

**As Passed by the Senate**

**134th General Assembly**

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**2021-2022**

**Am. Sub. H. B. No. 128**

**Representatives Hoops, Stein**

**Cosponsors: Representatives Carfagna, Abrams, Carruthers, Click, Crossman, Cutrona, Denson, Fraizer, Ghanbari, Gross, Hall, Holmes, Householder, Johnson, Jones, Lipps, McClain, Merrin, Miller, A., Ray, Riedel, Roemer, Seitz, Smith, K., Stephens, Wiggam, Young, T., Speaker Cupp**

**Senators Schuring, Brenner, Antani, Antonio, Blessing, Cirino, Craig, Dolan, Fedor, Hackett, Hoagland, Hottinger, Huffman, M., Huffman, S., Johnson, Lang, Manning, McColley, O'Brien, Peterson, Reineke, Roegner, Romanchuk, Rulli, Schaffer, Sykes, Thomas, Williams, Wilson, Yuko**

**A BILL**

To amend sections 3706.40, 3706.41, 3706.43, 1  
3706.45, 3706.46, 3706.49, 3706.55, 3706.59, 2  
4928.143, 4928.642, and 4928.645; to enact 3  
sections 3706.491, 3706.551, and 4906.105; and 4  
to repeal sections 3706.53, 3706.61, 4928.471, 5  
and 5727.231 of the Revised Code to make changes 6  
regarding electric utility service law, to 7  
repeal certain provisions of, and limit to solar 8  
resources the credit payment provisions of, H.B. 9  
6 of the 133rd General Assembly, and to provide 10  
refunds to retail electric customers in the 11  
state. 12

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

**Section 1.** That sections 3706.40, 3706.41, 3706.43, 13  
3706.45, 3706.46, 3706.49, 3706.55, 3706.59, 4928.143, 4928.642, 14

and 4928.645 be amended and sections 3706.491, 3706.551, and 15  
4906.105 of the Revised Code be enacted to read as follows: 16

**Sec. 3706.40.** As used in sections 3706.40 to 3706.65 of 17  
the Revised Code: 18

~~(A) "Qualifying nuclear resource" means an electric 19  
generating facility in this state fueled by nuclear power. 20~~

~~(B) "Qualifying renewable solar resource" means an 21  
electric generating facility in this state to which all of the 22  
following apply: 23~~

~~(1) The facility uses or will use solar energy as the 24  
primary energy source. 25~~

~~(2) The facility obtained a certificate for construction 26  
of a major utility facility from the power siting board prior to 27  
June 1, 2019. 28~~

~~(3) The facility is interconnected with the transmission 29  
grid that is subject to the operational control of PJM 30  
interconnection, L.L.C., or its successor organization. 31~~

~~(C) "Credit price adjustment" means a reduction to the 32  
price for each nuclear resource credit equal to the market price- 33  
index minus the strike price. 34~~

~~(D) "Strike price" means forty six dollars per megawatt- 35  
hour. 36~~

~~(E) "Market price index" means the sum, expressed in 37  
dollars per megawatt hour, of both of the following for the 38  
upcoming twelve month period that begins the first day of June 39  
and ends the thirty first day of May: 40~~

~~(1) Projected energy prices, determined using futures 41~~

~~contracts for the PJM AEP Dayton hub;~~ 42

~~(2) Projected capacity prices, determined using PJM's rest of RTO market clearing price.~~ 43  
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~~(F) (B) "Electric distribution utility" has the same meaning as in section 4928.01 of the Revised Code.~~ 45  
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**Sec. 3706.41.** ~~(A) Not later than February 1, 2020, the owner or operator of a qualifying nuclear resource or qualifying renewable solar resource may apply to the Ohio air quality development authority to receive payments for nuclear resource credits or renewable solar energy credits, as applicable, under section 3706.55 of the Revised Code.~~ 47  
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~~(B) An application submitted under division (A) of this section for a qualifying nuclear resource shall include all of the following information pertaining to the resource:~~ 53  
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~~(1) Financial information;~~ 56

~~(2) Certified cost and revenue projections through December 31, 2026;~~ 57  
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~~(3) Operation and maintenance expenses;~~ 59

~~(4) Fuel expenses, including spent fuel expenses;~~ 60

~~(5) Nonfuel capital expenses;~~ 61

~~(6) Fully allocated overhead costs;~~ 62

~~(7) The cost of operational risks and market risks that would be avoided by ceasing operation of the resource;~~ 63  
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~~(8) Any other information, financial or otherwise, that demonstrates that the resource is projected not to continue being operational.~~ 65  
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~~(C) As used in this section:~~ 68

