490

(F) The owner or a lessee pursuant to a sale and leaseback 2491  
transaction of a qualified energy project shall do each of the 2492  
following: 2493

(1) Comply with all applicable regulations; 2494

(2) File with the director of development services a 2495  
certified construction progress report before the first day of 2496  
March of each year during the energy facility's construction or 2497  
installation indicating the percentage of the project completed, 2498  
and the project's nameplate capacity, as of the preceding 2499  
thirty-first day of December. Unless otherwise instructed by the 2500  
director of development services, the owner or lessee of an energy 2501  
project shall file a report with the director on or before the 2502  
first day of March each year after completion of the energy 2503  
facility's construction or installation indicating the project's 2504  
nameplate capacity as of the preceding thirty-first day of 2505  
December. Not later than sixty days after June 17, 2010, the owner 2506  
or lessee of an energy project, the construction of which was 2507  
completed before June 17, 2010, shall file a certificate 2508  
indicating the project's nameplate capacity. 2509

(3) File with the director of development services, in a 2510  
manner prescribed by the director, a report of the total number of 2511

full-time equivalent employees, and the total number of full-time 2512  
equivalent employees domiciled in Ohio, who are employed in the 2513  
construction or installation of the energy facility; 2514

(4) For energy projects with a nameplate capacity of five 2515  
megawatts or greater, repair all roads, bridges, and culverts 2516  
affected by construction as reasonably required to restore them to 2517  
their preconstruction condition, as determined by the county 2518  
engineer in consultation with the local jurisdiction responsible 2519  
for the roads, bridges, and culverts. In the event that the county 2520  
engineer deems any road, bridge, or culvert to be inadequate to 2521  
support the construction or decommissioning of the energy 2522  
facility, the road, bridge, or culvert shall be rebuilt or 2523  
reinforced to the specifications established by the county 2524  
engineer prior to the construction or decommissioning of the 2525  
facility. The owner or lessee of the facility shall post a bond in 2526  
an amount established by the county engineer and to be held by the 2527  
board of county commissioners to ensure funding for repairs of 2528  
roads, bridges, and culverts affected during the construction. The 2529  
bond shall be released by the board not later than one year after 2530  
the date the repairs are completed. The energy facility owner or 2531  
lessee pursuant to a sale and leaseback transaction shall post a 2532  
bond, as may be required by the Ohio power siting board in the 2533  
certificate authorizing commencement of construction issued 2534  
pursuant to section 4906.10 of the Revised Code, to ensure funding 2535  
for repairs to roads, bridges, and culverts resulting from 2536  
decommissioning of the facility. The energy facility owner or 2537  
lessee and the county engineer may enter into an agreement 2538  
regarding specific transportation plans, reinforcements, 2539  
modifications, use and repair of roads, financial security to be 2540  
provided, and any other relevant issue. 2541

(5) Provide or facilitate training for fire and emergency 2542  
responders for response to emergency situations related to the 2543

energy project and, for energy projects with a nameplate capacity 2544  
of five megawatts or greater, at the person's expense, equip the 2545  
fire and emergency responders with proper equipment as reasonably 2546  
required to enable them to respond to such emergency situations; 2547

(6) Maintain a ratio of Ohio-domiciled full-time equivalent 2548  
employees employed in the construction or installation of the 2549  
energy project to total full-time equivalent employees employed in 2550  
the construction or installation of the energy project of not less 2551  
than eighty per cent in the case of a solar energy project, and 2552  
not less than fifty per cent in the case of any other energy 2553  
project. In the case of an energy project for which certification 2554  
from the power siting board is required under section 4906.20 of 2555  
the Revised Code, the number of full-time equivalent employees 2556  
employed in the construction or installation of the energy project 2557  
equals the number actually employed or the number projected to be 2558  
employed in the certificate application, if such projection is 2559  
required under regulations adopted pursuant to section 4906.03 of 2560  
the Revised Code, whichever is greater. For all other energy 2561  
projects, the number of full-time equivalent employees employed in 2562  
the construction or installation of the energy project equals the 2563  
number actually employed or the number projected to be employed by 2564  
the director of development services, whichever is greater. To 2565  
estimate the number of employees to be employed in the 2566  
construction or installation of an energy project, the director 2567  
shall use a generally accepted job-estimating model in use for 2568  
renewable energy projects, including but not limited to the job 2569  
and economic development impact model. The director may adjust an 2570  
estimate produced by a model to account for variables not 2571  
accounted for by the model. 2572

(7) For energy projects with a nameplate capacity in excess 2573  
of two megawatts, establish a relationship with a member of the 2574  
university system of Ohio as defined in section 3345.011 of the 2575

