

**As Reported by the House Energy and Natural Resources Committee**

**135th General Assembly**

**Regular Session**

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**H. B. No. 264**

**Representatives Pizzulli, Johnson**

**Cosponsors: Representatives Seitz, Williams, Schmidt**

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**A BILL**

To amend section 4928.01 of the Revised Code to  
make certain steam-producing facilities waste  
energy recovery systems for purposes of the  
state's energy efficiency laws.

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

**Section 1.** That section 4928.01 of the Revised Code be  
amended to read as follows:

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

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

service. 19

(2) "Billing and collection agent" means a fully 20  
independent agent, not affiliated with or otherwise controlled 21  
by an electric utility, electric services company, electric 22  
cooperative, or governmental aggregator subject to certification 23  
under section 4928.08 of the Revised Code, to the extent that 24  
the agent is under contract with such utility, company, 25  
cooperative, or aggregator solely to provide billing and 26  
collection for retail electric service on behalf of the utility 27  
company, cooperative, or aggregator. 28

(3) "Certified territory" means the certified territory 29  
established for an electric supplier under sections 4933.81 to 30  
4933.90 of the Revised Code. 31

(4) "Competitive retail electric service" means a 32  
component of retail electric service that is competitive as 33  
provided under division (B) of this section. 34

(5) "Electric cooperative" means a not-for-profit electric 35  
light company that both is or has been financed in whole or in 36  
part under the "Rural Electrification Act of 1936," 49 Stat. 37  
1363, 7 U.S.C. 901, and owns or operates facilities in this 38  
state to generate, transmit, or distribute electricity, or a 39  
not-for-profit successor of such company. 40

(6) "Electric distribution utility" means an electric 41  
utility that supplies at least retail electric distribution 42  
service. 43

(7) "Electric light company" has the same meaning as in 44  
section 4905.03 of the Revised Code and includes an electric 45  
services company, but excludes any self-generator to the extent 46  
that it consumes electricity it so produces, sells that 47

electricity for resale, or obtains electricity from a generating 48  
facility it hosts on its premises. 49

(8) "Electric load center" has the same meaning as in 50  
section 4933.81 of the Revised Code. 51

(9) "Electric services company" means an electric light 52  
company that is engaged on a for-profit or not-for-profit basis 53  
in the business of supplying or arranging for the supply of only 54  
a competitive retail electric service in this state. "Electric 55  
services company" includes a power marketer, power broker, 56  
aggregator, or independent power producer but excludes an 57  
electric cooperative, municipal electric utility, governmental 58  
aggregator, or billing and collection agent. 59

(10) "Electric supplier" has the same meaning as in 60  
section 4933.81 of the Revised Code. 61

(11) "Electric utility" means an electric light company 62  
that has a certified territory and is engaged on a for-profit 63  
basis either in the business of supplying a noncompetitive 64  
retail electric service in this state or in the businesses of 65  
supplying both a noncompetitive and a competitive retail 66  
electric service in this state. "Electric utility" excludes a 67  
municipal electric utility or a billing and collection agent. 68

(12) "Firm electric service" means electric service other 69  
than nonfirm electric service. 70

(13) "Governmental aggregator" means a legislative 71  
authority of a municipal corporation, a board of township 72  
trustees, or a board of county commissioners acting as an 73  
aggregator for the provision of a competitive retail electric 74  
service under authority conferred under section 4928.20 of the 75  
Revised Code. 76

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

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

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

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

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

(19) "Mercantile customer" means a commercial or

industrial customer if the electricity consumed is for 106  
nonresidential use and the customer consumes more than seven 107  
hundred thousand kilowatt hours per year or is part of a 108  
national account involving multiple facilities in one or more 109  
states. 110

(20) "Municipal electric utility" means a municipal 111  
corporation that owns or operates facilities to generate, 112  
transmit, or distribute electricity. 113

(21) "Noncompetitive retail electric service" means a 114  
component of retail electric service that is noncompetitive as 115  
provided under division (B) of this section. 116

(22) "Nonfirm electric service" means electric service 117  
provided pursuant to a schedule filed under section 4905.30 of 118  
the Revised Code or pursuant to an arrangement under section 119  
4905.31 of the Revised Code, which schedule or arrangement 120  
includes conditions that may require the customer to curtail or 121  
interrupt electric usage during nonemergency circumstances upon 122  
notification by an electric utility. 123

(23) "Percentage of income payment plan arrears" means 124  
funds eligible for collection through the percentage of income 125  
payment plan rider, but uncollected as of July 1, 2000. 126

(24) "Person" has the same meaning as in section 1.59 of 127  
the Revised Code. 128