~~(1) "Operational risks" include the risk that operating costs will be higher than anticipated because of new regulatory mandates or equipment failures and the risk that per megawatt-hour costs will be higher than anticipated because of a lower-than-expected capacity factor.~~ 69  
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~~(2) "Market risks" include the risk of a forced outage and the associated costs arising from contractual obligations, and the risk that output from the resource may not be able to be sold at projected levels.~~ 74  
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**Sec. 3706.43.** After receiving an application under section 3706.41 of the Revised Code, the Ohio air quality development authority shall review and approve the application, not later than March 31, 2020, if ~~all of the following apply, as applicable:~~ 78  
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~~(A) The the resource meets the definition of a qualifying nuclear resource or qualifying renewable solar resource in section 3706.40 of the Revised Code.~~ 83  
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~~(B) For a qualifying nuclear resource only, both of the following apply:~~ 86  
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~~(1) The application meets the requirements of section 3706.41 of the Revised Code.~~ 88  
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~~(2) The resource's operator maintains both a principal place of business in this state and a substantial presence in this state with regard to its business operations, offices, and transactions.~~ 90  
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**Sec. 3706.45.** (A) An owner or operator of a qualifying nuclear resource or qualifying renewable solar resource whose 94  
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application was approved under section 3706.43 of the Revised Code shall report to the Ohio air quality development authority, not later than seven days after the close of each quarter, the number of megawatt hours the resource produced, if any, in the previous quarter. The first report shall be made not later than April 7, 2020, and the last report shall be made not later than January 7, 2027. The information reported shall be in accordance with data from the generation attribute tracking designated by the authority.

~~(B) The authority shall issue one nuclear resource credit to a qualifying nuclear resource for each megawatt hour of electricity that is both reported under division (A) of this section and approved by the authority.~~ The authority shall issue one renewable solar energy credit to a qualifying renewable solar resource for each megawatt hour of electricity that is both reported under division (A) of this section and approved by the authority.

~~(C) Except as provided in section 3706.61 of the Revised Code, the price for a nuclear resource credit paid under section 3706.55 of the Revised Code shall be nine dollars.~~

~~(D) The price for a renewable solar energy credit paid under section 3706.55 of the Revised Code shall be nine dollars.~~

**Sec. 3706.46.** (A) (1) Beginning for all bills rendered on or after January 1, 2021, by an electric distribution utility in this state, such electric distribution utility shall collect from all of its retail electric customers in this state, each month, a charge ~~or charges~~ which, in the aggregate, ~~are is~~ sufficient to produce ~~the following a~~ revenue ~~requirements:~~

~~(a) One hundred fifty million dollars annually for total~~

~~disbursements required under section 3706.55 of the Revised Code~~ 125  
~~from the nuclear generation fund;~~ 126

~~(b) Twenty~~ requirement of twenty million dollars annually 127  
for total disbursements required under section 3706.55 of the 128  
Revised Code from the ~~renewable~~ solar generation fund. 129

(2) The public utilities commission shall determine the 130  
method by which the revenue is allocated or assigned to each 131  
electric distribution utility for billing and collection, 132  
provided that the method of allocation shall be based on the 133  
relative number of customers, relative quantity of kilowatt hour 134  
sales, or a combination of the two. The level and structure of 135  
the charge shall be authorized by the commission through a 136  
process that the commission shall determine is not for an 137  
increase in any rate, joint rate, toll, classification, charge, 138  
or rental, notwithstanding anything to the contrary in Title 139  
XLIX of the Revised Code. 140

(B) In authorizing the level and structure of any charge 141  
~~or charges~~ to be billed and collected by each electric 142  
distribution utility, the commission shall ensure that the per- 143  
customer monthly charge for residential customers does not 144  
exceed ~~eighty-five~~ ten cents and that the per-customer monthly 145  
charge for industrial customers eligible to become self- 146  
assessing purchasers pursuant to division (C) of section 5727.81 147  
of the Revised Code does not exceed two ~~thousand four~~ hundred 148  
forty-two dollars. For nonresidential customers that are not 149  
self-assessing purchasers, the level and design of the charge ~~or~~ 150  
~~charges~~ shall be established in a manner that avoids abrupt or 151  
excessive total net electric bill impacts for typical customers. 152

