

As Introduced

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S. B. No. 289

Senators Coley, Schiavoni

**Cosponsors: Senators Jones, Balderson, Cafaro, Gentile, Bacon, Brown,
Manning, Seitz, Turner, Eklund, Lehner, Oelslager, Sawyer**

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A B I L L

To amend sections 3706.25 and 4928.01 of the Revised 1
Code to include cogeneration technology using 2
waste or byproduct gas from an air contaminant 3
source as a renewable energy resource. 4

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

Section 1. That sections 3706.25 and 4928.01 of the Revised 5
Code be amended to read as follows: 6

Sec. 3706.25. As used in sections 3706.25 to 3706.30 of the 7
Revised Code: 8

(A) "Advanced energy project" means any technologies, 9
products, activities, or management practices or strategies that 10
facilitate the generation or use of electricity or energy and that 11
reduce or support the reduction of energy consumption or support 12
the production of clean, renewable energy for industrial, 13
distribution, commercial, institutional, governmental, research, 14
not-for-profit, or residential energy users including, but not 15
limited to, advanced energy resources and renewable energy 16
resources. "Advanced energy project" includes any project 17
described in division (A), (B), or (C) of section 4928.621 of the 18

Revised Code.	19
(B) "Advanced energy resource" means any of the following:	20
(1) Any method or any modification or replacement of any property, process, device, structure, or equipment that increases the generation output of an electric generating facility to the extent such efficiency is achieved without additional carbon dioxide emissions by that facility;	21 22 23 24 25
(2) Any distributed generation system consisting of customer cogeneration of electricity and thermal output simultaneously, primarily to meet the energy needs of the customer's facilities;	26 27 28
(3) Advanced nuclear energy technology consisting of generation III technology as defined by the nuclear regulatory commission; other, later technology; or significant improvements to existing facilities;	29 30 31 32
(4) Any fuel cell used in the generation of electricity, including, but not limited to, a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell;	33 34 35 36
(5) Advanced solid waste or construction and demolition debris conversion technology, including, but not limited to, advanced stoker technology, and advanced fluidized bed gasification technology, that results in measurable greenhouse gas emissions reductions as calculated pursuant to the United States environmental protection agency's waste reduction model (WARM).	37 38 39 40 41 42
(C) <u>"Air contaminant source" has the same meaning as in section 3704.01 of the Revised Code.</u>	43 44
(D) <u>"Cogeneration technology" means technology that produces electricity and useful thermal output simultaneously.</u>	45 46
(E) "Renewable energy resource" means solar photovoltaic or solar thermal energy, wind energy, power produced by a	47 48

hydroelectric facility, geothermal energy, fuel derived from solid wastes, as defined in section 3734.01 of the Revised Code, through fractionation, biological decomposition, or other process that does not principally involve combustion, biomass energy, energy produced by cogeneration technology for which more than ninety per cent of the total annual energy input is from a waste or byproduct gas from an air contaminant source in this state, which source has been in operation since on or before January 1, 1985, biologically derived methane gas, or energy derived from nontreated by-products of the pulping process or wood manufacturing process, including bark, wood chips, sawdust, and lignin in spent pulping liquors. "Renewable energy resource" includes, but is not limited to, any fuel cell used in the generation of electricity, including, but not limited to, a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell; wind turbine located in the state's territorial waters of Lake Erie; methane gas emitted from an abandoned coal mine; storage facility that will promote the better utilization of a renewable energy resource that primarily generates off peak; or distributed generation system used by a customer to generate electricity from any such energy. As used in this division, "hydroelectric facility" means a hydroelectric generating facility that is located at a dam on a river, or on any water discharged to a river, that is within or bordering this state or within or bordering an adjoining state and meets all of the following standards:

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

(2) The facility demonstrates that it complies with the water quality standards of this state, which compliance may consist of

certification under Section 401 of the "Clean Water Act of 1977," 81
91 Stat. 1598, 1599, 33 U.S.C. 1341, and demonstrates that it has 82
not contributed to a finding by this state that the river has 83
impaired water quality under Section 303(d) of the "Clean Water 84
Act of 1977," 114 Stat. 870, 33 U.S.C. 1313. 85