Revised Code or with a person offering an apprenticeship program 2576  
registered with the employment and training administration within 2577  
the United States department of labor or with the apprenticeship 2578  
council created by section 4139.02 of the Revised Code, to educate 2579  
and train individuals for careers in the wind or solar energy 2580  
industry. The relationship may include endowments, cooperative 2581  
programs, internships, apprenticeships, research and development 2582  
projects, and curriculum development. 2583

(8) Offer to sell power or renewable energy credits from the 2584  
energy project to electric distribution utilities or electric 2585  
service companies subject to renewable energy resource 2586  
requirements under section ~~4928.64~~ 4928.641 of the Revised Code 2587  
that have issued requests for proposal for such power or renewable 2588  
energy credits. If no electric distribution utility or electric 2589  
service company issues a request for proposal on or before 2590  
December 31, 2010, or accepts an offer for power or renewable 2591  
energy credits within forty-five days after the offer is 2592  
submitted, power or renewable energy credits from the energy 2593  
project may be sold to other persons. Division (F)(8) of this 2594  
section does not apply if: 2595

(a) The owner or lessee is a rural electric company or a 2596  
municipal power agency as defined in section 3734.058 of the 2597  
Revised Code. 2598

(b) The owner or lessee is a person that, before completion 2599  
of the energy project, contracted for the sale of power or 2600  
renewable energy credits with a rural electric company or a 2601  
municipal power agency. 2602

(c) The owner or lessee contracts for the sale of power or 2603  
renewable energy credits from the energy project before June 17, 2604  
2010. 2605

(9) Make annual service payments as required by division (G) 2606

of this section and as may be required in a resolution adopted by 2607  
a board of county commissioners under division (E) of this 2608  
section. 2609

(G) The owner or a lessee pursuant to a sale and leaseback 2610  
transaction of a qualified energy project shall make annual 2611  
service payments in lieu of taxes to the county treasurer on or 2612  
before the final dates for payments of taxes on public utility 2613  
personal property on the real and public utility personal property 2614  
tax list for each tax year for which property of the energy 2615  
project is exempt from taxation under this section. The county 2616  
treasurer shall allocate the payment on the basis of the project's 2617  
physical location. Upon receipt of a payment, or if timely payment 2618  
has not been received, the county treasurer shall certify such 2619  
receipt or non-receipt to the director of development services and 2620  
tax commissioner in a form determined by the director and 2621  
commissioner, respectively. Each payment shall be in the following 2622  
amount: 2623

(1) In the case of a solar energy project, seven thousand 2624  
dollars per megawatt of nameplate capacity located in the county 2625  
as of December 31, 2010, for tax year 2011, as of December 31, 2626  
2011, for tax year 2012, as of December 31, 2012, for tax year 2627  
2013, as of December 31, 2013, for tax year 2014, as of December 2628  
31, 2014, for tax year 2015, as of December 31, 2015, for tax year 2629  
2016, and as of December 31, 2016, for tax year 2017 and each tax 2630  
year thereafter; 2631

(2) In the case of any other energy project using renewable 2632  
energy resources, the following: 2633

(a) If the project maintains during the construction or 2634  
installation of the energy facility a ratio of Ohio-domiciled 2635  
full-time equivalent employees to total full-time equivalent 2636  
employees of not less than seventy-five per cent, six thousand 2637  
dollars per megawatt of nameplate capacity located in the county 2638

as of the thirty-first day of December of the preceding tax year; 2639

(b) If the project maintains during the construction or 2640  
installation of the energy facility a ratio of Ohio-domiciled 2641  
full-time equivalent employees to total full-time equivalent 2642  
employees of less than seventy-five per cent but not less than 2643  
sixty per cent, seven thousand dollars per megawatt of nameplate 2644  
capacity located in the county as of the thirty-first day of 2645  
December of the preceding tax year; 2646

(c) If the project maintains during the construction or 2647  
installation of the energy facility a ratio of Ohio-domiciled 2648  
full-time equivalent employees to total full-time equivalent 2649  
employees of less than sixty per cent but not less than fifty per 2650  
cent, eight thousand dollars per megawatt of nameplate capacity 2651  
located in the county as of the thirty-first day of December of 2652  
the preceding tax year. 2653

(3) In the case of an energy project using clean coal 2654  
technology, advanced nuclear technology, or cogeneration 2655  
technology, the following: 2656

(a) If the project maintains during the construction or 2657  
installation of the energy facility a ratio of Ohio-domiciled 2658  
full-time equivalent employees to total full-time equivalent 2659  
employees of not less than seventy-five per cent, six thousand 2660  
dollars per megawatt of nameplate capacity located in the county 2661  
as of the thirty-first day of December of the preceding tax year; 2662

(b) If the project maintains during the construction or 2663  
installation of the energy facility a ratio of Ohio-domiciled 2664  
full-time equivalent employees to total full-time equivalent 2665  
employees of less than seventy-five per cent but not less than 2666  
sixty per cent, seven thousand dollars per megawatt of nameplate 2667  
capacity located in the county as of the thirty-first day of 2668  
December of the preceding tax year; 2669

