

As Introduced

133rd General Assembly

Regular Session

2019-2020

H. B. No. 6

Representatives Callender, Wilkin

A BILL

To amend sections 3706.02, 3706.03, 4928.644, and 1
4928.66 and to enact sections 3706.40, 3706.42, 2
3706.44, 3706.45, 3706.46, 3706.47, 3706.471, 3
3706.48, 3706.481, 3706.482, 3706.49, 3706.50, 4
4928.46, 4928.47, and 4928.471 of the Revised 5
Code to create the Ohio Clean Air Program, to 6
facilitate and encourage electricity production 7
and use from clean air resources, to facilitate 8
investment to reduce the emissions from other 9
generating technologies that can be readily 10
dispatched to satisfy demand in real time, and 11
proactively engage the buying power of consumers 12
in this state for the purpose of improving air 13
quality in this state. 14

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

Section 1. That sections 3706.02, 3706.03, 4928.644, and 15
4928.66 be amended and sections 3706.40, 3706.42, 3706.44, 16
3706.45, 3706.46, 3706.47, 3706.471, 3706.48, 3706.481, 17
3706.482, 3706.49, 3706.50, 4928.46, 4928.47, and 4928.471 of 18
the Revised Code be enacted to read as follows: 19

Sec. 3706.02. (A) There is hereby created the Ohio air 20
quality development authority. Such authority is a body both 21
corporate and politic in this state, and the carrying out of its 22
purposes and the exercise by it of the powers conferred by 23
Chapter 3706. of the Revised Code shall be held to be, and are 24
hereby determined to be, essential governmental functions and 25
public purposes of the state, but the authority shall not be 26
immune from liability by reason thereof. 27

(B) The authority shall consist of ~~seven~~ eleven members as 28
follows: ~~five~~ 29

(1) Five members appointed by the governor, with the 30
advice and consent of the senate, no more than three of whom 31
shall be members of the same political party, ~~and the~~ 32

(2) The director of environmental protection ~~and the~~, who 33
shall be a member ex officio without compensation; 34

(3) The director of health, who shall be ~~members~~ a member 35
ex officio without compensation; 36

(4) Four legislative members, who shall be members ex 37
officio without compensation. The speaker of the house of 38
representatives, the president of the senate, and the minority 39
leader of each house shall each appoint one of the legislative 40
members. The legislative members may participate fully in all 41
the board's deliberations and activities. ~~Each~~ 42

Each appointive member shall be a resident of the state, 43
and a qualified elector therein. The members of the authority 44
first appointed shall continue in office for terms expiring on 45
June 30, 1971, June 30, 1973, June 30, 1975, June 30, 1977, and 46
June 30, 1978, respectively, the term of each member to be 47
designated by the governor. Appointed members' terms of office 48

shall be for eight years, commencing on the first day of July 49
and ending on the thirtieth day of June. Each appointed member 50
shall hold office from the date of ~~his~~ appointment until the end 51
of the term for which ~~he was~~ appointed. Any member appointed to 52
fill a vacancy occurring prior to the expiration of the term for 53
which ~~his~~ the member's predecessor was appointed shall hold 54
office for the remainder of such term. Any appointed member 55
shall continue in office subsequent to the expiration date of 56
~~his~~ the member's term until ~~his~~ the member's successor takes 57
office, or until a period of sixty days has elapsed, whichever 58
occurs first. A member of the authority is eligible for 59
reappointment. Each appointed member of the authority, before 60
entering upon ~~his~~ official duties, shall take an oath as 61
provided by Section 7 of Article XV, Ohio Constitution. The 62
governor may at any time remove any member of the authority for 63
misfeasance, nonfeasance, or malfeasance in office. The 64
authority shall elect one of its appointed members as ~~chairman~~ 65
chairperson and another as ~~vice-chairman~~ vice-chairperson, and 66
shall appoint a secretary-treasurer who need not be a member of 67
the authority. Four members of the authority shall constitute a 68
quorum, and the affirmative vote of four members shall be 69
necessary for any action taken by vote of the authority. No 70
vacancy in the membership of the authority shall impair the 71
rights of a quorum by such vote to exercise all the rights and 72
perform all the duties of the authority. 73

~~Before~~ (C) Except as provided in division (D) of this 74
section, before the issuance of any air quality revenue bonds 75
under Chapter 3706. of the Revised Code, each appointed member 76
of the authority shall give a surety bond to the state in the 77
penal sum of twenty-five thousand dollars and the secretary- 78
treasurer shall give such a bond in the penal sum of fifty 79

thousand dollars, each such surety bond to be conditioned upon 80
the faithful performance of the duties of the office, to be 81
executed by a surety company authorized to transact business in 82
this state, and to be approved by the governor and filed in the 83
office of the secretary of state. ~~Each~~ Except as provided in 84
division (B) (4) of this section, each appointed member of the 85
authority shall receive an annual salary of five thousand 86
dollars, payable in monthly installments. Each member shall be 87
reimbursed for ~~his~~ the actual expenses necessarily incurred in 88
the performance of ~~his~~ official duties. All expenses incurred in 89
carrying out Chapter 3706. of the Revised Code shall be payable 90
solely from funds provided under Chapter 3706. of the Revised 91
Code, appropriated for such purpose by the general assembly, or 92
provided by the controlling board. No liability or obligation 93
shall be incurred by the authority beyond the extent to which 94
moneys have been so provided or appropriated. 95