(3) The facility complies with mandatory prescriptions 86
regarding fish passage as required by the federal energy 87
regulatory commission license issued for the project, regarding 88
fish protection for riverine, anadromous, and ~~catadromus~~ 89
catadromous fish. 90

(4) The facility complies with the recommendations of the 91
Ohio environmental protection agency and with the terms of its 92
federal energy regulatory commission license regarding watershed 93
protection, mitigation, or enhancement, to the extent of each 94
agency's respective jurisdiction over the facility. 95

(5) The facility complies with provisions of the "Endangered 96
Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 to 1544, as 97
amended. 98

(6) The facility does not harm cultural resources of the 99
area. This can be shown through compliance with the terms of its 100
federal energy regulatory commission license or, if the facility 101
is not regulated by that commission, through development of a plan 102
approved by the Ohio historic preservation office, to the extent 103
it has jurisdiction over the facility. 104

(7) The facility complies with the terms of its federal 105
energy regulatory commission license or exemption that are related 106
to recreational access, accommodation, and facilities or, if the 107
facility is not regulated by that commission, the facility 108
complies with similar requirements as are recommended by resource 109
agencies, to the extent they have jurisdiction over the facility; 110
and the facility provides access to water to the public without 111

fee or charge. 112

(8) The facility is not recommended for removal by any 113
federal agency or agency of any state, to the extent the 114
particular agency has jurisdiction over the facility. 115

Sec. 4928.01. (A) As used in this chapter: 116

(1) "Ancillary service" means any function necessary to the 117
provision of electric transmission or distribution service to a 118
retail customer and includes, but is not limited to, scheduling, 119
system control, and dispatch services; reactive supply from 120
generation resources and voltage control service; reactive supply 121
from transmission resources service; regulation service; frequency 122
response service; energy imbalance service; operating 123
reserve-spinning reserve service; operating reserve-supplemental 124
reserve service; load following; back-up supply service; 125
real-power loss replacement service; dynamic scheduling; system 126
black start capability; and network stability service. 127

(2) "Billing and collection agent" means a fully independent 128
agent, not affiliated with or otherwise controlled by an electric 129
utility, electric services company, electric cooperative, or 130
governmental aggregator subject to certification under section 131
4928.08 of the Revised Code, to the extent that the agent is under 132
contract with such utility, company, cooperative, or aggregator 133
solely to provide billing and collection for retail electric 134
service on behalf of the utility company, cooperative, or 135
aggregator. 136

(3) "Certified territory" means the certified territory 137
established for an electric supplier under sections 4933.81 to 138
4933.90 of the Revised Code. 139

(4) "Competitive retail electric service" means a component 140
of retail electric service that is competitive as provided under 141

division (B) of this section.	142
(5) "Electric cooperative" means a not-for-profit electric light company that both is or has been financed in whole or in part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 7 U.S.C. 901, and owns or operates facilities in this state to generate, transmit, or distribute electricity, or a not-for-profit successor of such company.	143 144 145 146 147 148
(6) "Electric distribution utility" means an electric utility that supplies at least retail electric distribution service.	149 150
(7) "Electric light company" has the same meaning as in section 4905.03 of the Revised Code and includes an electric services company, but excludes any self-generator to the extent that it consumes electricity it so produces, sells that electricity for resale, or obtains electricity from a generating facility it hosts on its premises.	151 152 153 154 155 156
(8) "Electric load center" has the same meaning as in section 4933.81 of the Revised Code.	157 158
(9) "Electric services company" means an electric light company that is engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of only a competitive retail electric service in this state. "Electric services company" includes a power marketer, power broker, aggregator, or independent power producer but excludes an electric cooperative, municipal electric utility, governmental aggregator, or billing and collection agent.	159 160 161 162 163 164 165 166
(10) "Electric supplier" has the same meaning as in section 4933.81 of the Revised Code.	167 168
(11) "Electric utility" means an electric light company that has a certified territory and is engaged on a for-profit basis either in the business of supplying a noncompetitive retail electric service in this state or in the businesses of supplying	169 170 171 172

both a noncompetitive and a competitive retail electric service in 173
this state. "Electric utility" excludes a municipal electric 174
utility or a billing and collection agent. 175