(25) "Advanced energy project" means any technologies, 129  
products, activities, or management practices or strategies that 130  
facilitate the generation or use of electricity or energy and 131  
that reduce or support the reduction of energy consumption or 132  
support the production of clean, renewable energy for 133  
industrial, distribution, commercial, institutional, 134

governmental, research, not-for-profit, or residential energy 135  
users, including, but not limited to, advanced energy resources 136  
and renewable energy resources. "Advanced energy project" also 137  
includes any project described in division (A), (B), or (C) of 138  
section 4928.621 of the Revised Code. 139

(26) "Regulatory assets" means the unamortized net 140  
regulatory assets that are capitalized or deferred on the 141  
regulatory books of the electric utility, pursuant to an order 142  
or practice of the public utilities commission or pursuant to 143  
generally accepted accounting principles as a result of a prior 144  
commission rate-making decision, and that would otherwise have 145  
been charged to expense as incurred or would not have been 146  
capitalized or otherwise deferred for future regulatory 147  
consideration absent commission action. "Regulatory assets" 148  
includes, but is not limited to, all deferred demand-side 149  
management costs; all deferred percentage of income payment plan 150  
arrears; post-in-service capitalized charges and assets 151  
recognized in connection with statement of financial accounting 152  
standards no. 109 (receivables from customers for income taxes); 153  
future nuclear decommissioning costs and fuel disposal costs as 154  
those costs have been determined by the commission in the 155  
electric utility's most recent rate or accounting application 156  
proceeding addressing such costs; the undepreciated costs of 157  
safety and radiation control equipment on nuclear generating 158  
plants owned or leased by an electric utility; and fuel costs 159  
currently deferred pursuant to the terms of one or more 160  
settlement agreements approved by the commission. 161

(27) "Retail electric service" means any service involved 162  
in supplying or arranging for the supply of electricity to 163  
ultimate consumers in this state, from the point of generation 164  
to the point of consumption. For the purposes of this chapter, 165

retail electric service includes one or more of the following 166  
"service components": generation service, aggregation service, 167  
power marketing service, power brokerage service, transmission 168  
service, distribution service, ancillary service, metering 169  
service, and billing and collection service. 170

(28) "Starting date of competitive retail electric 171  
service" means January 1, 2001. 172

(29) "Customer-generator" means a user of a net metering 173  
system. 174

(30) "Net metering" means measuring the difference in an 175  
applicable billing period between the electricity supplied by an 176  
electric service provider and the electricity generated by a 177  
customer-generator that is fed back to the electric service 178  
provider. 179

(31) "Net metering system" means a facility for the 180  
production of electrical energy that does all of the following: 181

(a) Uses as its fuel either solar, wind, biomass, landfill 182  
gas, or hydropower, or uses a microturbine or a fuel cell; 183

(b) Is located on a customer-generator's premises; 184

(c) Operates in parallel with the electric utility's 185  
transmission and distribution facilities; 186

(d) Is intended primarily to offset part or all of the 187  
customer-generator's requirements for electricity. For an 188  
industrial customer-generator with a net metering system that 189  
has a capacity of less than twenty megawatts and uses wind as 190  
energy, this means the net metering system was sized so as to 191  
not exceed one hundred per cent of the customer-generator's 192  
annual requirements for electric energy at the time of 193

interconnection.	194
(32) "Self-generator" means an entity in this state that	195
owns or hosts on its premises an electric generation facility	196
that produces electricity primarily for the owner's consumption	197
and that may provide any such excess electricity to another	198
entity, whether the facility is installed or operated by the	199
owner or by an agent under a contract.	200
(33) "Rate plan" means the standard service offer in	201
effect on the effective date of the amendment of this section by	202
S.B. 221 of the 127th general assembly, July 31, 2008.	203
(34) "Advanced energy resource" means any of the	204
following:	205
(a) Any method or any modification or replacement of any	206
property, process, device, structure, or equipment that	207
increases the generation output of an electric generating	208
facility to the extent such efficiency is achieved without	209
additional carbon dioxide emissions by that facility;	210
(b) Any distributed generation system consisting of	211
customer cogeneration technology;	212
(c) Clean coal technology that includes a carbon-based	213
product that is chemically altered before combustion to	214
demonstrate a reduction, as expressed as ash, in emissions of	215
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or	216
sulfur trioxide in accordance with the American society of	217
testing and materials standard D1757A or a reduction of metal	218
oxide emissions in accordance with standard D5142 of that	219
society, or clean coal technology that includes the design	220
capability to control or prevent the emission of carbon dioxide,	221
which design capability the commission shall adopt by rule and	222



shall be based on economically feasible best available 223  
technology or, in the absence of a determined best available 224  
technology, shall be of the highest level of economically 225  
feasible design capability for which there exists generally 226  
accepted scientific opinion; 227