(D) The four legislative members appointed under division 96
(B) (4) of this section shall be exempt from the requirement 97
under division (C) of this section to give a surety bond. 98

Sec. 3706.03. (A) It is hereby declared to be the public 99
policy of the state through the operations of the Ohio air 100
quality development authority under this chapter to contribute 101
toward one or more of the following: ~~to~~ 102

(1) To provide for the conservation of air as a natural 103
resource of the state, ~~and to~~ ; 104

(2) To prevent or abate the pollution thereof, ~~to~~ ; 105

(3) To provide for the comfort, health, safety, and 106
general welfare of all employees, as well as all other 107
inhabitants of the state, ~~to~~ ; 108

(4) To assist in the financing of air quality facilities 109
for industry, commerce, distribution, and research, including 110
public utility companies, ~~to~~; 111

(5) To create or preserve jobs and employment 112
opportunities or improve the economic welfare of the people, or 113
assist and cooperate with governmental agencies in achieving 114
such purposes; 115

(6) To maintain operations of certified clean air 116
resources, as defined in section 3706.40 of the Revised Code, 117
that, through continued operation, are expected to provide the 118
greatest quantity of carbon-dioxide-free electric energy 119
generation, and to encourage the operation and development of 120
other clean air resources that provide carbon-dioxide-free 121
electric energy generation; 122

(7) To encourage reduced emissions resources, as defined 123
in section 3706.40 of the Revised Code, to reduce the resources' 124
emissions. 125

(B) In furtherance of such public policy the Ohio air 126
quality development authority may ~~initiate~~ do any of the 127
following: 128

(1) Initiate, acquire, construct, maintain, repair, and 129
operate air quality projects or cause the same to be operated 130
pursuant to a lease, sublease, or agreement with any person or 131
governmental agency; ~~may make~~ 132

(2) Make loans and grants to governmental agencies for the 133
acquisition or construction of air quality facilities by such 134
governmental agencies; ~~may make~~ 135

(3) Make loans to persons for the acquisition or 136
construction of air quality facilities by such persons; ~~may~~ 137

enter	138
<u>(4) Enter</u> into commodity contracts with, or make loans for the purpose of entering into commodity contracts to, any person, governmental agency, or entity located within or without the state in connection with the acquisition or construction of air quality facilities; and may issue	139 140 141 142 143
<u>(5) Issue</u> air quality revenue bonds of this state payable solely from revenues, to pay the cost of such projects, including any related commodity contracts.	144 145 146
<u>(C)</u> Any air quality project shall be determined by the authority to be not inconsistent with any applicable air quality standards duly established and then required to be met pursuant to the "Clean Air Act," 84 Stat. 1679 (1970), 42 U.S.C.A. 1857, as amended. Any resolution of the authority providing for acquiring or constructing such projects or for making a loan or grant for such projects shall include a finding by the authority that such determination has been made. Determinations by resolution of the authority that a project is an air quality facility under this chapter and is consistent with the purposes of section 13 of Article VIII, Ohio Constitution, and this chapter, shall be conclusive as to the validity and enforceability of the air quality revenue bonds issued to finance such project and of the resolutions, trust agreements or indentures, leases, subleases, sale agreements, loan agreements, and other agreements made in connection therewith, all in accordance with their terms.	147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163
<u>Sec. 3706.40.</u> As used in sections 3706.40 to 3706.50 of the Revised Code:	164 165
<u>(A) "Clean air resource" means an electric generating</u>	166

facility that emits zero carbon dioxide and that produces 167
electricity from the utilization or consumption of any form of 168
primary energy that satisfies all of the following criteria: 169

(1) The facility does not receive state tax exemptions, 170
deferrals, exclusions, allowances, payments, credits, 171
deductions, or reimbursements calculated using a metric that 172
provides a value for air emissions not produced by the facility 173
through any program other than the Ohio clean air program 174
created under section 3706.42 of the Revised Code. 175

(2) The facility is not wholly owned by a municipal or 176
cooperative corporation or a group, association, or consortium 177
of those corporations. 178

(3) The facility is not used to supply customers of a 179
wholly owned municipal or cooperative corporation or a group, 180
association, or consortium of those corporations. 181

(4) Either of the following: 182

(a) The facility has made a significant historical 183
contribution to the air quality of the state by minimizing 184
emissions that result from electricity generated in this state. 185

(b) The facility will make a significant contribution 186
toward minimizing emissions that result from electric generation 187
in this state. 188

