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Legislative Service Commission

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133rd General Assembly
Regular Session
2019-2020

. B. No.


A BILL

To amend sections 4928.644 and 4928.66 and to enact
sections 3706.40, 3706.42, 3706.44, 3706.45,
3706.46, 3706.47, 3706.471, 3706.48, 3706.50,
4928.46, and 4928.47 of the Revised Code to
create the Ohio Clean Air Program, to facilitate
and encourage electricity production and use
from clean air resources, to facilitate
investment to reduce the emissions from other
generating technologies that can be readily
dispatched to satisfy demand in real time, and
proactively engage the buying power of consumers
in this state for the purpose of improving air
quality in this state.

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

Section 1. That sections 4928.644 and 4928.66 be amended
and sections 3706.40, 3706.42, 3706.44, 3706.45, 3706.46,
3706.47, 3706.471, 3706.48, 3706.50, 4928.46, and 4928.47 of the
Revised Code be enacted to read as follows:

Sec. 3706.40. As used in sections 3706.40 to 3706.50 of


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the Revised Code: 19

(A) "Clean air resource" means an electric generating 20
facility that produces electricity from the utilization or 21
consumption of any form of primary energy that satisfies all of 22
the following criteria: 23

(1) The facility exclusively obtains compensation for its 24
capacity, energy services, and ancillary services through the 25
organized wholesale electric market in which this state is 26
located and is subject to supervision by the federal energy 27
regulatory commission. This excludes any value the facility may 28
be eligible to receive pursuant to sections 3706.40 to 3706.50 29
of the Revised Code. 30

(2) The facility does not receive state tax exemptions, 31
deferrals, exclusions, allowances, payments, credits, including 32
production tax credits and investment tax credits, deductions, 33
or reimbursements calculated using a metric that provides a 34
value for air emissions not produced by the facility through any 35
program other than the Ohio clean air program created under 36
section 3706.42 of the Revised Code. 37

(3) The facility is not wholly owned by a municipal or 38
cooperative corporation or a group, association, or consortium 39
of those corporations. 40

(4) The facility is not used to supply customers of a 41
wholly owned municipal or cooperative corporation or a group, 42
association, or consortium of those corporations. 43

(5) Either of the following: 44

(a) The facility has made a significant historical 45
contribution to the air quality of the state by minimizing 46
emissions that result from electricity generated in this state. 47

(b) The facility will make a significant contribution 48
toward minimizing emissions that result from electric generation 49
in this state. 50

(B) "Program year" means the twelve-month period beginning 51
the first day of July of a given year of the Ohio clean air 52
program and ending the thirtieth day of June of the following 53
year. 54

(C) "Electric distribution utility" and "renewable energy 55
resource" have the same meanings as in section 4928.01 of the 56
Revised Code. 57

(D) "Annual capacity factor" means the actual energy 58
produced in a year divided by the energy that would have been 59
produced if the utility was operating continuously at the 60
maximum rating. 61

Sec. 3706.42. (A) There is hereby created the Ohio clean 62
air program. 63

(B) Any person owning or controlling an electric 64
generating facility that meets the definition of a clean air 65
resource in section 3706.40 of the Revised Code may submit a 66
written application with the Ohio air quality development 67
authority for certification as a clean air resource to be 68
eligible to participate in the Ohio clean air program. 69
Applications shall be submitted by the first day of February for 70
any program year beginning the first day of July of the same 71
calendar year. 72

(C) Applications shall include all of the following 73
information: 74

(1) The in-service date and estimated remaining useful 75
life of the clean air resource; 76