(12) "Firm electric service" means electric service other 176
than nonfirm electric service. 177

(13) "Governmental aggregator" means a legislative authority 178
of a municipal corporation, a board of township trustees, or a 179
board of county commissioners acting as an aggregator for the 180
provision of a competitive retail electric service under authority 181
conferred under section 4928.20 of the Revised Code. 182

(14) A person acts "knowingly," regardless of the person's 183
purpose, when the person is aware that the person's conduct will 184
probably cause a certain result or will probably be of a certain 185
nature. A person has knowledge of circumstances when the person is 186
aware that such circumstances probably exist. 187

(15) "Level of funding for low-income customer energy 188
efficiency programs provided through electric utility rates" means 189
the level of funds specifically included in an electric utility's 190
rates on October 5, 1999, pursuant to an order of the public 191
utilities commission issued under Chapter 4905. or 4909. of the 192
Revised Code and in effect on October 4, 1999, for the purpose of 193
improving the energy efficiency of housing for the utility's 194
low-income customers. The term excludes the level of any such 195
funds committed to a specific nonprofit organization or 196
organizations pursuant to a stipulation or contract. 197

(16) "Low-income customer assistance programs" means the 198
percentage of income payment plan program, the home energy 199
assistance program, the home weatherization assistance program, 200
and the targeted energy efficiency and weatherization program. 201

(17) "Market development period" for an electric utility 202
means the period of time beginning on the starting date of 203

competitive retail electric service and ending on the applicable 204
date for that utility as specified in section 4928.40 of the 205
Revised Code, irrespective of whether the utility applies to 206
receive transition revenues under this chapter. 207

(18) "Market power" means the ability to impose on customers 208
a sustained price for a product or service above the price that 209
would prevail in a competitive market. 210

(19) "Mercantile customer" means a commercial or industrial 211
customer if the electricity consumed is for nonresidential use and 212
the customer consumes more than seven hundred thousand kilowatt 213
hours per year or is part of a national account involving multiple 214
facilities in one or more states. 215

(20) "Municipal electric utility" means a municipal 216
corporation that owns or operates facilities to generate, 217
transmit, or distribute electricity. 218

(21) "Noncompetitive retail electric service" means a 219
component of retail electric service that is noncompetitive as 220
provided under division (B) of this section. 221

(22) "Nonfirm electric service" means electric service 222
provided pursuant to a schedule filed under section 4905.30 of the 223
Revised Code or pursuant to an arrangement under section 4905.31 224
of the Revised Code, which schedule or arrangement includes 225
conditions that may require the customer to curtail or interrupt 226
electric usage during nonemergency circumstances upon notification 227
by an electric utility. 228

(23) "Percentage of income payment plan arrears" means funds 229
eligible for collection through the percentage of income payment 230
plan rider, but uncollected as of July 1, 2000. 231

(24) "Person" has the same meaning as in section 1.59 of the 232
Revised Code. 233

(25) "Advanced energy project" means any technologies, 234
products, activities, or management practices or strategies that 235
facilitate the generation or use of electricity or energy and that 236
reduce or support the reduction of energy consumption or support 237
the production of clean, renewable energy for industrial, 238
distribution, commercial, institutional, governmental, research, 239
not-for-profit, or residential energy users, including, but not 240
limited to, advanced energy resources and renewable energy 241
resources. "Advanced energy project" also includes any project 242
described in division (A), (B), or (C) of section 4928.621 of the 243
Revised Code. 244