(5) The facility is interconnected with PJM 189
interconnection, L.L.C., or its successor organization. 190

(6) The facility is either of the following: 191

(a) A major utility facility as defined in section 4906.01 192
of the Revised Code; 193

<u>(b) An economically significant wind farm as defined in</u>	194
<u>section 4906.13 of the Revised Code.</u>	195
<u>(B) "Reduced emissions resource" means an electric</u>	196
<u>generating facility that emits a reduced amount of carbon</u>	197
<u>dioxide in the production of electricity from the utilization or</u>	198
<u>consumption of any form of primary energy that satisfies all of</u>	199
<u>the following criteria:</u>	200
<u>(1) The facility does not receive state tax exemptions,</u>	201
<u>deferrals, exclusions, allowances, payments, credits,</u>	202
<u>deductions, or reimbursements calculated using a metric that</u>	203
<u>provides a value for air emissions not produced by the facility</u>	204
<u>through any program other than the Ohio clean air program</u>	205
<u>created under section 3706.42 of the Revised Code.</u>	206
<u>(2) The facility is not wholly owned by a municipal or</u>	207
<u>cooperative corporation or a group, association, or consortium</u>	208
<u>of those corporations.</u>	209
<u>(3) The facility is not used to supply customers of a</u>	210
<u>wholly owned municipal or cooperative corporation or a group,</u>	211
<u>association, or consortium of those corporations.</u>	212
<u>(4) Either of the following:</u>	213
<u>(a) The facility has made a significant historical</u>	214
<u>contribution to the air quality of the state by minimizing</u>	215
<u>emissions that result from electricity generated in this state.</u>	216
<u>(b) The facility will make a significant contribution</u>	217
<u>toward minimizing emissions that result from electric generation</u>	218
<u>in this state.</u>	219
<u>(5) The facility is interconnected with PJM</u>	220
<u>interconnection, L.L.C., or its successor organization.</u>	221

<u>(6) The facility is a major utility facility as defined in</u>	222
<u>section 4906.01 of the Revised Code.</u>	223
<u>(C) "Program year" means the twelve-month period beginning</u>	224
<u>the first day of June of a given year of the Ohio clean air</u>	225
<u>program and ending the thirty-first day of May of the following</u>	226
<u>year.</u>	227
<u>(D) "Electric distribution utility" and "renewable energy</u>	228
<u>resource" have the same meanings as in section 4928.01 of the</u>	229
<u>Revised Code.</u>	230
<u>(E) "Annual capacity factor" means the actual energy</u>	231
<u>produced in a year divided by the energy that would have been</u>	232
<u>produced if the facility was operating continuously at the</u>	233
<u>maximum rating.</u>	234
<u>(F) "Clean air credit" means a credit that represents the</u>	235
<u>clean air attributes of one megawatt hour of electric energy</u>	236
<u>produced from a certified clean air resource.</u>	237
<u>Sec. 3706.42. (A) There is hereby created the Ohio clean</u>	238
<u>air program.</u>	239
<u>(B) Any person owning or controlling an electric</u>	240
<u>generating facility that meets the definition of a clean air</u>	241
<u>resource or reduced emissions resource in section 3706.40 of the</u>	242
<u>Revised Code may submit a written application with the Ohio air</u>	243
<u>quality development authority for certification as a clean air</u>	244
<u>resource or reduced emissions resource to be eligible to</u>	245
<u>participate in the Ohio clean air program. Applications shall be</u>	246
<u>submitted by the first day of February for any program year</u>	247
<u>beginning the first day of June of the same calendar year.</u>	248
<u>(C) Applications shall include all of the following</u>	249
<u>information:</u>	250

<u>(1) The in-service date and estimated remaining useful</u>	251
<u>life of the resource;</u>	252
<u>(2) For existing resources, the quantity of megawatt hours</u>	253
<u>generated by the resource annually and the annual capacity</u>	254
<u>factor for each of the previous five calendar years;</u>	255
<u>(3) A forecast estimate of the annual quantity of megawatt</u>	256
<u>hours to be generated by the resource and the projected annual</u>	257
<u>capacity factor over the remaining useful life of the resource;</u>	258
<u>(4) A forecast estimate of the emissions that would occur</u>	259
<u>in this state during the remaining useful life of the resource</u>	260
<u>if the resource discontinued operations prior to the end of the</u>	261
<u>resource's useful life;</u>	262
<u>(5) Verified documentation demonstrating all of the</u>	263
<u>following:</u>	264
<u>(a) That certification as a clean air resource or reduced</u>	265
<u>emissions resource and participation in the Ohio clean air</u>	266
<u>program will permit the resource to reduce future emissions per</u>	267
<u>unit of electrical energy generated in this state;</u>	268
<u>(b) That without certification as a clean air resource or</u>	269
<u>reduced emissions resource, the positive contributions to the</u>	270
<u>air quality of this state that the resource has made and is</u>	271
<u>capable of making in the future may be diminished or eliminated;</u>	272
<u>(c) That the clean air resource or reduced emissions</u>	273
<u>resource meets the definition of a clean air resource or reduced</u>	274
<u>emissions resource, as applicable, in section 3706.40 of the</u>	275
<u>Revised Code;</u>	276
<u>(d) That the person seeking certification owns or controls</u>	277
<u>the resource.</u>	278