<u>(2) The quantity of megawatt hours generated by the clean</u>	77
<u>air resource annually and the annual capacity factor for each of</u>	78
<u>the previous five calendar years;</u>	79
<u>(3) A forecast estimate of the annual quantity of megawatt</u>	80
<u>hours to be generated by the clean air resource and the</u>	81
<u>projected annual capacity factor over the remaining useful life</u>	82
<u>of the clean air resource;</u>	83
<u>(4) A forecast estimate of the emissions that would occur</u>	84
<u>in this state during the remaining useful life of the clean air</u>	85
<u>resource if the resource discontinued operations prior to the</u>	86
<u>end of the resource's useful life;</u>	87
<u>(5) Verified documentation demonstrating all of the</u>	88
<u>following:</u>	89
<u>(a) That certification as a clean air resource and</u>	90
<u>participation in the Ohio clean air program will permit the</u>	91
<u>resource to reduce future emissions per unit of electrical</u>	92
<u>energy generated in this state;</u>	93
<u>(b) That without certification as a clean air resource,</u>	94
<u>the positive contributions to the air quality of this state that</u>	95
<u>the clean air resource has made and is capable of making in the</u>	96
<u>future may be diminished or eliminated;</u>	97
<u>(c) That the clean air resource meets the definition of a</u>	98
<u>clean air resource in section 3706.40 of the Revised Code;</u>	99
<u>(d) That the person seeking certification owns or controls</u>	100
<u>the clean air resource.</u>	101
<u>(6) The clean air resource's nameplate capacity;</u>	102
<u>(7) The level of financial assistance needed from the Ohio</u>	103
<u>clean air program;</u>	104

(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 to demonstrate that certification would be in the public interest. 105
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(D) The authority shall post on the authority's web site all applications and nonconfidential supporting materials submitted under this section. 109
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(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. 112
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Sec. 3706.44. (A) On or before the thirtieth day of April, 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 for one or more program years as determined by the authority in its sole discretion. A certified clean air 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 in section 3706.40 of the Revised Code and any additional requirements set by the authority. 117
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(B) In the event the authority does not issue an order under division (A) of this section by the thirtieth day of April, each electric generating facility included in a timely and properly filed application shall be deemed a clean air resource that is eligible for participation in the Ohio clean air program. 127
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(C) The authority, in its sole discretion, may decertify a 133

clean air resource at any time if it determines that 134
certification is not in the public interest. 135

Sec. 3706.45. (A) In the last year which a clean air 136
resource's certification is effective under section 3706.44 of 137
the Revised Code, the Ohio air quality development authority 138
shall reevaluate the eligibility of the clean air resource for 139
participation in the Ohio clean air program. At the time of 140
reevaluation, if the clean air resource still meets the 141
definition of a clean air resource in section 3706.40 of the 142
Revised Code and any additional requirements that were imposed 143
by the authority when the resource was last certified, the 144
authority shall recertify the resource for one or more program 145
years. 146

(B)(1) If the authority recertifies the clean air resource 147
under division (A) of this section, the authority may impose 148
requirements on the clean air resource that are in addition to 149
any requirements that were imposed when the resource was last 150
certified. If additional requirements are imposed at the time of 151
recertification, the resource shall comply with both the old 152
requirements and the new requirements. 153

(2) The authority shall adopt rules in accordance with 154
Chapter 119. of the Revised Code to determine the amount of time 155
during which a clean air resource must come into compliance with 156
the new requirements. 157

Sec. 3706.46. (A) For the purpose of funding benefits 158
provided by the Ohio clean air program, there is hereby created 159
the Ohio clean air program fund. The fund shall be in the 160
custody of the state treasurer but shall not be part of the 161
state treasury. All interest generated by the fund shall be 162
retained in the fund and used for the purpose of funding the 163

Ohio clean air program. 164

(B) The treasurer shall distribute the moneys in the Ohio clean air program fund in accordance with the directions provided by the Ohio air quality development authority. 165
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Sec. 3706.47. (A) Each retail electric customer of an electric distribution utility in this state shall pay a per-account monthly charge, which shall be billed and collected by each electric distribution utility and remitted to the state treasurer for deposit into the Ohio clean air program fund, created under section 3706.46 of the Revised Code. 168
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(B) The caps on the monthly charges imposed under division (A) of this section for the first program year shall be: 174
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(1) For customers classified by the utility as residential, two dollars and fifty cents; 176
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(2) For customers classified by the utility as commercial, twenty dollars; 178
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(3) For customers classified by the utility as industrial, two hundred fifty dollars. 180
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(C) Starting in the second program year, the Ohio air quality development authority may reduce the caps set forth under division (B) of this section. 182
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(D) A customer required to pay the monthly charge under 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. 185
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Sec. 3706.471. Any customer opting to pay costs associated 191

