

As Introduced

**128th General Assembly
Regular Session
2009-2010**

H. B. No. 474

Representative Hite

**Cosponsors: Representatives Hottinger, Zehringer, Gardner, Wachtmann,
Combs, Bacon, Domenick**

—

A B I L L

To amend sections 3706.01 and 3706.041 of the Revised 1
Code to exempt from property taxation renewable 2
energy facilities that are not financed through 3
the Ohio Air Quality Development Authority and to 4
require a payment in lieu of taxes on the basis of 5
each megawatt of production capacity of such 6
facilities. 7

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

Section 1. That sections 3706.01 and 3706.041 of the Revised 8
Code be amended to read as follows: 9

Sec. 3706.01. As used in this chapter: 10

(A) "Governmental agency" means a department, division, or 11
other unit of state government, a municipal corporation, county, 12
township, and other political subdivision, or any other public 13
corporation or agency having the power to acquire, construct, or 14
operate air quality facilities, the United States or any agency 15
thereof, and any agency, commission, or authority established 16
pursuant to an interstate compact or agreement. 17

(B) "Person" means any individual, firm, partnership, 18

association, or corporation, or any combination thereof. 19

(C) "Air contaminant" means particulate matter, dust, fumes, 20
gas, mist, smoke, noise, vapor, heat, radioactivity, radiation, or 21
odorous substance, or any combination thereof. 22

(D) "Air pollution" means the presence in the ambient air of 23
one or more air contaminants in sufficient quantity and of such 24
characteristics and duration as to injure human health or welfare, 25
plant or animal life, or property, or that unreasonably interferes 26
with the comfortable enjoyment of life or property. 27

(E) "Ambient air" means that portion of the atmosphere 28
outside of buildings and other enclosures, stacks, or ducts that 29
surrounds human, plant, or animal life, or property. 30

(F) "Emission" means the release into the outdoor atmosphere 31
of an air contaminant. 32

(G) "Air quality facility" means any of the following: 33

(1) Any method, modification or replacement of property, 34
process, device, structure, or equipment that removes, reduces, 35
prevents, contains, alters, conveys, stores, disperses, or 36
disposes of air contaminants or substances containing air 37
contaminants, or that renders less noxious or reduces the 38
concentration of air contaminants in the ambient air, including, 39
without limitation, facilities and expenditures that qualify as 40
air pollution control facilities under section 103 (C)(4)(F) of 41
the Internal Revenue Code of 1954, as amended, and regulations 42
adopted thereunder; 43

(2) Motor vehicle inspection stations operated in accordance 44
with, and any equipment used for motor vehicle inspections 45
conducted under, section 3704.14 of the Revised Code and rules 46
adopted under it; 47

(3) Ethanol or other biofuel facilities, including any 48

equipment used at the ethanol or other biofuel facility for the 49
production of ethanol or other biofuels; 50

(4) Any property or portion thereof used for the collection, 51
storage, treatment, utilization, processing, or final disposal of 52
a by-product or solid waste resulting from any method, process, 53
device, structure, or equipment that removes, reduces, prevents, 54
contains, alters, conveys, stores, disperses, or disposes of air 55
contaminants, or that renders less noxious or reduces the 56
concentration of air contaminants in the ambient air; 57

(5) Any property, device, or equipment that promotes the 58
reduction of emissions of air contaminants into the ambient air 59
through improvements in the efficiency of energy utilization or 60
energy conservation; 61

(6) Any coal research and development project conducted under 62
Chapter 1555. of the Revised Code; 63

(7) As determined by the director of the Ohio coal 64
development office, any property or portion thereof that is used 65
for the collection, storage, treatment, utilization, processing, 66
or final disposal of a by-product resulting from a coal research 67
and development project as defined in section 1555.01 of the 68
Revised Code or from the use of clean coal technology, excluding 69
any property or portion thereof that is used primarily for other 70
subsequent commercial purposes; 71

(8) Any property or portion thereof that is part of the 72
FutureGen project of the United States department of energy or 73
related to the siting of the FutureGen project. 74

(9) Any property, device, or equipment that promotes the 75
reduction of emissions of air contaminants into the ambient air 76
through the generation of clean, renewable energy with renewable 77
energy resources or advanced energy resources as defined in 78
section 3706.25 of the Revised Code. 79