<u>(6) The resource's nameplate capacity;</u>	279
<u>(7) The level of funding requested from the Ohio clean air program;</u>	280 281
<u>(8) Any other data or information that the authority requests and determines is necessary to evaluate an application for certification as a clean air resource or reduced emissions resource or to demonstrate that certification would be in the public interest.</u>	282 283 284 285 286
<u>(D) The authority shall post on the authority's web site all applications and nonconfidential supporting materials submitted under this section.</u>	287 288 289
<u>(E) Interested persons may file comments not later than twenty days after the date that an application is posted on the authority's web site. All comments shall be posted on the authority's web site. An applicant may respond to those comments not later than ten days thereafter.</u>	290 291 292 293 294
Sec. 3706.44. <u>(A) On or before the thirty-first day of March, the Ohio air quality development authority shall review all applications timely submitted under section 3706.42 of the Revised Code and issue an order certifying a clean air resource or reduced emissions resource for one or more program years as determined by the authority in its sole discretion. A certified clean air resource or certified reduced emissions resource shall be eligible to participate in the Ohio clean air program, provided that the resource continues to meet the definition of a clean air resource or reduced emissions resource, as applicable, in section 3706.40 of the Revised Code and any additional requirements set by the authority.</u>	295 296 297 298 299 300 301 302 303 304 305 306
<u>(B) In the event the authority does not issue an order</u>	307

under division (A) of this section by the thirty-first day of 308
March, each electric generating facility included in a timely 309
and properly filed application shall be deemed a clean air 310
resource or reduced emissions resource, as applicable, that is 311
eligible for participation in the Ohio clean air program. 312

(C) (1) The authority, in its sole discretion, may 313
decertify a clean air resource or reduced emissions resource at 314
any time if it determines that certification is not in the 315
public interest. 316

(2) Before decertifying a clean air resource or reduced 317
emissions resource, the authority shall hold a public hearing 318
and allow for public comment. 319

Sec. 3706.45. (A) During the last year in which 320
certification as a clean air resource or reduced emissions 321
resource is effective under section 3706.44 of the Revised Code, 322
the Ohio air quality development authority shall reevaluate the 323
eligibility of the clean air resource or reduced emissions 324
resource for participation in the Ohio clean air program. At the 325
time of reevaluation, if the clean air resource or reduced 326
emissions resource still meets the definition of a clean air 327
resource or reduced emissions resource, as applicable, in 328
section 3706.40 of the Revised Code and any additional 329
requirements that were imposed by the authority when the 330
resource was last certified, the authority shall recertify the 331
resource for one or more program years. 332

(B) (1) If the authority recertifies the clean air resource 333
or reduced emissions resource under division (A) of this 334
section, the authority may impose requirements on the clean air 335
resource or reduced emissions resource that are in addition to 336
any requirements that were imposed when the resource was last 337

certified. If additional requirements are imposed at the time of 338
recertification, the resource shall comply with both the old 339
requirements and the new requirements. 340

(2) The authority shall adopt rules in accordance with 341
Chapter 119. of the Revised Code to determine the amount of time 342
during which a clean air resource or reduced emissions resource 343
must come into compliance with the new requirements. 344

Sec. 3706.46. (A) For the purpose of funding benefits 345
provided by the Ohio clean air program, there is hereby created 346
the Ohio clean air program fund. The fund shall be in the 347
custody of the state treasurer but shall not be part of the 348
state treasury. The fund shall consist of the charges under 349
section 3706.47 of the Revised Code. All interest generated by 350
the fund shall be retained in the fund and used for the purpose 351
of funding the Ohio clean air program. 352

(B) The treasurer shall distribute the moneys in the Ohio 353
clean air program fund in accordance with the directions 354
provided by the Ohio air quality development authority. 355

Sec. 3706.47. (A) Each retail electric customer of an 356
electric distribution utility in this state shall pay a per- 357
account monthly charge, which shall be billed and collected by 358
each electric distribution utility and remitted to the state 359
treasurer for deposit into the Ohio clean air program fund, 360
created under section 3706.46 of the Revised Code. 361

(B) The monthly charges established under division (A) of 362
this section shall be: 363

(1) For customers classified by the utility as 364
residential, two dollars and fifty cents; 365