with the requirements under sections 4928.64 and 4928.66 of the 192
Revised Code shall do so by providing a written notice of intent 193
to opt in to pay either or both the renewable energy monthly 194
charge or the energy efficiency and peak demand reduction 195
monthly charge to the electric distribution utility from which 196
it receives service. The customer shall submit a complete copy 197
of the opt-in notice to the secretary of the public utilities 198
commission. The notice shall include all of the following: 199

(A) A statement indicating that the customer has elected 200
to opt in; 201

(B) An indication of whether the customer is opting to pay 202
both charges or which charge the customer is opting to pay; 203

(C) The effective date of the election to opt in; 204

(D) The account number for each customer account to which 205
the opt in shall apply; 206

(E) The physical location of the customer's load center. 207

Sec. 3706.48. (A) The Ohio air quality development 208
authority shall determine how available moneys in the Ohio clean 209
air program fund shall be distributed to each clean air resource 210
each program year. Upon making those determinations, the Ohio 211
air quality development authority shall provide the state 212
treasurer with directions for distributing the moneys. 213

(B) In determining how the moneys in the Ohio clean air 214
program fund shall be distributed, the authority shall 215
prioritize all of the following in this order: 216

(1) Maintaining operations of certified clean air 217
resources that, through continued operation, are expected to 218
provide the greatest quantity of carbon dioxide-free electric 219

energy generation for the next program year or program years, as 220
applicable; 221

(2) Encouraging the operation and development of other 222
clean air resources that emit zero carbon dioxide in the 223
production of electric energy; 224

(3) Encouraging carbon dioxide-emitting clean air 225
resources to reduce the resources' emissions. 226

(C) To assist with making the determinations under 227
division (B) of this section, the authority may seek the 228
assistance of the staff of the public utilities commission. All 229
information, comments, and recommendations shared between the 230
staff of the commission and the authority shall be considered 231
information pertaining to a staff investigation and shall not be 232
deemed a public record under section 149.43 of the Revised Code. 233

(D)(1) To facilitate air quality development related 234
capital formation and investment by or in a certified clean air 235
resource, the authority may pledge a portion of moneys that may, 236
in the future, be accumulated in the Ohio clean air program fund 237
for the benefit of any certified clean air resource, provided 238
the clean air resource agrees to be bound by the conditions the 239
authority, in its sole discretion, may attach to the pledge. 240

(2) The authority shall not be required to direct 241
distribution of moneys in the Ohio clean air program fund unless 242
or until there are adequate moneys available in the Ohio clean 243
air program fund. Nothing herein shall cause any such pledge to 244
be construed or applied to create, directly or indirectly, a 245
general obligation of or for this state. 246

Sec. 3706.50. (A) Not later than ninety days after the 247
effective date of this section, the Ohio air quality development 248

authority shall adopt rules under Chapter 119. of the Revised 249
Code that are necessary to begin implementation of the Ohio 250
clean air program. 251

(B) Not later than two hundred seventy-five days after the 252
effective date of this section, the authority shall adopt rules 253
under Chapter 119. of the Revised Code that are necessary for 254
the further implementation and administration of the Ohio clean 255
air program. 256

(C) The rules shall include a requirement that a certified 257
clean air resource report to the authority, not later than seven 258
days after the close of each month, the number of megawatt hours 259
the resource produced in the previous month. 260

Sec. 4928.46. (A) In the event that the federal energy 261
regulatory commission authorizes a program by which this state 262
may take action to satisfy any portion of the capacity resource 263
obligation associated with the organized wholesale market that 264
functions to meet the capacity, energy services, and ancillary 265
services needs of consumers in this state, the public utilities 266
commission shall promptly review the program and submit a report 267
of its findings to the general assembly. 268