(10) Any property, device, structure or equipment necessary 80
for the manufacture and production of equipment described as an 81
air quality facility under this chapter. 82

"Air quality facility" further includes any property or 83
system to be used in whole or in part for any of the purposes in 84
divisions (G)(1) to (10) of this section, whether another purpose 85
is also served, and any property or system incidental to or that 86
has to do with, or the end purpose of which is, any of the 87
foregoing. Air quality facilities that are defined in this 88
division for industry, commerce, distribution, or research, 89
including public utility companies, are hereby determined to be 90
those that qualify as facilities for the control of air pollution 91
and thermal pollution related to air under Section 13 of Article 92
VIII, Ohio Constitution. 93

(H) "Project" or "air quality project" means any air quality 94
facility, including undivided or other interests therein, acquired 95
or to be acquired or constructed or to be constructed by the Ohio 96
air quality development authority under this chapter, or acquired 97
or to be acquired or constructed or to be constructed by a 98
governmental agency or person with all or a part of the cost 99
thereof being paid from a loan or grant from the authority under 100
this chapter or otherwise paid from the proceeds of air quality 101
revenue bonds, including all buildings and facilities that the 102
authority determines necessary for the operation of the project, 103
together with all property, rights, easements, and interests that 104
may be required for the operation of the project. 105

(I) "Cost" as applied to an air quality project means the 106
cost of acquisition and construction, the cost of acquisition of 107
all land, rights-of-way, property rights, easements, franchise 108
rights, and interests required for such acquisition and 109
construction, the cost of demolishing or removing any buildings or 110
structures on land so acquired, including the cost of acquiring 111

any lands to which such buildings or structures may be moved, the 112
cost of acquiring or constructing and equipping a principal office 113
and sub-offices of the authority, the cost of diverting highways, 114
interchange of highways, and access roads to private property, 115
including the cost of land or easements for such access roads, the 116
cost of public utility and common carrier relocation or 117
duplication, the cost of all machinery, furnishings, and 118
equipment, financing charges, interest prior to and during 119
construction and for no more than eighteen months after completion 120
of construction, engineering, expenses of research and development 121
with respect to air quality facilities, the cost of any commodity 122
contract, including fees and expenses related thereto, legal 123
expenses, plans, specifications, surveys, studies, estimates of 124
cost and revenues, working capital, other expenses necessary or 125
incident to determining the feasibility or practicability of 126
acquiring or constructing such project, administrative expense, 127
and such other expense as may be necessary or incident to the 128
acquisition or construction of the project, the financing of such 129
acquisition or construction, including the amount authorized in 130
the resolution of the authority providing for the issuance of air 131
quality revenue bonds to be paid into any special funds from the 132
proceeds of such bonds, and the financing of the placing of such 133
project in operation. Any obligation, cost, or expense incurred by 134
any governmental agency or person for surveys, borings, 135
preparation of plans and specifications, and other engineering 136
services, or any other cost described above, in connection with 137
the acquisition or construction of a project may be regarded as a 138
part of the cost of that project and may be reimbursed out of the 139
proceeds of air quality revenue bonds as authorized by this 140
chapter. 141

(J) "Owner" includes an individual, copartnership, 142
association, limited liability company, or corporation having any 143
title or interest in any property, rights, easements, or interests 144

authorized to be acquired by this chapter. 145

(K) "Revenues" means all rentals and other charges received 146
by the authority for the use or services of any air quality 147
project, any gift or grant received with respect to any air 148
quality project, any moneys received with respect to the lease, 149
sublease, sale, including installment sale or conditional sale, or 150
other disposition of an air quality project, moneys received in 151
repayment of and for interest on any loans made by the authority 152
to a person or governmental agency, whether from the United States 153
or any department, administration, or agency thereof, or 154
otherwise, proceeds of such bonds to the extent that use thereof 155
for payment of principal of, premium, if any, or interest on the 156
bonds is authorized by the authority, amounts received or 157
otherwise derived from a commodity contract or from the sale of 158
the related commodity under such a contract, proceeds from any 159
insurance, condemnation, or guaranty pertaining to a project or 160
property mortgaged to secure bonds or pertaining to the financing 161
of the project, and income and profit from the investment of the 162
proceeds of air quality revenue bonds or of any revenues. 163