(C) Each charge authorized by the commission under this 153  
section shall be subject to adjustment so as to reconcile actual 154

revenue collected with the revenue needed to meet the revenue 155  
~~requirements~~requirement under division (A) (1) of this section. 156  
The commission shall authorize each electric distribution 157  
utility to adopt accounting practices to facilitate such 158  
reconciliation. Notwithstanding any other provisions of the 159  
Revised Code, the charge ~~or charges~~ authorized by the commission 160  
may continue beyond December 31, 2027, only if it is necessary 161  
to reconcile actual revenue collected under this section during 162  
the period ending on December 31, 2027, with the actual revenue 163  
needed to meet the revenue ~~requirements~~requirement under 164  
division (A) (1) of this section for required disbursements under 165  
section 3706.55 of the Revised Code that may be due and owing 166  
during the same period. Such continuation shall be authorized 167  
only for such period of time beyond December 31, 2027, as may be 168  
reasonably necessary to complete the reconciliation. 169

**Sec. 3706.49.** (A) There is hereby created ~~the nuclear~~ 170  
~~generation fund and the renewable solar~~ generation fund. ~~Each~~ 171  
The fund shall be in the custody of the treasurer of state but 172  
shall not be part of the state treasury. ~~Each~~The fund shall 173  
consist of the charges collected under section 3706.46 of the 174  
Revised Code and deposited ~~in accordance with section 3706.53 of~~ 175  
~~the Revised Code~~ by the Ohio air quality development authority, 176  
in consultation with the public utilities commission. The 177  
interest generated by ~~each the~~ fund shall be retained ~~by each~~ 178  
~~respective in the~~ fund and used for the purposes set forth in 179  
sections 3706.40 to 3706.65 of the Revised Code. 180

(B) The fund shall be administered by the Ohio air quality 181  
development authority, and the authority shall request the 182  
treasurer of state to create the account for the fund. The 183  
treasurer of state shall distribute the moneys in the ~~funds~~fund 184  
in accordance with directions provided by the ~~Ohio air quality~~ 185

~~development~~ authority. Before giving directions under this 186  
division, the authority shall consult with the public utilities 187  
commission. 188

**Sec. 3706.491.** (A) Except as provided in division (B) of 189  
this section, each fiscal year, beginning July 1, 2021, and 190  
ending June 30, 2029, and subject to controlling board approval, 191  
the Ohio air quality development authority may use, from the 192  
solar generation fund created under section 3706.49 of the 193  
Revised Code, up to a maximum of three hundred thousand dollars 194  
to pay for the authority's administrative costs for that year 195  
under sections 3706.40 to 3706.65 of the Revised Code. 196

(B) In addition to the amount approved in division (A) of 197  
this section for fiscal year 2022 and subject to controlling 198  
board approval, the authority may use the following amounts in 199  
fiscal year 2022 from the solar generation fund: 200

(1) Up to three hundred thousand dollars to pay for the 201  
authority's administrative costs incurred in fiscal year 2020; 202

(2) Up to three hundred thousand dollars to pay for the 203  
authority's administrative costs incurred in fiscal year 2021. 204

**Sec. 3706.55.** (A) For the period beginning with April of 205  
2021 and ending with January of 2028, the Ohio air quality 206  
development authority shall, in April of 2021 and every three 207  
months thereafter through the end of the period, and not later 208  
than the twenty-first day of the month, direct the treasurer of 209  
state to remit money from the ~~funds~~ solar generation fund 210  
created under section 3706.49 of the Revised Code ~~as follows:~~ 211

~~(1) Subject to sections 3706.59 and 3706.61 of the Revised~~ 212  
~~Code, from the nuclear generation fund to the owner or operator~~ 213  
~~of a qualifying nuclear resource, in the amount equivalent to~~ 214



~~the number of credits earned by the resource during the quarter~~ 215  
~~that ended twelve months prior to the last day of the previous~~ 216  
~~quarter multiplied by the credit price, and as directed by the~~ 217  
~~authority in accordance with section 3706.61 of the Revised~~ 218  
~~Code,~~ 219

~~(2)~~ Subject to section 3706.59 of the Revised Code, ~~from~~ 220  
~~the renewable generation fund the moneys from the fund shall be~~ 221  
~~remitted~~ to the owners or operators of qualifying ~~renewable~~ 222  
~~solar~~ resources, in the amount equivalent to the number of 223  
credits earned by the resources during the quarter that ended 224  
twelve months prior to the last day of the previous quarter 225  
multiplied by the credit price. 226

(B) Notwithstanding section 4905.32 of the Revised Code, 227  
any amounts remaining in the ~~nuclear generation fund and the~~ 228  
~~renewable generation fund~~ as of December 31, 2027, minus the 229  
remittances that are required to be made between that date and 230  
January 21, 2028, shall be refunded to customers in a manner 231  
that shall be determined by the authority in consultation with 232  
the public utilities commission. 233

Sec. 3706.551. (A) Notwithstanding the solar energy credit 234  
application deadlines for qualifying solar resources under 235  
sections 3706.41 and 3706.43 of the Revised Code, the Ohio air 236  
quality development authority shall rereview and approve an 237  
application from a qualifying solar resource if the resource 238  
submitted the application before March 1, 2020. 239