(B) The report shall include any recommendations for 269
legislation that may be necessary to permit this state to 270
beneficially participate in any such program. 271

Sec. 4928.47. (A) As used in this section, "clean air 272
resource" means all of the following: 273

(1) A clean air resource as defined in section 3706.40 of 274
the Revised Code; 275

(2) A customer-sited renewable energy resource; 276

<u>(3) A renewable energy resource that is a self-generator.</u>	277
<u>(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.</u>	278 279 280 281 282 283 284 285
<u>(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.</u>	286 287 288 289 290
<u>(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:</u>	291 292 293 294 295 296 297 298
<u>(a) The Ohio clean air program charge established in section 3706.47 of the Revised Code;</u>	299 300
<u>(b) The renewable energy charge for compliance with section 4928.64 of the Revised Code;</u>	301 302
<u>(c) The energy efficiency and peak demand reduction charge for compliance with section 4928.66 of the Revised Code.</u>	303 304
<u>(C)(1) Not later than ninety days after the effective date</u>	305

of this section, the commission shall promulgate rules under 306
Chapter 119. of the Revised Code as necessary to begin the 307
implementation of this section. 308

(2) Not later than two hundred seventy-five days after the 309
effective date of this section, the commission shall promulgate 310
rules for further implementation and administration of this 311
section. 312

Sec. 4928.644. (A) The public utilities commission may 313
reduce either baseline described in section 4928.643 of the 314
Revised Code to adjust for new economic growth in the electric 315
distribution utility's certified territory or in the electric 316
services company's service area in this state. 317

(B) For an electric distribution utility, neither baseline 318
shall include the load and usage of a customer who is subject to 319
the monthly charge established under section 3706.47 of the 320
Revised Code unless or until the customer opts to pay the charge 321
associated with compliance with section 4928.64 of the Revised 322
Code. 323

Sec. 4928.66. (A) (1) (a) Beginning in 2009, an electric 324
distribution utility shall implement energy efficiency programs 325
that achieve energy savings equivalent to at least three-tenths 326
of one per cent of the total, annual average, and normalized 327
kilowatt-hour sales of the electric distribution utility during 328
the preceding three calendar years to customers in this state. 329
An energy efficiency program may include a combined heat and 330
power system placed into service or retrofitted on or after the 331
effective date of the amendment of this section by S.B. 315 of 332
the 129th general assembly, September 10, 2012, or a waste 333
energy recovery system placed into service or retrofitted on or 334
after September 10, 2012, except that a waste energy recovery 335

system described in division (A)(38)(b) of section 4928.01 of 336
the Revised Code may be included only if it was placed into 337
service between January 1, 2002, and December 31, 2004. For a 338
waste energy recovery or combined heat and power system, the 339
savings shall be as estimated by the public utilities 340
commission. The savings requirement, using such a three-year 341
average, shall increase to an additional five-tenths of one per 342
cent in 2010, seven-tenths of one per cent in 2011, eight-tenths 343
of one per cent in 2012, nine-tenths of one per cent in 2013, 344
and one per cent in 2014. In 2015 and 2016, an electric 345
distribution utility shall achieve energy savings equal to the 346
result of subtracting the cumulative energy savings achieved 347
since 2009 from the product of multiplying the baseline for 348
energy savings, described in division (A)(2)(a) of this section, 349
by four and two-tenths of one per cent. If the result is zero or 350
less for the year for which the calculation is being made, the 351
utility shall not be required to achieve additional energy 352
savings for that year, but may achieve additional energy savings 353
for that year. Thereafter, the annual savings requirements shall 354
be, for years 2017, 2018, 2019, and 2020, one per cent of the 355
baseline, and two per cent each year thereafter, achieving 356
cumulative energy savings in excess of twenty-two per cent by 357
the end of 2027. For purposes of a waste energy recovery or 358
combined heat and power system, an electric distribution utility 359
shall not apply more than the total annual percentage of the 360
electric distribution utility's industrial-customer load, 361
relative to the electric distribution utility's total load, to 362
the annual energy savings requirement. 363