(26) "Regulatory assets" means the unamortized net regulatory 245
assets that are capitalized or deferred on the regulatory books of 246
the electric utility, pursuant to an order or practice of the 247
public utilities commission or pursuant to generally accepted 248
accounting principles as a result of a prior commission 249
rate-making decision, and that would otherwise have been charged 250
to expense as incurred or would not have been capitalized or 251
otherwise deferred for future regulatory consideration absent 252
commission action. "Regulatory assets" includes, but is not 253
limited to, all deferred demand-side management costs; all 254
deferred percentage of income payment plan arrears; 255
post-in-service capitalized charges and assets recognized in 256
connection with statement of financial accounting standards no. 257
109 (receivables from customers for income taxes); future nuclear 258
decommissioning costs and fuel disposal costs as those costs have 259
been determined by the commission in the electric utility's most 260
recent rate or accounting application proceeding addressing such 261
costs; the undepreciated costs of safety and radiation control 262
equipment on nuclear generating plants owned or leased by an 263
electric utility; and fuel costs currently deferred pursuant to 264
the terms of one or more settlement agreements approved by the 265
commission. 266

(27) "Retail electric service" means any service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption. For the purposes of this chapter, retail electric service includes one or more of the following "service components": generation service, aggregation service, power marketing service, power brokerage service, transmission service, distribution service, ancillary service, metering service, and billing and collection service.

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

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

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

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

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

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

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

(d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(32) "Self-generator" means an entity in this state that owns or hosts on its premises an electric generation facility that produces electricity primarily for the owner's consumption and

that may provide any such excess electricity to another entity, 297
whether the facility is installed or operated by the owner or by 298
an agent under a contract. 299

(33) "Rate plan" means the standard service offer in effect 300
on the effective date of the amendment of this section by S.B. 221 301
of the 127th general assembly, July 31, 2008. 302

(34) "Advanced energy resource" means any of the following: 303

(a) Any method or any modification or replacement of any 304
property, process, device, structure, or equipment that increases 305
the generation output of an electric generating facility to the 306
extent such efficiency is achieved without additional carbon 307
dioxide emissions by that facility; 308

(b) Any distributed generation system consisting of customer 309
cogeneration of electricity and thermal output simultaneously; 310

(c) Clean coal technology that includes a carbon-based 311
product that is chemically altered before combustion to 312
demonstrate a reduction, as expressed as ash, in emissions of 313
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 314
sulfur trioxide in accordance with the American society of testing 315
and materials standard D1757A or a reduction of metal oxide 316
emissions in accordance with standard D5142 of that society, or 317
clean coal technology that includes the design capability to 318
control or prevent the emission of carbon dioxide, which design 319
capability the commission shall adopt by rule and shall be based 320
on economically feasible best available technology or, in the 321
absence of a determined best available technology, shall be of the 322
highest level of economically feasible design capability for which 323
there exists generally accepted scientific opinion; 324

(d) Advanced nuclear energy technology consisting of 325
generation III technology as defined by the nuclear regulatory 326
commission; other, later technology; or significant improvements 327

to existing facilities; 328

(e) Any fuel cell used in the generation of electricity, 329
including, but not limited to, a proton exchange membrane fuel 330
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 331
solid oxide fuel cell; 332

(f) Advanced solid waste or construction and demolition 333
debris conversion technology, including, but not limited to, 334
advanced stoker technology, and advanced fluidized bed 335
gasification technology, that results in measurable greenhouse gas 336
emissions reductions as calculated pursuant to the United States 337
environmental protection agency's waste reduction model (WARM). 338

(g) Demand-side management and any energy efficiency 339
improvement. 340

(35) "Air contaminant source" has the same meaning as in 341
section 3704.01 of the Revised Code. 342

(36) "Cogeneration technology" means technology that produces 343
electricity and useful thermal output simultaneously. 344