(2) For customers classified by the utility as commercial, 366

twenty dollars, except as provided in division (B) (4) of this section; 367
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(3) For customers classified by the utility as industrial, two hundred fifty dollars, except as provided in division (B) (4) of this section; 369
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(4) For customers classified by the utility as commercial or industrial that exceeded forty-five million kilowatt hours of electricity at a single location in the preceding year, two thousand five hundred dollars. 372
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(C) Except as provided in division (D) of this section, a customer required to pay the monthly charge under divisions (A) and (B) of this section shall be exempt from paying costs associated with the requirements under sections 4928.64 and 4928.66 of the Revised Code, unless the customer opts, in accordance with section 3706.471 of the Revised Code, to pay those costs in addition to the charge imposed under this section. 376
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(D) A customer required to pay the monthly charge under divisions (A) and (B) of this section shall continue to pay the following costs associated with the requirements under sections 4928.64 and 4928.66 of the Revised Code: 384
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(1) Costs prudently incurred for contractual obligations that existed prior to the effective date of this section by an electric distribution utility in reliance on the requirements under sections 4928.64 and 4928.66 of the Revised Code; 388
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(2) Costs prudently incurred by an electric distribution utility associated with programs approved by the public utilities commission under section 4928.64 or 4928.66 of the Revised Code that are modified or eliminated as a result of 392
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...B... of the 133rd general assembly, including any costs to 396
discontinue those programs. 397

Sec. 3706.471. Any customer opting to pay costs associated 398
with the requirements under sections 4928.64 and 4928.66 of the 399
Revised Code shall do so by providing a written notice of intent 400
to opt in to pay either or both the renewable energy monthly 401
charge or the energy efficiency and peak demand reduction 402
monthly charge to the electric distribution utility from which 403
it receives service. The customer shall submit a complete copy 404
of the opt-in notice to the secretary of the public utilities 405
commission. The notice shall include all of the following: 406

(A) A statement indicating that the customer has elected 407
to opt in; 408

(B) An indication of whether the customer is opting to pay 409
both charges or which charge the customer is opting to pay; 410

(C) The effective date of the election to opt in; 411

(D) The account number for each customer account to which 412
the opt in shall apply; 413

(E) The physical location of the customer's load center. 414

Sec. 3706.48. Each owner of a certified clean air resource 415
or certified reduced emissions resource shall report to the Ohio 416
air quality development authority, not later than seven days 417
after the close of each month during a program year, the number 418
of megawatt hours the resource produced in the previous month. 419

Sec. 3706.481. A certified clean air resource shall earn a 420
clean air credit for each megawatt hour of electricity it 421
produces. 422

Sec. 3706.482. (A) Not later than fourteen days after the 423

close of each month during a program year, the Ohio air quality 424
development authority shall direct the treasurer of state to 425
remit money from the Ohio clean air program fund, as long as 426
there is sufficient money in the fund, to each owner of a 427
certified clean air resource in the amount equivalent to the 428
number of credits earned by the resource during the previous 429
month multiplied by the credit price. 430

(B) (1) The price for each clean air credit in the first 431
program year shall be nine dollars and twenty-five cents. 432

(2) In subsequent program years, the price may be adjusted 433
for inflation using the gross domestic product implicit price 434
deflator as published by the United States department of 435
commerce, bureau of economic analysis. 436

Sec. 3706.49. (A) To facilitate air quality development 437
related capital formation and investment by or in a certified 438
reduced emissions resource, the Ohio air quality development 439
authority may pledge a portion of moneys that may, in the 440
future, be accumulated in the Ohio clean air program fund for 441
the benefit of any certified reduced emissions resource, 442
provided the resource agrees to be bound by the conditions the 443
authority, in its sole discretion, may attach to the pledge. 444

(B) The authority shall not be required to direct 445
distribution of moneys in the Ohio clean air program fund unless 446
or until there are adequate moneys available in the Ohio clean 447
air program fund. Nothing herein shall cause any such pledge to 448
be construed or applied to create, directly or indirectly, a 449
general obligation of or for this state. 450

Sec. 3706.50. (A) Not later than ninety days after the 451
effective date of this section, the Ohio air quality development 452

authority shall adopt rules under Chapter 119. of the Revised 453
Code that are necessary to begin implementation of the Ohio 454
clean air program. The rules adopted under this division shall 455
include provisions for tracking the number of clean air credits 456
earned by each certified clean air resource during each month of 457
a program year, based on the information reported under section 458
3706.48 of the Revised Code. 459

(B) Not later than two hundred seventy-five days after the 460
effective date of this section, the authority shall adopt rules 461
under Chapter 119. of the Revised Code that are necessary for 462
the further implementation and administration of the Ohio clean 463
air program. 464

Sec. 4928.46. (A) In the event that the federal energy 465
regulatory commission authorizes a program by which this state 466
may take action to satisfy any portion of the capacity resource 467
obligation associated with the organized wholesale market that 468
functions to meet the capacity, energy services, and ancillary 469
services needs of consumers in this state, the public utilities 470
commission shall promptly review the program and submit a report 471
of its findings to the general assembly. 472

(B) The report shall include any recommendations for 473
legislation that may be necessary to permit this state to 474
beneficially participate in any such program. 475