(b) Beginning in 2009, an electric distribution utility 364
shall implement peak demand reduction programs designed to 365
achieve a one per cent reduction in peak demand in 2009 and an 366

additional seventy-five hundredths of one per cent reduction 367
each year through 2014. In 2015 and 2016, an electric 368
distribution utility shall achieve a reduction in peak demand 369
equal to the result of subtracting the cumulative peak demand 370
reductions achieved since 2009 from the product of multiplying 371
the baseline for peak demand reduction, described in division 372
(A) (2) (a) of this section, by four and seventy-five hundredths 373
of one per cent. If the result is zero or less for the year for 374
which the calculation is being made, the utility shall not be 375
required to achieve an additional reduction in peak demand for 376
that year, but may achieve an additional reduction in peak 377
demand for that year. In 2017 and each year thereafter through 378
2020, the utility shall achieve an additional seventy-five 379
hundredths of one per cent reduction in peak demand. 380

(2) For the purposes of divisions (A) (1) (a) and (b) of 381
this section: 382

(a) The baseline for energy savings under division (A) (1) 383
(a) of this section shall be the average of the total kilowatt 384
hours the electric distribution utility sold in the preceding 385
three calendar years. The baseline for a peak demand reduction 386
under division (A) (1) (b) of this section shall be the average 387
peak demand on the utility in the preceding three calendar 388
years, except that the commission may reduce either baseline to 389
adjust for new economic growth in the utility's certified 390
territory. Neither baseline shall include the load and usage of 391
any of the following customers: 392

(i) Beginning January 1, 2017, a customer for which a 393
reasonable arrangement has been approved under section 4905.31 394
of the Revised Code; 395

(ii) A customer that has opted out of the utility's 396

portfolio plan under section 4928.6611 of the Revised Code; 397

(iii) A customer that has opted out of the utility's 398
portfolio plan under Section 8 of S.B. 310 of the 130th general 399
assembly; 400

(iv) A customer who is subject to the monthly charge 401
established by section 3706.47 of the Revised Code until or 402
unless the customer opts to pay the costs associated with 403
compliance with this section. 404

(b) The commission may amend the benchmarks set forth in 405
division (A)(1)(a) or (b) of this section if, after application 406
by the electric distribution utility, the commission determines 407
that the amendment is necessary because the utility cannot 408
reasonably achieve the benchmarks due to regulatory, economic, 409
or technological reasons beyond its reasonable control. 410

(c) Compliance with divisions (A)(1)(a) and (b) of this 411
section shall be measured by including the effects of all 412
demand-response programs for mercantile customers of the subject 413
electric distribution utility, all waste energy recovery systems 414
and all combined heat and power systems, and all such mercantile 415
customer-sited energy efficiency, including waste energy 416
recovery and combined heat and power, and peak demand reduction 417
programs, adjusted upward by the appropriate loss factors. Any 418
mechanism designed to recover the cost of energy efficiency, 419
including waste energy recovery and combined heat and power, and 420
peak demand reduction programs under divisions (A)(1)(a) and (b) 421
of this section may exempt mercantile customers that commit 422
their demand-response or other customer-sited capabilities, 423
whether existing or new, for integration into the electric 424
distribution utility's demand-response, energy efficiency, 425
including waste energy recovery and combined heat and power, or 426

peak demand reduction programs, if the commission determines 427
that that exemption reasonably encourages such customers to 428
commit those capabilities to those programs. If a mercantile 429
customer makes such existing or new demand-response, energy 430
efficiency, including waste energy recovery and combined heat 431
and power, or peak demand reduction capability available to an 432
electric distribution utility pursuant to division (A)(2)(c) of 433
this section, the electric utility's baseline under division (A) 434
(2)(a) of this section shall be adjusted to exclude the effects 435
of all such demand-response, energy efficiency, including waste 436
energy recovery and combined heat and power, or peak demand 437
reduction programs that may have existed during the period used 438
to establish the baseline. The baseline also shall be normalized 439
for changes in numbers of customers, sales, weather, peak 440
demand, and other appropriate factors so that the compliance 441
measurement is not unduly influenced by factors outside the 442
control of the electric distribution utility. 443