(c) If the project maintains during the construction or 2670  
installation of the energy facility a ratio of Ohio-domiciled 2671  
full-time equivalent employees to total full-time equivalent 2672  
employees of less than sixty per cent but not less than fifty per 2673  
cent, eight thousand dollars per megawatt of nameplate capacity 2674  
located in the county as of the thirty-first day of December of 2675  
the preceding tax year. 2676

(H) The director of development services in consultation with 2677  
the tax commissioner shall adopt rules pursuant to Chapter 119. of 2678  
the Revised Code to implement and enforce this section. 2679

**Section 2.** That existing sections 717.25, 1710.061, 3706.25, 2680  
4905.31, 4928.01, 4928.143, 4928.20, 4928.61, 4928.64, 4928.65, 2681  
4928.66, 5501.311, and 5727.75 of the Revised Code are hereby 2682  
repealed. 2683

**Section 3.** The act recodifies section 4928.64 of the Revised 2684  
Code by subdividing it into the sections identified in the 2685  
following table. The left-hand column identifies the sections that 2686  
result from the recodification, and the right-hand column 2687  
indicates the source of the resulting section in section 4928.64 2688  
of the Revised Code before its recodification. Except insofar as 2689  
amendments are indicated in the resulting sections, the resulting 2690  
sections are a continuation of, and are to be substituted in a 2691  
continuing way for, the law as it existed in section 4928.64 of 2692  
the Revised Code before its recodification. 2693

Sections resulting from the 2694 recodification	Source in former R.C. 4928.64	
4928.641	4928.64(B)	2695
4928.642	4928.64(C)(1)	2696
4928.643	4928.64(C)(2)	2697
4928.644	4928.64(C)(3)	2698

4928.645	4928.64(C)(4)	2699
4928.646	4928.64(C)(5)	2700
4928.647	4928.64(D)(1)	2701
4928.648	4928.64(D)(2)	2702
4928.649	4928.64(E)	2703

Section 4928.64 of the Revised Code, as amended by this act, 2704  
contains only division (A) of that section as it existed prior to 2705  
the effective date of the amendments to that section, as well as 2706  
the amendments made to that section. 2707

**Section 4.** The act recodifies section 4928.66 of the Revised 2708  
Code by subdividing it into the sections identified in the 2709  
following table. The left-hand column identifies the sections that 2710  
result from the recodification, and the right-hand column 2711  
indicates the source of the resulting section in section 4928.66 2712  
of the Revised Code before its recodification. Except insofar as 2713  
amendments are indicated in the resulting sections, the resulting 2714  
sections are a continuation of, and are to be substituted in a 2715  
continuing way for, the law as it existed in section 4928.64 of 2716  
the Revised Code before its recodification. 2717

Sections resulting from the 2718	Source in former R.C. 4928.66	
4928.661	4928.66(A)(1)(a), 1st, 3rd, 4th, and 5th sentences.	2719
4928.662	4928.66(A)(1)(b)	2720
4928.665	4928.66(A)(2)(a)	2721
4928.666	4928.66(A)(2)(c), 3rd sentence.	2722
4928.667	4928.66(A)(2)(c), 4th sentence.	2723
4928.668	4928.66(A)(2)(b)	2724
4928.6625	4928.66(A)(2)(c), 1st sentence.	2725
4928.6626	4928.66(A)(2)(d), 2nd sentence.	2726
4928.6627	4928.66(A)(2)(d), 1st sentence.	2727
4928.6650	4928.66(A)(2)(c), 2nd sentence.	2728

4928.6651	4928.66(D)	2729
4928.6655	4928.66(B)	2730
4928.6656	4928.66(C)	2731
4928.6657	4928.66(E)	2732
4928.6658	4928.66(A)(2)(e)	2733

The source of new section 4928.66 of the Revised Code is 2734  
division (A)(1)(a)(second sentence) of former section 4928.66 of 2735  
the Revised Code. 2736

**Section 5.** To the extent that the Public Utilities Commission 2737  
may have adopted, prior to the effective date of S.B. 58 of the 2738  
130th General Assembly, methods to measure alternative energy, 2739  
energy efficiency, and peak demand reduction compliance that are 2740  
different or inconsistent with the requirements of former sections 2741  
4928.64 and 4928.66 of the Revised Code as they existed prior to 2742  
the effective date of S.B. 58 of the 130th General Assembly, such 2743  
difference or inconsistency shall, for purposes of addressing all 2744  
cases or controversies, be resolved by the Commission and the 2745  
Supreme Court in favor of the measurement method that maximizes 2746  
the amount of compliance during the period in question. 2747