Sec. 4928.47. (A) As used in this section, "clean air 476
resource" means any of the following: 477

(1) A clean air resource as defined in section 3706.40 of 478
the Revised Code; 479

(2) A customer-sited renewable energy resource; 480

(3) A renewable energy resource that is a self-generator. 481

(B) (1) Through its general supervision, ratemaking, cost assignment, allocation, rate schedule approval, and rulemaking authority, as well as its authority under section 4905.31 of the Revised Code, the public utilities commission shall facilitate and encourage the establishment of retail purchased power agreements having a term of three years or more through which consumers commit to satisfy a portion of their electricity requirements from the output of a clean air resource. 482
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(2) The commission's application and administration of this section shall be the same for all clean air resources regardless of whether the resource is certified or eligible for certification under the Ohio clean air program created under section 3706.42 of the Revised Code. 490
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(3) In addition to any other benefits that may be available as a result of the commission's application of its authority under this section, on the effective date of a retail purchased power agreement, the commission may exempt such purchasing consumer from all of the following, provided the customer agrees to forgo the benefits from compliance with the programs established in sections 3706.42, 4928.64, and 4928.66 of the Revised Code: 495
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(a) The Ohio clean air program charge established in section 3706.47 of the Revised Code; 503
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(b) The renewable energy charge for compliance with section 4928.64 of the Revised Code; 505
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(c) The energy efficiency and peak demand reduction charge for compliance with section 4928.66 of the Revised Code. 507
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(C) (1) Not later than ninety days after the effective date of this section, the commission shall promulgate rules under 509
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Chapter 119. of the Revised Code as necessary to begin the 511
implementation of this section. 512

(2) Not later than two hundred seventy-five days after the 513
effective date of this section, the commission shall promulgate 514
rules for further implementation and administration of this 515
section. 516

Sec. 4928.471. (A) Not earlier than thirty days after the 517
effective date of this section, an electric distribution utility 518
may file an application to implement a decoupling mechanism for 519
the 2019 calendar year and each calendar year thereafter. For an 520
electric distribution utility that applies for a decoupling 521
mechanism under this section, the base distribution rates for 522
residential and commercial customers shall be decoupled to the 523
base distribution revenue and revenue resulting from 524
implementation of section 4928.66 of the Revised Code and 525
recovered pursuant to an approved electric security plan under 526
section 4928.143 of the Revised Code, as of the twelve-month 527
period ending on December 31, 2018. An application under this 528
division shall not be considered an application under section 529
4909.18 of the Revised Code. 530

(B) The commission shall issue an order approving an 531
application for a decoupling mechanism filed under division (A) 532
of this section not later than sixty days after the application 533
is filed. Before approving the application, the commission shall 534
verify that the rate schedule or schedules are designed to 535
recover the electric distribution utility's 2018 annual revenues 536
as described in division (A) of this section and that the 537
decoupling rate design is aligned with the rate design of the 538
electric distribution utility's existing base distribution 539
rates. The decoupling mechanism shall recover an amount equal to 540

the base distribution revenue and revenue resulting from 541
implementation of section 4928.66 of the Revised Code and 542
recovered pursuant to an approved electric security plan under 543
section 4928.143 of the Revised Code, as of the twelve-month 544
period ending on December 31, 2018. The decoupling mechanism 545
shall be adjusted annually thereafter to reconcile any over 546
recovery or under recovery from the prior year and to enable an 547
electric distribution utility to recover the same level of 548
revenues described in division (A) of this section in each year. 549

(C) The commission's approval of a decoupling mechanism 550
under this section shall not affect any other rates, riders, 551
charges, schedules, classifications, or services previously 552
approved by the commission. The decoupling mechanism shall 553
remain in effect until the next time that the electric 554
distribution utility applies for and the commission approves 555
base distribution rates for the utility under section 4909.18 of 556
the Revised Code. 557

Sec. 4928.644. (A) The public utilities commission may 558
reduce either baseline described in section 4928.643 of the 559
Revised Code to adjust for new economic growth in the electric 560
distribution utility's certified territory or in the electric 561
services company's service area in this state. 562

(B) For an electric distribution utility, neither baseline 563
shall include the load and usage of a customer who is subject to 564
the monthly charge established under section 3706.47 of the 565
Revised Code unless or until the customer opts to pay the charge 566
associated with compliance with section 4928.64 of the Revised 567
Code. 568