(d)(i) Programs implemented by a utility may include the 444
following: 445

(I) Demand-response programs; 446

(II) Smart grid investment programs, provided that such 447
programs are demonstrated to be cost-beneficial; 448

(III) Customer-sited programs, including waste energy 449
recovery and combined heat and power systems; 450

(IV) Transmission and distribution infrastructure 451
improvements that reduce line losses; 452

(V) Energy efficiency savings and peak demand reduction 453
that are achieved, in whole or in part, as a result of funding 454
provided from the universal service fund established by section 455

4928.51 of the Revised Code to benefit low-income customers 456
through programs that include, but are not limited to, energy 457
audits, the installation of energy efficiency insulation, 458
appliances, and windows, and other weatherization measures. 459

(ii) No energy efficiency or peak demand reduction 460
achieved under divisions (A)(2)(d)(i)(IV) and (V) of this 461
section shall qualify for shared savings. 462

(iii) Division (A)(2)(c) of this section shall be applied 463
to include facilitating efforts by a mercantile customer or 464
group of those customers to offer customer-sited demand- 465
response, energy efficiency, including waste energy recovery and 466
combined heat and power, or peak demand reduction capabilities 467
to the electric distribution utility as part of a reasonable 468
arrangement submitted to the commission pursuant to section 469
4905.31 of the Revised Code. 470

(e) No programs or improvements described in division (A) 471
(2)(d) of this section shall conflict with any statewide 472
building code adopted by the board of building standards. 473

(B) In accordance with rules it shall adopt, the public 474
utilities commission shall produce and docket at the commission 475
an annual report containing the results of its verification of 476
the annual levels of energy efficiency and of peak demand 477
reductions achieved by each electric distribution utility 478
pursuant to division (A) of this section. A copy of the report 479
shall be provided to the consumers' counsel. 480

(C) If the commission determines, after notice and 481
opportunity for hearing and based upon its report under division 482
(B) of this section, that an electric distribution utility has 483
failed to comply with an energy efficiency or peak demand 484

reduction requirement of division (A) of this section, the 485
commission shall assess a forfeiture on the utility as provided 486
under sections 4905.55 to 4905.60 and 4905.64 of the Revised 487
Code, either in the amount, per day per undercompliance or 488
noncompliance, relative to the period of the report, equal to 489
that prescribed for noncompliances under section 4905.54 of the 490
Revised Code, or in an amount equal to the then existing market 491
value of one renewable energy credit per megawatt hour of 492
undercompliance or noncompliance. Revenue from any forfeiture 493
assessed under this division shall be deposited to the credit of 494
the advanced energy fund created under section 4928.61 of the 495
Revised Code. 496

(D) The commission may establish rules regarding the 497
content of an application by an electric distribution utility 498
for commission approval of a revenue decoupling mechanism under 499
this division. Such an application shall not be considered an 500
application to increase rates and may be included as part of a 501
proposal to establish, continue, or expand energy efficiency or 502
conservation programs. The commission by order may approve an 503
application under this division if it determines both that the 504
revenue decoupling mechanism provides for the recovery of 505
revenue that otherwise may be forgone by the utility as a result 506
of or in connection with the implementation by the electric 507
distribution utility of any energy efficiency or energy 508
conservation programs and reasonably aligns the interests of the 509
utility and of its customers in favor of those programs. 510

(E) The commission additionally shall adopt rules that 511
require an electric distribution utility to provide a customer 512
upon request with two years' consumption data in an accessible 513
form. 514

Section 2. That existing sections 4928.644 and 4928.66 of
the Revised Code are hereby repealed.

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