(37) "Renewable energy resource" means solar photovoltaic or 345
solar thermal energy, wind energy, power produced by a 346
hydroelectric facility, geothermal energy, fuel derived from solid 347
wastes, as defined in section 3734.01 of the Revised Code, through 348
fractionation, biological decomposition, or other process that 349
does not principally involve combustion, biomass energy, energy 350
produced by cogeneration technology for which more than ninety per 351
cent of the total annual energy input is from a waste or byproduct 352
gas from an air contaminant source in this state, which source has 353
been in operation since on or before January 1, 1985, biologically 354
derived methane gas, or energy derived from nontreated by-products 355
of the pulping process or wood manufacturing process, including 356
bark, wood chips, sawdust, and lignin in spent pulping liquors. 357
"Renewable energy resource" includes, but is not limited to, any 358

fuel cell used in the generation of electricity, including, but 359
not limited to, a proton exchange membrane fuel cell, phosphoric 360
acid fuel cell, molten carbonate fuel cell, or solid oxide fuel 361
cell; wind turbine located in the state's territorial waters of 362
Lake Erie; methane gas emitted from an abandoned coal mine; 363
storage facility that will promote the better utilization of a 364
renewable energy resource that primarily generates off peak; or 365
distributed generation system used by a customer to generate 366
electricity from any such energy. As used in division (A)~~(35)~~(37) 367
of this section, "hydroelectric facility" means a hydroelectric 368
generating facility that is located at a dam on a river, or on any 369
water discharged to a river, that is within or bordering this 370
state or within or bordering an adjoining state and meets all of 371
the following standards: 372

(a) The facility provides for river flows that are not 373
detrimental for fish, wildlife, and water quality, including 374
seasonal flow fluctuations as defined by the applicable licensing 375
agency for the facility. 376

(b) The facility demonstrates that it complies with the water 377
quality standards of this state, which compliance may consist of 378
certification under Section 401 of the "Clean Water Act of 1977," 379
91 Stat. 1598, 1599, 33 U.S.C. 1341, and demonstrates that it has 380
not contributed to a finding by this state that the river has 381
impaired water quality under Section 303(d) of the "Clean Water 382
Act of 1977," 114 Stat. 870, 33 U.S.C. 1313. 383

(c) The facility complies with mandatory prescriptions 384
regarding fish passage as required by the federal energy 385
regulatory commission license issued for the project, regarding 386
fish protection for riverine, anadromous, and catadromous fish. 387

(d) The facility complies with the recommendations of the 388
Ohio environmental protection agency and with the terms of its 389
federal energy regulatory commission license regarding watershed 390

protection, mitigation, or enhancement, to the extent of each 391
agency's respective jurisdiction over the facility. 392

(e) The facility complies with provisions of the "Endangered 393
Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 to 1544, as 394
amended. 395

(f) The facility does not harm cultural resources of the 396
area. This can be shown through compliance with the terms of its 397
federal energy regulatory commission license or, if the facility 398
is not regulated by that commission, through development of a plan 399
approved by the Ohio historic preservation office, to the extent 400
it has jurisdiction over the facility. 401

(g) The facility complies with the terms of its federal 402
energy regulatory commission license or exemption that are related 403
to recreational access, accommodation, and facilities or, if the 404
facility is not regulated by that commission, the facility 405
complies with similar requirements as are recommended by resource 406
agencies, to the extent they have jurisdiction over the facility; 407
and the facility provides access to water to the public without 408
fee or charge. 409

(h) The facility is not recommended for removal by any 410
federal agency or agency of any state, to the extent the 411
particular agency has jurisdiction over the facility. 412

(B) For the purposes of this chapter, a retail electric 413
service component shall be deemed a competitive retail electric 414
service if the service component is competitive pursuant to a 415
declaration by a provision of the Revised Code or pursuant to an 416
order of the public utilities commission authorized under division 417
(A) of section 4928.04 of the Revised Code. Otherwise, the service 418
component shall be deemed a noncompetitive retail electric 419
service. 420

Section 2. That existing sections 3706.25 and 4928.01 of the Revised Code are hereby repealed.

Section 3. Section 4928.01 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 181 and Am. Sub. S.B. 232 of the 128th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.