Sec. 4928.66. (A) (1) (a) Beginning in 2009, an electric 569
distribution utility shall implement energy efficiency programs 570

that achieve energy savings equivalent to at least three-tenths 571
of one per cent of the total, annual average, and normalized 572
kilowatt-hour sales of the electric distribution utility during 573
the preceding three calendar years to customers in this state. 574
An energy efficiency program may include a combined heat and 575
power system placed into service or retrofitted on or after the 576
effective date of the amendment of this section by S.B. 315 of 577
the 129th general assembly, September 10, 2012, or a waste 578
energy recovery system placed into service or retrofitted on or 579
after September 10, 2012, except that a waste energy recovery 580
system described in division (A) (38) (b) of section 4928.01 of 581
the Revised Code may be included only if it was placed into 582
service between January 1, 2002, and December 31, 2004. For a 583
waste energy recovery or combined heat and power system, the 584
savings shall be as estimated by the public utilities 585
commission. The savings requirement, using such a three-year 586
average, shall increase to an additional five-tenths of one per 587
cent in 2010, seven-tenths of one per cent in 2011, eight-tenths 588
of one per cent in 2012, nine-tenths of one per cent in 2013, 589
and one per cent in 2014. In 2015 and 2016, an electric 590
distribution utility shall achieve energy savings equal to the 591
result of subtracting the cumulative energy savings achieved 592
since 2009 from the product of multiplying the baseline for 593
energy savings, described in division (A) (2) (a) of this section, 594
by four and two-tenths of one per cent. If the result is zero or 595
less for the year for which the calculation is being made, the 596
utility shall not be required to achieve additional energy 597
savings for that year, but may achieve additional energy savings 598
for that year. Thereafter, the annual savings requirements shall 599
be, for years 2017, 2018, 2019, and 2020, one per cent of the 600
baseline, and two per cent each year thereafter, achieving 601
cumulative energy savings in excess of twenty-two per cent by 602

the end of 2027. For purposes of a waste energy recovery or 603
combined heat and power system, an electric distribution utility 604
shall not apply more than the total annual percentage of the 605
electric distribution utility's industrial-customer load, 606
relative to the electric distribution utility's total load, to 607
the annual energy savings requirement. 608

(b) Beginning in 2009, an electric distribution utility 609
shall implement peak demand reduction programs designed to 610
achieve a one per cent reduction in peak demand in 2009 and an 611
additional seventy-five hundredths of one per cent reduction 612
each year through 2014. In 2015 and 2016, an electric 613
distribution utility shall achieve a reduction in peak demand 614
equal to the result of subtracting the cumulative peak demand 615
reductions achieved since 2009 from the product of multiplying 616
the baseline for peak demand reduction, described in division 617
(A) (2) (a) of this section, by four and seventy-five hundredths 618
of one per cent. If the result is zero or less for the year for 619
which the calculation is being made, the utility shall not be 620
required to achieve an additional reduction in peak demand for 621
that year, but may achieve an additional reduction in peak 622
demand for that year. In 2017 and each year thereafter through 623
2020, the utility shall achieve an additional seventy-five 624
hundredths of one per cent reduction in peak demand. 625

(2) For the purposes of divisions (A) (1) (a) and (b) of 626
this section: 627

(a) The baseline for energy savings under division (A) (1) 628
(a) of this section shall be the average of the total kilowatt 629
hours the electric distribution utility sold in the preceding 630
three calendar years. The baseline for a peak demand reduction 631
under division (A) (1) (b) of this section shall be the average 632

peak demand on the utility in the preceding three calendar 633
years, except that the commission may reduce either baseline to 634
adjust for new economic growth in the utility's certified 635
territory. Neither baseline shall include the load and usage of 636
any of the following customers: 637

(i) Beginning January 1, 2017, a customer for which a 638
reasonable arrangement has been approved under section 4905.31 639
of the Revised Code; 640

(ii) A customer that has opted out of the utility's 641
portfolio plan under section 4928.6611 of the Revised Code; 642

(iii) A customer that has opted out of the utility's 643
portfolio plan under Section 8 of S.B. 310 of the 130th general 644
assembly; 645

(iv) A customer who is subject to the monthly charge 646
established by section 3706.47 of the Revised Code until or 647
unless the customer opts to pay the costs associated with 648
compliance with this section. 649

(b) The commission may amend the benchmarks set forth in 650
division (A)(1)(a) or (b) of this section if, after application 651
by the electric distribution utility, the commission determines 652
that the amendment is necessary because the utility cannot 653
reasonably achieve the benchmarks due to regulatory, economic, 654
or technological reasons beyond its reasonable control. 655

(c) Compliance with divisions (A)(1)(a) and (b) of this 656
section shall be measured by including the effects of all 657
demand-response programs for mercantile customers of the subject 658
electric distribution utility, all waste energy recovery systems 659
and all combined heat and power systems, and all such mercantile 660
customer-sited energy efficiency, including waste energy 661