(B) The deadlines for the quarterly reports required under 240  
section 3706.45 of the Revised Code that have passed before the 241  
effective date of this section do not apply to a qualifying 242  
solar resource whose application for solar energy credits is 243  
approved under division (A) of this section. 244

**Sec. 3706.59.** ~~(A) If the money in the nuclear generation fund is insufficient in a particular quarter to make the payments in the amount required under division (A) (1) of section 3706.55 of the Revised Code, then the Ohio air quality development authority shall, not later than twenty one days after the close of any quarter in which the owner or operator was not fully compensated, direct the treasurer of state to remit money from the nuclear generation fund to pay for the unpaid credits.~~ 245  
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~~(B) If the money in the renewable solar generation fund is insufficient to make the payments in the amounts required under division (A) (2) of section 3706.55 of the Revised Code for all owners and operators of qualifying renewable solar resources, then the authority shall do both of the following:~~ 254  
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~~(1) (A) Not later than twenty-one days after the close of the quarter in which the charges collected were insufficient, direct the treasurer to prorate payments from the total amount available in the renewable solar generation fund, based on the number of each resource's credits earned during the quarter that ended twelve months prior to the last day of the previous quarter;~~ 259  
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~~(2) (B) Not later than twenty-one days after the close of any quarter in which the owners or operators received prorated payments under division ~~(B) (1)~~ (A) of this section, direct the treasurer of state to remit money from the renewable solar generation fund to pay for the unpaid credits. Unpaid credits paid for under division (B) ~~(2)~~ of this section shall be paid before any other remittances are made under ~~division (A) (2)~~ of section 3706.55 of the Revised Code.~~ 266  
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**Sec. 4906.105.** The power siting board shall submit a 274

report to the general assembly, not later than December 1, 2021, 275  
on whether the current requirements for the planning of the 276  
power transmission system and associated facilities investment 277  
in this state are cost effective and in the interest of 278  
consumers. The board shall hold at least one public meeting 279  
before completing the report. The board shall complete the 280  
report in consultation with JobsOhio and may consult with or 281  
request the assistance of PJM interconnection regional 282  
transmission organization, L.L.C., the independent market 283  
monitor for PJM interconnection regional transmission 284  
organization, L.L.C. and other interested stakeholders, such as 285  
transmission owners. The report may include any recommendations 286  
for legislative changes to ensure transmission planning is cost 287  
effective and in the interest of consumers, including 288  
recommendations regarding any of the following: 289

(A) Whether the definition of a major utility facility 290  
should include an electric transmission line of a design 291  
capacity at or above sixty-nine kilovolts and associated 292  
facilities the costs of which are recovered as a transmission 293  
asset by the transmission owners; 294

(B) Whether the criteria for an accelerated certificate 295  
application should be modified; 296

(C) Whether the certification process is sufficiently 297  
transparent; 298

(D) Whether the board should require the following for, or 299  
determine if the following apply to, a transmission project 300  
certification application: 301

(1) That alternative transmission projects were 302  
considered; 303

(2) That the project was competitively bid or compared to 304  
the results of a competitive bid; 305

(3) That the project has been considered in the context of 306  
the utility's larger transmission plan; 307

(4) That the project has been considered in the context of 308  
the regional transmission planning process of PJM 309  
interconnection regional transmission organization, L.L.C.; 310

(5) That the project could not have been deferred or 311  
redesigned to achieve the same operational result at a lower 312  
overall cost; 313

(6) That the project has provided historical information 314  
for an existing transmission project or information for a 315  
planned or proposed project. 316

**Sec. 4928.143.** (A) For the purpose of complying with 317  
section 4928.141 of the Revised Code, an electric distribution 318  
utility may file an application for public utilities commission 319  
approval of an electric security plan as prescribed under 320  
division (B) of this section. The utility may file that 321  
application prior to the effective date of any rules the 322  
commission may adopt for the purpose of this section, and, as 323  
the commission determines necessary, the utility immediately 324  
shall conform its filing to those rules upon their taking 325  
effect. 326

(B) Notwithstanding any other provision of Title XLIX of 327  
the Revised Code to the contrary except division (D) of this 328  
section, divisions (I), (J), and (K) of section 4928.20, 329  
division (E) of section 4928.64, and section 4928.69 of the 330  
Revised Code: 331

(1) An electric security plan shall include provisions 332

relating to the supply and pricing of electric generation 333  
service. In addition, if the proposed electric security plan has 334  
a term longer than three years, it may include provisions in the 335  
plan to permit the commission to test the plan pursuant to 336  
division (E) of this section and any transitional conditions 337  
that should be adopted by the commission if the commission 338  
terminates the plan as authorized under that division. 339