(L) "Public roads" includes all public highways, roads, and 164
streets in the state, whether maintained by the state, county, 165
city, township, or other political subdivision. 166

(M) "Public utility facilities" includes tracks, pipes, 167
mains, conduits, cables, wires, towers, poles, and other equipment 168
and appliances of any public utility. 169

(N) "Construction," unless the context indicates a different 170
meaning or intent, includes reconstruction, enlargement, 171
improvement, or providing furnishings or equipment. 172

(O) "Air quality revenue bonds," unless the context indicates 173
a different meaning or intent, includes air quality revenue notes, 174
air quality revenue renewal notes, and air quality revenue 175

refunding bonds, except that notes issued in anticipation of the 176
issuance of bonds shall have a maximum maturity of five years as 177
provided in section 3706.05 of the Revised Code and notes or 178
renewal notes issued as the definitive obligation may be issued 179
maturing at such time or times with a maximum maturity of forty 180
years from the date of issuance of the original note. 181

(P) "Solid waste" means any garbage; refuse; sludge from a 182
waste water treatment plant, water supply treatment plant, or air 183
pollution control facility; and other discarded material, 184
including solid, liquid, semisolid, or contained gaseous material 185
resulting from industrial, commercial, mining, and agricultural 186
operations, and from community activities, but not including solid 187
or dissolved material in domestic sewage, or solid or dissolved 188
material in irrigation return flows or industrial discharges that 189
are point sources subject to permits under section 402 of the 190
"Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 191
880, 33 U.S.C.A. 1342, as amended, or source, special nuclear, or 192
byproduct material as defined by the "Atomic Energy Act of 1954," 193
68 Stat. 921, 42 U.S.C.A. 2011, as amended. 194

(Q) "Sludge" means any solid, semisolid, or liquid waste, 195
other than a recyclable by-product, generated from a municipal, 196
commercial, or industrial waste water treatment plant, water 197
supply plant, or air pollution control facility or any other such 198
wastes having similar characteristics and effects. 199

(R) "Ethanol or other biofuel facility" means a plant at 200
which ethanol or other biofuel is produced. 201

(S) "Ethanol" means fermentation ethyl alcohol derived from 202
agricultural products, including potatoes, cereal, grains, cheese 203
whey, and sugar beets; forest products; or other renewable or 204
biomass resources, including residue and waste generated from the 205
production, processing, and marketing of agricultural products, 206
forest products, and other renewable or biomass resources, that 207

meets all of the specifications in the American society for 208
testing and materials (ASTM) specification D 4806-88 and is 209
denatured as specified in Parts 20 and 21 of Title 27 of the Code 210
of Federal Regulations. 211

(T) "Biofuel" means any fuel that is made from cellulosic 212
biomass resources, including renewable organic matter, crop waste 213
residue, wood, aquatic plants and other crops, animal waste, solid 214
waste, or sludge, and that is used for the production of energy 215
for transportation or other purposes. 216

(U) "FutureGen project" means the buildings, equipment, and 217
real property and functionally related buildings, equipment, and 218
real property, including related research projects that support 219
the development and operation of the buildings, equipment, and 220
real property, designated by the United States department of 221
energy and the FutureGen industrial alliance, inc., as the 222
coal-fueled, zero-emissions power plant designed to prove the 223
technical and economic feasibility of producing electricity and 224
hydrogen from coal and nearly eliminating carbon dioxide emissions 225
through capture and permanent storage. 226

(V) "Commodity contract" means a contract or series of 227
contracts entered into in connection with the acquisition or 228
construction of air quality facilities for the purchase or sale of 229
a commodity that is eligible for prepayment with the proceeds of 230
federally tax exempt bonds under sections 103, 141, and 148 of the 231
Internal Revenue Code of 1986, as amended, and regulations adopted 232
under it. 233

(W) "Exempt energy air quality facility" means any "advanced 234
energy project" that generates electricity from a "renewable 235
energy resource" as those terms are defined by section 3706.25 of 236
the Revised Code for which an application is filed with the Ohio 237
power siting board, or upon which construction or installation is 238
commenced, on or after January 1, 2010, but on or before December 239