recovery and combined heat and power, and peak demand reduction 662
programs, adjusted upward by the appropriate loss factors. Any 663
mechanism designed to recover the cost of energy efficiency, 664
including waste energy recovery and combined heat and power, and 665
peak demand reduction programs under divisions (A) (1) (a) and (b) 666
of this section may exempt mercantile customers that commit 667
their demand-response or other customer-sited capabilities, 668
whether existing or new, for integration into the electric 669
distribution utility's demand-response, energy efficiency, 670
including waste energy recovery and combined heat and power, or 671
peak demand reduction programs, if the commission determines 672
that that exemption reasonably encourages such customers to 673
commit those capabilities to those programs. If a mercantile 674
customer makes such existing or new demand-response, energy 675
efficiency, including waste energy recovery and combined heat 676
and power, or peak demand reduction capability available to an 677
electric distribution utility pursuant to division (A) (2) (c) of 678
this section, the electric utility's baseline under division (A) 679
(2) (a) of this section shall be adjusted to exclude the effects 680
of all such demand-response, energy efficiency, including waste 681
energy recovery and combined heat and power, or peak demand 682
reduction programs that may have existed during the period used 683
to establish the baseline. The baseline also shall be normalized 684
for changes in numbers of customers, sales, weather, peak 685
demand, and other appropriate factors so that the compliance 686
measurement is not unduly influenced by factors outside the 687
control of the electric distribution utility. 688

(d) (i) Programs implemented by a utility may include the 689
following: 690

(I) Demand-response programs; 691

(II) Smart grid investment programs, provided that such programs are demonstrated to be cost-beneficial; 692
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(III) Customer-sited programs, including waste energy recovery and combined heat and power systems; 694
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(IV) Transmission and distribution infrastructure improvements that reduce line losses; 696
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(V) Energy efficiency savings and peak demand reduction that are 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 to benefit low-income customers through programs that include, but are not limited to, energy audits, the installation of energy efficiency insulation, appliances, and windows, and other weatherization measures. 698
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(ii) No energy efficiency or peak demand reduction achieved under divisions (A) (2) (d) (i) (IV) and (V) of this section shall qualify for shared savings. 705
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(iii) Division (A) (2) (c) of this section shall be applied to include facilitating efforts by a mercantile customer or group of those customers to offer customer-sited demand-response, energy efficiency, including waste energy recovery and combined heat and power, or peak demand reduction capabilities to the electric distribution utility as part of a reasonable arrangement submitted to the commission pursuant to section 4905.31 of the Revised Code. 708
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(e) No programs or improvements described in division (A) (2) (d) of this section shall conflict with any statewide building code adopted by the board of building standards. 716
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(B) In accordance with rules it shall adopt, the public utilities commission shall produce and docket at the commission 719
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an annual report containing the results of its verification of 721
the annual levels of energy efficiency and of peak demand 722
reductions achieved by each electric distribution utility 723
pursuant to division (A) of this section. A copy of the report 724
shall be provided to the consumers' counsel. 725

(C) If the commission determines, after notice and 726
opportunity for hearing and based upon its report under division 727
(B) of this section, that an electric distribution utility has 728
failed to comply with an energy efficiency or peak demand 729
reduction requirement of division (A) of this section, the 730
commission shall assess a forfeiture on the utility as provided 731
under sections 4905.55 to 4905.60 and 4905.64 of the Revised 732
Code, either in the amount, per day per undercompliance or 733
noncompliance, relative to the period of the report, equal to 734
that prescribed for noncompliances under section 4905.54 of the 735
Revised Code, or in an amount equal to the then existing market 736
value of one renewable energy credit per megawatt hour of 737
undercompliance or noncompliance. Revenue from any forfeiture 738
assessed under this division shall be deposited to the credit of 739
the advanced energy fund created under section 4928.61 of the 740
Revised Code. 741

(D) The commission may establish rules regarding the 742
content of an application by an electric distribution utility 743
for commission approval of a revenue decoupling mechanism under 744
this division. Such an application shall not be considered an 745
application to increase rates and may be included as part of a 746
proposal to establish, continue, or expand energy efficiency or 747
conservation programs. The commission by order may approve an 748
application under this division if it determines both that the 749
revenue decoupling mechanism provides for the recovery of 750
revenue that otherwise may be forgone by the utility as a result 751

of or in connection with the implementation by the electric 752
distribution utility of any energy efficiency or energy 753
conservation programs and reasonably aligns the interests of the 754
utility and of its customers in favor of those programs. 755

(E) The commission additionally shall adopt rules that 756
require an electric distribution utility to provide a customer 757
upon request with two years' consumption data in an accessible 758
form. 759

Section 2. That existing sections 3706.02, 3706.03, 760
4928.644, and 4928.66 of the Revised Code are hereby repealed. 761

Section 3. (A) Not earlier than two years after the 762
effective date of this section, the Director of Environmental 763
Protection may apply to the Administrator of the United States 764
Environmental Protection Agency for an exemption from the 765
requirement to implement the decentralized motor vehicle 766
inspection and maintenance program established under section 767
3704.14 of the Revised Code. In making the application and for 768
purposes of complying with the "Federal Clean Air Act," the 769
Director shall request the Administrator to authorize the 770
implementation of the Ohio Clean Air Program established by this 771
act as an alternative to the decentralized program in those 772
areas of the state where the program is currently operating. 773

(B) As used in this section, "Federal Clean Air Act" has 774
the same meaning as in section 3704.01 of the Revised Code. 775