(2) The plan may provide for or include, without 340  
limitation, any of the following: 341

(a) Automatic recovery of any of the following costs of 342  
the electric distribution utility, provided the cost is 343  
prudently incurred: the cost of fuel used to generate the 344  
electricity supplied under the offer; the cost of purchased 345  
power supplied under the offer, including the cost of energy and 346  
capacity, and including purchased power acquired from an 347  
affiliate; the cost of emission allowances; and the cost of 348  
federally mandated carbon or energy taxes; 349

(b) A reasonable allowance for construction work in 350  
progress for any of the electric distribution utility's cost of 351  
constructing an electric generating facility or for an 352  
environmental expenditure for any electric generating facility 353  
of the electric distribution utility, provided the cost is 354  
incurred or the expenditure occurs on or after January 1, 2009. 355  
Any such allowance shall be subject to the construction work in 356  
progress allowance limitations of division (A) of section 357  
4909.15 of the Revised Code, except that the commission may 358  
authorize such an allowance upon the incurrence of the cost or 359  
occurrence of the expenditure. No such allowance for generating 360  
facility construction shall be authorized, however, unless the 361  
commission first determines in the proceeding that there is need 362

for the facility based on resource planning projections 363  
submitted by the electric distribution utility. Further, no such 364  
allowance shall be authorized unless the facility's construction 365  
was sourced through a competitive bid process, regarding which 366  
process the commission may adopt rules. An allowance approved 367  
under division (B) (2) (b) of this section shall be established as 368  
a nonbypassable surcharge for the life of the facility. 369

(c) The establishment of a nonbypassable surcharge for the 370  
life of an electric generating facility that is owned or 371  
operated by the electric distribution utility, was sourced 372  
through a competitive bid process subject to any such rules as 373  
the commission adopts under division (B) (2) (b) of this section, 374  
and is newly used and useful on or after January 1, 2009, which 375  
surcharge shall cover all costs of the utility specified in the 376  
application, excluding costs recovered through a surcharge under 377  
division (B) (2) (b) of this section. However, no surcharge shall 378  
be authorized unless the commission first determines in the 379  
proceeding that there is need for the facility based on resource 380  
planning projections submitted by the electric distribution 381  
utility. Additionally, if a surcharge is authorized for a 382  
facility pursuant to plan approval under division (C) of this 383  
section and as a condition of the continuation of the surcharge, 384  
the electric distribution utility shall dedicate to Ohio 385  
consumers the capacity and energy and the rate associated with 386  
the cost of that facility. Before the commission authorizes any 387  
surcharge pursuant to this division, it may consider, as 388  
applicable, the effects of any decommissioning, deratings, and 389  
retirements. 390

(d) Terms, conditions, or charges relating to limitations 391  
on customer shopping for retail electric generation service, 392  
bypassability, standby, back-up, or supplemental power service, 393

default service, carrying costs, amortization periods, and	394
accounting or deferrals, including future recovery of such	395
deferrals, as would have the effect of stabilizing or providing	396
certainty regarding retail electric service;	397
(e) Automatic increases or decreases in any component of	398
the standard service offer price;	399
(f) Consistent with sections 4928.23 to 4928.2318 of the	400
Revised Code, both of the following:	401
(i) Provisions for the electric distribution utility to	402
securitize any phase-in, inclusive of carrying charges, of the	403
utility's standard service offer price, which phase-in is	404
authorized in accordance with section 4928.144 of the Revised	405
Code;	406
(ii) Provisions for the recovery of the utility's cost of	407
securitization.	408
(g) Provisions relating to transmission, ancillary,	409
congestion, or any related service required for the standard	410
service offer, including provisions for the recovery of any cost	411
of such service that the electric distribution utility incurs on	412
or after that date pursuant to the standard service offer;	413
(h) Provisions regarding the utility's distribution	414
service, including, without limitation and notwithstanding any	415
provision of Title XLIX of the Revised Code to the contrary,	416
provisions regarding single issue ratemaking, a revenue	417
decoupling mechanism or any other incentive ratemaking, and	418
provisions regarding distribution infrastructure and	419
modernization incentives for the electric distribution utility.	420
The latter may include a long-term energy delivery	421
infrastructure modernization plan for that utility or any plan	422

providing for the utility's recovery of costs, including lost 423  
revenue, shared savings, and avoided costs, and a just and 424  
reasonable rate of return on such infrastructure modernization. 425  
As part of its determination as to whether to allow in an 426  
electric distribution utility's electric security plan inclusion 427  
of any provision described in division (B) (2) (h) of this 428  
section, the commission shall examine the reliability of the 429  
electric distribution utility's distribution system and ensure 430  
that customers' and the electric distribution utility's 431  
expectations are aligned and that the electric distribution 432  
utility is placing sufficient emphasis on and dedicating 433  
sufficient resources to the reliability of its distribution 434  
system. 435