(d) Advanced nuclear energy technology consisting of 228  
generation III technology as defined by the nuclear regulatory 229  
commission; other, later technology; or significant improvements 230  
to existing facilities; 231

(e) Any fuel cell used in the generation of electricity, 232  
including, but not limited to, a proton exchange membrane fuel 233  
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 234  
solid oxide fuel cell; 235

(f) Advanced solid waste or construction and demolition 236  
debris conversion technology, including, but not limited to, 237  
advanced stoker technology, and advanced fluidized bed 238  
gasification technology, that results in measurable greenhouse 239  
gas emissions reductions as calculated pursuant to the United 240  
States environmental protection agency's waste reduction model 241  
(WARM); 242

(g) Demand-side management and any energy efficiency 243  
improvement; 244

(h) Any new, retrofitted, refueled, or repowered 245  
generating facility located in Ohio, including a simple or 246  
combined-cycle natural gas generating facility or a generating 247  
facility that uses biomass, coal, modular nuclear, or any other 248  
fuel as its input; 249

(i) Any uprated capacity of an existing electric 250  
generating facility if the uprated capacity results from the 251

deployment of advanced technology.	252
"Advanced energy resource" does not include a waste energy	253
recovery system that is, or has been, included in an energy	254
efficiency program of an electric distribution utility pursuant	255
to requirements under section 4928.66 of the Revised Code.	256
(35) "Air contaminant source" has the same meaning as in	257
section 3704.01 of the Revised Code.	258
(36) "Cogeneration technology" means technology that	259
produces electricity and useful thermal output simultaneously.	260
(37) (a) "Renewable energy resource" means any of the	261
following:	262
(i) Solar photovoltaic or solar thermal energy;	263
(ii) Wind energy;	264
(iii) Power produced by a hydroelectric facility;	265
(iv) Power produced by a small hydroelectric facility,	266
which is a facility that operates, or is rated to operate, at an	267
aggregate capacity of less than six megawatts;	268
(v) Power produced by a run-of-the-river hydroelectric	269
facility placed in service on or after January 1, 1980, that is	270
located within this state, relies upon the Ohio river, and	271
operates, or is rated to operate, at an aggregate capacity of	272
forty or more megawatts;	273
(vi) Geothermal energy;	274
(vii) Fuel derived from solid wastes, as defined in	275
section 3734.01 of the Revised Code, through fractionation,	276
biological decomposition, or other process that does not	277
principally involve combustion;	278

(viii) Biomass energy;	279
(ix) 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;	280 281 282 283 284 285 286 287 288 289
(x) Biologically derived methane gas;	290
(xi) Heat captured from a generator of electricity, boiler, or heat exchanger fueled by biologically derived methane gas;	291 292 293
(xii) 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.	294 295 296
"Renewable energy resource" includes, but is not limited to, any 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	297 298 299 300 301 302 303 304 305 306 307

may be included only if it was placed into service between 308  
January 1, 2002, and December 31, 2004; storage facility that 309  
will promote the better utilization of a renewable energy 310  
resource; or distributed generation system used by a customer to 311  
generate electricity from any such energy. 312

"Renewable energy resource" does not include a waste 313  
energy recovery system that is, or was, on or after January 1, 314  
2012, included in an energy efficiency program of an electric 315  
distribution utility pursuant to requirements under section 316  
4928.66 of the Revised Code. 317

(b) As used in division (A) (37) of this section, 318  
"hydroelectric facility" means a hydroelectric generating 319  
facility that is located at a dam on a river, or on any water 320  
discharged to a river, that is within or bordering this state or 321  
within or bordering an adjoining state and meets all of the 322  
following standards: 323

(i) The facility provides for river flows that are not 324  
detrimental for fish, wildlife, and water quality, including 325  
seasonal flow fluctuations as defined by the applicable 326  
licensing agency for the facility. 327

(ii) The facility demonstrates that it complies with the 328  
water quality standards of this state, which compliance may 329  
consist of certification under Section 401 of the "Clean Water 330  
Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and 331  
demonstrates that it has not contributed to a finding by this 332  
state that the river has impaired water quality under Section 333  
303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33  
U.S.C. 1313. 335

(iii) The facility complies with mandatory prescriptions 336

regarding fish passage as required by the federal energy 337  
regulatory commission license issued for the project, regarding 338  
fish protection for riverine, anadromous, and catadromous fish. 339

(iv) The facility complies with the recommendations of the 340  
Ohio environmental protection agency and with the terms of its 341  
federal energy regulatory commission license regarding watershed 342  
protection, mitigation, or enhancement, to the extent of each 343  
agency's respective jurisdiction over the facility. 344