31, 2011, and that is placed in service on or before December 31, 2012. 240
241

(X) "Job and economic development impact model" means the job 242
and economic development impact model published by the national 243
renewable energy laboratory of the United States department of 244
energy. "Job and economic development impact model" includes 245
economic models that project job creation and that are approved by 246
the air quality development authority in consultation with the 247
department of development for technologies for which the national 248
renewable energy laboratory has not developed an applicable model. 249

Sec. 3706.041. (A) With respect to projects, and the 250
financing thereof, for industry, commerce, distribution, or 251
research, including public utility companies, under agreements 252
whereby the person to whom the project is to be leased, subleased, 253
or sold, or to whom a loan is to be made for the project, is to 254
make payments sufficient to pay all of the principal of, premium, 255
if any, and interest on the air quality revenue bonds issued for 256
the project, or the counterparty under any related commodity 257
contract agrees to make payments sufficient in amount to pay all 258
of the principal of, premium, if any, and interest on the related 259
air quality revenue bonds, the Ohio air quality development 260
authority shall make appropriate provision for adequate 261
maintenance of the project and may, in addition to other powers 262
under this chapter: 263

(1) Make loans for the acquisition or construction of the 264
project to such person upon such terms as the authority may 265
determine or authorize, including secured or unsecured loans, and, 266
in connection therewith, enter into loan agreements and other 267
agreements, including commodity contracts, accept notes and other 268
forms of obligation to evidence such indebtedness and mortgages, 269
liens, pledges, assignments, or other security interests to secure 270

such indebtedness, which may be prior or subordinate to or on a parity with other indebtedness, obligations, mortgages, pledges, assignments, other security interests, or liens or encumbrances, and take such actions as may be considered by it appropriate to protect such security and safeguard against losses, including, without limitation thereto, foreclosure and the bidding upon and purchase of property upon foreclosure or other sale.

(2) Sell such project under such terms as it may determine, including, without limitation thereto, sale by conditional sale or installment sale, under which title may pass prior to or after completion of the project or payment or provisions for payment of all principal of, premium, if any, and interest on such bonds, or at any other time provided in such agreement pertaining to such sale, and including sale under an option to purchase at a price which may be a nominal amount or less than true value at the time of purchase.

(3) Grant a mortgage, lien, or other encumbrance on, or pledge or assignment of, or other security interest with respect to, all or any part of the project, revenues, reserve funds, or other funds established in connection with such bonds, or on, of, or with respect to any lease, sublease, sale, conditional sale or installment sale agreement, loan agreement, or other agreement pertaining to the lease, sublease, sale, or other disposition of a project or pertaining to a loan made for a project, or any guaranty or insurance agreement made with respect thereto, or any interest of the authority therein, or any other interest granted, assigned, or released to secure payments of the principal of, premium, if any, or interest on the bonds or to secure any other payments to be made by the authority, which mortgage, lien, encumbrance, pledge, assignment, or other security interest may be prior or subordinate to or on a parity with any other mortgage, assignment, other security interest, or lien or encumbrance.

(4) Provide that the interest on such bonds may be at a 303
variable rate or rates changing from time to time in accordance 304
with a base or formula as authorized by the authority. 305

(5) Contract for the acquisition or construction of such 306
project or any part thereof, including any related commodity 307
contracts, and for the leasing, subleasing, sale or other 308
disposition of such project in a manner determined by the 309
authority in its sole discretion, without necessity for 310
competitive bidding or performance bonds. 311

(B) Property comprising a project shall not be subject to 312
taxes or assessments and so long as the bonds or notes issued to 313
finance the costs of such project are outstanding, and the 314
transfer of title to or possession of such property to the person 315
to whom a loan or installment sale or conditional sale with 316
respect to such project is made shall not be subject to the taxes 317
levied pursuant to Chapters 5739. and 5741. of the Revised Code. 318

The authority shall certify the property comprising a project 319
which is exempt from taxes and assessments pursuant to this 320
section, and shall send, by certified mail, copies of such 321
certification to the owner of such exempt property, to the tax 322
commissioner, and to the county auditor of the county or counties 323
in which any such exempt property is located. 324