(i) Provisions under which the electric distribution 436  
utility may implement economic development, job retention, and 437  
energy efficiency programs, which provisions may allocate 438  
program costs across all classes of customers of the utility and 439  
those of electric distribution utilities in the same holding 440  
company system. 441

(C) (1) The burden of proof in the proceeding shall be on 442  
the electric distribution utility. The commission shall issue an 443  
order under this division for an initial application under this 444  
section not later than one hundred fifty days after the 445  
application's filing date and, for any subsequent application by 446  
the utility under this section, not later than two hundred 447  
seventy-five days after the application's filing date. Subject 448  
to division (D) of this section, the commission by order shall 449  
approve or modify and approve an application filed under 450  
division (A) of this section if it finds that the electric 451  
security plan so approved, including its pricing and all other 452  
terms and conditions, including any deferrals and any future 453



recovery of deferrals, is more favorable in the aggregate as 454  
compared to the expected results that would otherwise apply 455  
under section 4928.142 of the Revised Code. Additionally, if the 456  
commission so approves an application that contains a surcharge 457  
under division (B) (2) (b) or (c) of this section, the commission 458  
shall ensure that the benefits derived for any purpose for which 459  
the surcharge is established are reserved and made available to 460  
those that bear the surcharge. Otherwise, the commission by 461  
order shall disapprove the application. 462

(2) (a) If the commission modifies and approves an 463  
application under division (C) (1) of this section, the electric 464  
distribution utility may withdraw the application, thereby 465  
terminating it, and may file a new standard service offer under 466  
this section or a standard service offer under section 4928.142 467  
of the Revised Code. 468

(b) If the utility terminates an application pursuant to 469  
division (C) (2) (a) of this section or if the commission 470  
disapproves an application under division (C) (1) of this 471  
section, the commission shall issue such order as is necessary 472  
to continue the provisions, terms, and conditions of the 473  
utility's most recent standard service offer, along with any 474  
expected increases or decreases in fuel costs from those 475  
contained in that offer, until a subsequent offer is authorized 476  
pursuant to this section or section 4928.142 of the Revised 477  
Code, respectively. 478

(D) Regarding the rate plan requirement of division (A) of 479  
section 4928.141 of the Revised Code, if an electric 480  
distribution utility that has a rate plan that extends beyond 481  
December 31, 2008, files an application under this section for 482  
the purpose of its compliance with division (A) of section 483

4928.141 of the Revised Code, that rate plan and its terms and 484  
conditions are hereby incorporated into its proposed electric 485  
security plan and shall continue in effect until the date 486  
scheduled under the rate plan for its expiration, and that 487  
portion of the electric security plan shall not be subject to 488  
commission approval or disapproval under division (C) of this 489  
section, and the earnings test provided for in division (F) of 490  
this section shall not apply until after the expiration of the 491  
rate plan. However, that utility may include in its electric 492  
security plan under this section, and the commission may 493  
approve, modify and approve, or disapprove subject to division 494  
(C) of this section, provisions for the incremental recovery or 495  
the deferral of any costs that are not being recovered under the 496  
rate plan and that the utility incurs during that continuation 497  
period to comply with section 4928.141, division (B) of section 498  
4928.64, or division (A) of section 4928.66 of the Revised Code. 499

(E) If an electric security plan approved under division 500  
(C) of this section, except one withdrawn by the utility as 501  
authorized under that division, has a term, exclusive of phase- 502  
ins or deferrals, that exceeds three years from the effective 503  
date of the plan, the commission shall test the plan in the 504  
fourth year, and if applicable, every fourth year thereafter, to 505  
determine whether the plan, including its then-existing pricing 506  
and all other terms and conditions, including any deferrals and 507  
any future recovery of deferrals, continues to be more favorable 508  
in the aggregate and during the remaining term of the plan as 509  
compared to the expected results that would otherwise apply 510  
under section 4928.142 of the Revised Code. The commission shall 511  
also determine the prospective effect of the electric security 512  
plan to determine if that effect is substantially likely to 513  
provide the electric distribution utility with a return on 514