(v) The facility complies with provisions of the 345  
"Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 346  
to 1544, as amended. 347

(vi) The facility does not harm cultural resources of the 348  
area. This can be shown through compliance with the terms of its 349  
federal energy regulatory commission license or, if the facility 350  
is not regulated by that commission, through development of a 351  
plan approved by the Ohio historic preservation office, to the 352  
extent it has jurisdiction over the facility. 353

(vii) The facility complies with the terms of its federal 354  
energy regulatory commission license or exemption that are 355  
related to recreational access, accommodation, and facilities 356  
or, if the facility is not regulated by that commission, the 357  
facility complies with similar requirements as are recommended 358  
by resource agencies, to the extent they have jurisdiction over 359  
the facility; and the facility provides access to water to the 360  
public without fee or charge. 361

(viii) The facility is not recommended for removal by any 362  
federal agency or agency of any state, to the extent the 363  
particular agency has jurisdiction over the facility. 364

(c) The standards in divisions (A) (37) (b) (i) to (viii) of 365

this section do not apply to a small hydroelectric facility 366  
under division (A) (37) (a) (iv) of this section. 367

(38) "Waste energy recovery system" means ~~either~~ any of 368  
the following: 369

(a) A facility that generates electricity through the 370  
conversion of energy from either of the following: 371

(i) Exhaust heat from engines or manufacturing, 372  
industrial, commercial, or institutional sites, except for 373  
exhaust heat from a facility whose primary purpose is the 374  
generation of electricity; 375

(ii) Reduction of pressure in gas pipelines before gas is 376  
distributed through the pipeline, provided that the conversion 377  
of energy to electricity is achieved without using additional 378  
fossil fuels. 379

(b) A facility at a state institution of higher education 380  
as defined in section 3345.011 of the Revised Code that recovers 381  
waste heat from electricity-producing engines or combustion 382  
turbines and that simultaneously uses the recovered heat to 383  
produce steam, provided that the facility was placed into 384  
service between January 1, 2002, and December 31, 2004; 385

(c) A facility that produces steam from recovered waste 386  
heat from a manufacturing process and uses that steam, or 387  
transfers that steam to another facility, to provide heat to 388  
another manufacturing process or to generate electricity. 389

(39) "Smart grid" means capital improvements to an 390  
electric distribution utility's distribution infrastructure that 391  
improve reliability, efficiency, resiliency, or reduce energy 392  
demand or use, including, but not limited to, advanced metering 393  
and automation of system functions. 394

(40) "Combined heat and power system" means the 395  
coproduction of electricity and useful thermal energy from the 396  
same fuel source designed to achieve thermal-efficiency levels 397  
of at least sixty per cent, with at least twenty per cent of the 398  
system's total useful energy in the form of thermal energy. 399

(41) "Legacy generation resource" means all generating 400  
facilities owned directly or indirectly by a corporation that 401  
was formed prior to 1960 by investor-owned utilities for the 402  
original purpose of providing power to the federal government 403  
for use in the nation's defense or in furtherance of national 404  
interests, including the Ohio valley electric corporation. 405

(42) "Prudently incurred costs related to a legacy 406  
generation resource" means costs, including deferred costs, 407  
allocated pursuant to a power agreement approved by the federal 408  
energy regulatory commission that relates to a legacy generation 409  
resource, less any revenues realized from offering the 410  
contractual commitment for the power agreement into the 411  
wholesale markets, provided that where the net revenues exceed 412  
net costs, those excess revenues shall be credited to customers. 413  
Such costs shall exclude any return on investment in common 414  
equity and, in the event of a premature retirement of a legacy 415  
generation resource, shall exclude any recovery of remaining 416  
debt. Such costs shall include any incremental costs resulting 417  
from the bankruptcy of a current or former sponsor under such 418  
power agreement or co-owner of the legacy generation resource if 419  
not otherwise recovered through a utility rate cost recovery 420  
mechanism. 421

(43) "Green energy" means any energy generated by using an 422  
energy resource that does one or more of the following: 423

(a) Releases reduced air pollutants, thereby reducing 424

cumulative air emissions;	425
(b) Is more sustainable and reliable relative to some	426
fossil fuels.	427
"Green energy" includes energy generated by using natural	428
gas as a resource.	429
(B) For the purposes of this chapter, a retail electric	430
service component shall be deemed a competitive retail electric	431
service if the service component is competitive pursuant to a	432
declaration by a provision of the Revised Code or pursuant to an	433
order of the public utilities commission authorized under	434
division (A) of section 4928.04 of the Revised Code. Otherwise,	435
the service component shall be deemed a noncompetitive retail	436
electric service.	437
<b>Section 2.</b> That existing section 4928.01 of the Revised	438
Code is hereby repealed.	439