Each county auditor shall maintain a separate list of all 325
property exempt pursuant to this section and sections 6121.044 and 326
6123.041 of the Revised Code, in addition to the list of exempt 327
property required to be maintained pursuant to section 5713.07 of 328
the Revised Code. 329

Any facility exempted from taxation under division (C) of 330
this section shall not also be exempted under this division. 331

~~(C) The authority, in the lease, sale or loan agreement with 332
respect to a project referred to in division (A) of this section, 333~~

~~shall make appropriate provision for adequate maintenance of the~~ 334
~~project. (1) Real and tangible personal property constituting an~~ 335
~~exempt energy air quality facility shall not be subject to taxes~~ 336
~~or assessments if the air quality development authority certifies~~ 337
~~under this division that the construction and operation of the~~ 338
~~facility creates and maintains the number of jobs as projected by~~ 339
~~the job and economic development impact model during construction~~ 340
~~and each year the facility is in service. The owner of the~~ 341
~~facility shall apply to the authority for certification in the~~ 342
~~manner prescribed by the authority. The application shall include~~ 343
~~the facility's job creation and maintenance projection as~~ 344
~~estimated by the job and economic development impact model. Any~~ 345
~~facility exempted from taxation under division (B) of this section~~ 346
~~shall not also be exempted under this division.~~ 347

Within sixty days after receiving an application under this 348
division, the authority, in consultation with the department of 349
development, shall determine whether the facility qualifies for 350
exemption under this division and, if so, shall certify the 351
qualification in writing and shall send, by certified mail, copies 352
of the certification to the owner of the facility, to the tax 353
commissioner, and to the county auditor of the county or counties 354
in which any such exempt property is located. 355

(2) The owner of a facility that is exempted from taxes and 356
assessments under division (C) of this section shall make annual 357
service payments in lieu of taxes to the county treasurer of any 358
county in which the exempted property is located. Service payments 359
shall be required for each tax year for which the property is 360
exempt. If the facility is not owned by one or more public utility 361
companies, the payment shall equal six thousand dollars for each 362
megawatt of name plate capacity of the exempted property. If the 363
facility is owned by one or more public utility companies, the 364
payment shall equal five thousand dollars for each megawatt of 365

name plate capacity. The payment shall be charged, collected, and 366
distributed at the same time and in the same manner as the taxes 367
imposed on taxable property subject to assessment under Chapter 368
5727. of the Revised Code. 369

(3) The owner of an exempt energy air quality facility that 370
is exempted from taxation under division (C) of this section shall 371
do all of the following: 372

(a) Offer to sell power or renewable energy credits from the 373
exempted facility to electric distribution utilities or electric 374
service companies subject to renewable energy resource 375
requirements under section 4928.64 of the Revised Code that have 376
issued requests for proposal for such power or renewable energy 377
credits. If no electric distribution utility or electric service 378
company issues a request for proposal on or before December 31, 379
2010, or accepts an offer for power or renewable energy credits 380
within forty-five days after the offer is submitted, the owner of 381
the exempt energy air quality facility may sell the power or 382
renewable energy credits to other persons. Contracts made for the 383
sale of power or renewable energy credits before the effective 384
date of B. of the 128th general assembly are not 385
subject to division (C)(3)(a) of this section. 386

(b) Repair all roads affected by construction as reasonably 387
required to restore them to their preconstruction condition; 388

(c) Provide or facilitate training for fire and emergency 389
responders to respond to emergency situations related to the 390
facility and, at the facility owner's expense, equip such fire and 391
emergency responders with proper equipment as reasonably required 392
to enable them to respond to such events; 393

(d) Make a best faith effort to ensure that a majority of 394
employees employed at the facility are domiciled in this state. 395

(D) With respect to the projects referred to in this section, 396

the authority granted by this section is cumulative and 397
supplementary to all other authority granted in this chapter. The 398
authority granted by this section does not alter or impair any 399
similar authority granted elsewhere in this chapter for or with 400
respect to other projects. 401

Section 2. That existing sections 3706.01 and 3706.041 of the 402
Revised Code are hereby repealed. 403