common equity that is significantly in excess of the return on 515  
common equity that is likely to be earned by publicly traded 516  
companies, including utilities, that face comparable business 517  
and financial risk, with such adjustments for capital structure 518  
as may be appropriate. The burden of proof for demonstrating 519  
that significantly excessive earnings will not occur shall be on 520  
the electric distribution utility. ~~For affiliated Ohio electric-~~ 521  
~~distribution utilities that operate under a joint electric-~~ 522  
~~security plan, their total earned return on common equity shall-~~ 523  
~~be used for purposes of assessing significantly excessive-~~ 524  
~~earnings.~~ If the test results are in the negative or the 525  
commission finds that continuation of the electric security plan 526  
will result in a return on equity that is significantly in 527  
excess of the return on common equity that is likely to be 528  
earned by publicly traded companies, including utilities, that 529  
will face comparable business and financial risk, with such 530  
adjustments for capital structure as may be appropriate, during 531  
the balance of the plan, the commission may terminate the 532  
electric security plan, but not until it shall have provided 533  
interested parties with notice and an opportunity to be heard. 534  
The commission may impose such conditions on the plan's 535  
termination as it considers reasonable and necessary to 536  
accommodate the transition from an approved plan to the more 537  
advantageous alternative. In the event of an electric security 538  
plan's termination pursuant to this division, the commission 539  
shall permit the continued deferral and phase-in of any amounts 540  
that occurred prior to that termination and the recovery of 541  
those amounts as contemplated under that electric security plan. 542

(F) With regard to the provisions that are included in an 543  
electric security plan under this section, the commission shall 544  
consider, following the end of each annual period of the plan, 545

if any such adjustments resulted in excessive earnings as 546  
measured by whether the earned return on common equity of the 547  
electric distribution utility is significantly in excess of the 548  
return on common equity that was earned during the same period 549  
by publicly traded companies, including utilities, that face 550  
comparable business and financial risk, with such adjustments 551  
for capital structure as may be appropriate. ~~In making its~~ 552  
~~determination of significantly excessive earnings under this~~ 553  
~~division, the commission shall, for affiliated Ohio electric~~ 554  
~~distribution utilities that operate under a joint electric~~ 555  
~~security plan, use the total of the utilities' earned return on~~ 556  
~~common equity.~~ Consideration also shall be given to the capital 557  
requirements of future committed investments in this state. The 558  
burden of proof for demonstrating that significantly excessive 559  
earnings did not occur shall be on the electric distribution 560  
utility. If the commission finds that such adjustments, in the 561  
aggregate, did result in significantly excessive earnings, it 562  
shall require the electric distribution utility to return to 563  
consumers the amount of the excess by prospective adjustments; 564  
provided that, upon making such prospective adjustments, the 565  
electric distribution utility shall have the right to terminate 566  
the plan and immediately file an application pursuant to section 567  
4928.142 of the Revised Code. Upon termination of a plan under 568  
this division, rates shall be set on the same basis as specified 569  
in division (C) (2) (b) of this section, and the commission shall 570  
permit the continued deferral and phase-in of any amounts that 571  
occurred prior to that termination and the recovery of those 572  
amounts as contemplated under that electric security plan. In 573  
making its determination of significantly excessive earnings 574  
under this division, the commission shall not consider, directly 575  
or indirectly, the revenue, expenses, or earnings of any 576  
~~affiliate that is not an Ohio electric distribution utility or~~ 577

parent company. 578

**Sec. 4928.642.** Beginning with compliance year 2020, the 579  
public utilities commission shall, in accordance with this 580  
section, reduce the number of kilowatt hours required for 581  
compliance with section 4928.64 of the Revised Code for all 582  
electric distribution utilities and all electric services 583  
companies in this state. The commission shall determine each 584  
utility's and each company's reduction by taking the total 585  
amount of kilowatt hours produced, if any, by all qualifying 586  
~~renewable~~ solar resources, as defined in section 3706.40 of the 587  
Revised Code, during the preceding compliance year, allocating 588  
that total among all electric distribution utilities and 589  
electric services companies in proportion to their baselines for 590  
the subject compliance year, and subtracting that allocated 591  
amount from the utility's or company's compliance amount as 592  
otherwise determined under section 4928.64 of the Revised Code. 593

**Sec. 4928.645.** (A) An electric distribution utility or 594  
electric services company may use, for the purpose of complying 595  
with the requirements under divisions (B)(1) and (2) of section 596  
4928.64 of the Revised Code, renewable energy credits any time 597  
in the five calendar years following the date of their purchase 598  
or acquisition from any entity, including, but not limited to, 599  
the following: 600

(1) A mercantile customer; 601

(2) An owner or operator of a hydroelectric generating 602  
facility that is located at a dam on a river, or on any water 603  
discharged to a river, that is within or bordering this state or 604  
within or bordering an adjoining state, or that produces power 605  
that can be shown to be deliverable into this state; 606

(3) A seller of compressed natural gas that has been 607  
produced from biologically derived methane gas, provided that 608  
the seller may only provide renewable energy credits for metered 609  
amounts of gas. 610

(B) (1) The public utilities commission shall adopt rules 611  
specifying that one unit of credit shall equal one megawatt hour 612  
of electricity derived from renewable energy resources, except 613  
that, for a generating facility of seventy-five megawatts or 614  
greater that is situated within this state and has committed by 615  
December 31, 2009, to modify or retrofit its generating unit or 616  
units to enable the facility to generate principally from 617  
biomass energy by June 30, 2013, each megawatt hour of 618  
electricity generated principally from that biomass energy shall 619  
equal, in units of credit, the product obtained by multiplying 620  
the actual percentage of biomass feedstock heat input used to 621  
generate such megawatt hour by the quotient obtained by dividing 622  
the then existing unit dollar amount used to determine a 623  
renewable energy compliance payment as provided under division 624  
(C) (2) (b) of section 4928.64 of the Revised Code by the then 625  
existing market value of one renewable energy credit, but such 626  
megawatt hour shall not equal less than one unit of credit. 627  
Renewable energy resources do not have to be converted to 628  
electricity in order to be eligible to receive renewable energy 629  
credits. The rules shall specify that, for purposes of 630  
converting the quantity of energy derived from biologically 631  
derived methane gas to an electricity equivalent, one megawatt 632  
hour equals 3,412,142 British thermal units. 633

(2) The rules also shall provide for this state a system 634  
of registering renewable energy credits by specifying which of 635  
any generally available registries shall be used for that 636  
purpose and not by creating a registry. That selected system of 637

registering renewable energy credits shall allow a hydroelectric 638  
generating facility to be eligible for obtaining renewable 639  
energy credits and shall allow customer-sited projects or 640  
actions the broadest opportunities to be eligible for obtaining 641  
renewable energy credits. 642

(C) Beginning January 1, 2020, a qualifying ~~renewable~~ 643  
solar resource as defined in section 3706.40 of the Revised Code 644  
is not eligible to obtain a renewable energy credit under this 645  
section for any megawatt hour for which the resource has been 646  
issued a ~~renewable~~ solar energy credit under section 3706.45 of 647  
the Revised Code. 648

**Section 2.** That existing sections 3706.40, 3706.41, 649  
3706.43, 3706.45, 3706.46, 3706.49, 3706.55, 3706.59, 4928.143, 650  
4928.642, and 4928.645 of the Revised Code are hereby repealed. 651

**Section 3.** That sections 3706.53, 3706.61, 4928.471, and 652  
5727.231 of the Revised Code are hereby repealed. 653

**Section 4.** On and after the effective date of this 654  
section, and notwithstanding any provision in Title XLIX of the 655  
Revised Code to the contrary, no decoupling mechanism 656  
established under section 4928.471 of the Revised Code, as that 657  
section existed prior to the effective date of this section, 658  
shall remain in effect, and no amount, charge, mechanism, or 659  
rider related to that section may be assessed or collected from 660  
customers. 661

**Section 5.** Upon the effective date of this section, and 662  
notwithstanding section 4905.32 of the Revised Code and any 663  
other provision in Title XLIX of the Revised Code to the 664  
contrary, the full amount of revenues collected from customers 665  
through an amount, charge, mechanism, or rider established under 666

section 4928.471 of the Revised Code, as that section existed 667  
prior to the effective date of this section, shall be promptly 668  
refunded to customers from whom the revenues were collected. 669  
Refunds paid to customers shall be allocated to customer classes 670  
in the same proportion as originally collected. 671

**Section 6.** Upon the effective date of this section, and 672  
notwithstanding section 4905.32 of the Revised Code and any 673  
other provision in Title XLIX of the Revised Code to the 674  
contrary, both of the following apply: 675

(A) The amounts of money collected from customers 676  
resulting from, or attributable to, the amendments to divisions 677  
(E) and (F) of section 4928.143 of the Revised Code by H.B. 166 678  
of the 133rd General Assembly, shall be treated as follows: 679

(1) The amounts shall be promptly refunded to customers 680  
from whom they were collected. 681

(2) The amounts refunded shall be allocated to customer 682  
classes in the same proportion as originally collected. 683

(B) The public utilities commission shall reconsider any 684  
order or determination it made in compliance with the amendments 685  
to divisions (E) and (F) of section 4928.143 of the Revised Code 686  
made by H.B. 166 of the 133rd General Assembly prior to the 687  
effective date of this section and shall issue a new order or 688  
determination in compliance with the provisions of divisions (E) 689  
and (F) of section 4928.143 as amended by this act. 690