

As Reported by the House Public Utilities Committee

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Sub. S. B. No. 289

Senators Coley, Schiavoni

Cosponsors: Senators Jones, Balderson, Cafaro, Gentile, Bacon, Brown,

Manning, Seitz, Turner, Eklund, Lehner, Oelslager, Sawyer, Burke, Faber,

Hughes, Niehaus, Patton, Peterson

Representatives Stautberg, Williams, Cera, Conditt, O'Brien, Pillich, Roegner

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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 21
property, process, device, structure, or equipment that increases 22
the generation output of an electric generating facility to the 23
extent such efficiency is achieved without additional carbon 24
dioxide emissions by that facility; 25

(2) Any distributed generation system consisting of customer 26
~~cogeneration of electricity and thermal output simultaneously~~ 27
technology, primarily to meet the energy needs of the customer's 28
facilities; 29

(3) Advanced nuclear energy technology consisting of 30
generation III technology as defined by the nuclear regulatory 31
commission; other, later technology; or significant improvements 32
to existing facilities; 33

(4) Any fuel cell used in the generation of electricity, 34
including, but not limited to, a proton exchange membrane fuel 35
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 36
solid oxide fuel cell; 37

(5) Advanced solid waste or construction and demolition 38
debris conversion technology, including, but not limited to, 39
advanced stoker technology, and advanced fluidized bed 40
gasification technology, that results in measurable greenhouse gas 41
emissions reductions as calculated pursuant to the United States 42
environmental protection agency's waste reduction model (WARM). 43

(C) "Air contaminant source" has the same meaning as in 44
section 3704.01 of the Revised Code. 45

(D) "Cogeneration technology" means technology that produces 46

electricity and useful thermal output simultaneously. 47

(E) "Renewable energy resource" means solar photovoltaic or 48
solar thermal energy, wind energy, power produced by a 49
hydroelectric facility, geothermal energy, fuel derived from solid 50
wastes, as defined in section 3734.01 of the Revised Code, through 51
fractionation, biological decomposition, or other process that 52
does not principally involve combustion, biomass energy, energy 53
produced by cogeneration technology that is placed into service on 54
or before December 31, 2015, and for which more than ninety per 55
cent of the total annual energy input is from combustion of a 56
waste or byproduct gas from an air contaminant source in this 57
state, which source has been in operation since on or before 58
January 1, 1985, provided that the cogeneration technology is a 59
part of a facility located in a county having a population of more 60
than three hundred sixty-five thousand but less than three hundred 61
seventy thousand according to the most recent federal decennial 62
census, biologically derived methane gas, or energy derived from 63
nontreated by-products of the pulping process or wood 64
manufacturing process, including bark, wood chips, sawdust, and 65
lignin in spent pulping liquors. "Renewable energy resource" 66
includes, but is not limited to, any fuel cell used in the 67
generation of electricity, including, but not limited to, a proton 68
exchange membrane fuel cell, phosphoric acid fuel cell, molten 69
carbonate fuel cell, or solid oxide fuel cell; wind turbine 70
located in the state's territorial waters of Lake Erie; methane 71
gas emitted from an abandoned coal mine; storage facility that 72
will promote the better utilization of a renewable energy resource 73
that primarily generates off peak; or distributed generation 74
system used by a customer to generate electricity from any such 75
energy. As used in this division, "hydroelectric facility" means a 76
hydroelectric generating facility that is located at a dam on a 77
river, or on any water discharged to a river, that is within or 78
bordering this state or within or bordering an adjoining state and 79

meets all of the following standards: 80

(1) The facility provides for river flows that are not 81
detrimental for fish, wildlife, and water quality, including 82
seasonal flow fluctuations as defined by the applicable licensing 83
agency for the facility. 84

(2) The facility demonstrates that it complies with the water 85
quality standards of this state, which compliance may consist of 86
certification under Section 401 of the "Clean Water Act of 1977," 87
91 Stat. 1598, 1599, 33 U.S.C. 1341, and demonstrates that it has 88
not contributed to a finding by this state that the river has 89
impaired water quality under Section 303(d) of the "Clean Water 90
Act of 1977," 114 Stat. 870, 33 U.S.C. 1313. 91

(3) The facility complies with mandatory prescriptions 92
regarding fish passage as required by the federal energy 93
regulatory commission license issued for the project, regarding 94
fish protection for riverine, anadromous, and ~~catadromous~~ 95
catadromous fish. 96

(4) The facility complies with the recommendations of the 97
Ohio environmental protection agency and with the terms of its 98
federal energy regulatory commission license regarding watershed 99
protection, mitigation, or enhancement, to the extent of each 100
agency's respective jurisdiction over the facility. 101

(5) The facility complies with provisions of the "Endangered 102
Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 to 1544, as 103
amended. 104

(6) The facility does not harm cultural resources of the 105
area. This can be shown through compliance with the terms of its 106
federal energy regulatory commission license or, if the facility 107
is not regulated by that commission, through development of a plan 108
approved by the Ohio historic preservation office, to the extent 109
it has jurisdiction over the facility. 110

(7) The facility complies with the terms of its federal 111
energy regulatory commission license or exemption that are related 112
to recreational access, accommodation, and facilities or, if the 113
facility is not regulated by that commission, the facility 114
complies with similar requirements as are recommended by resource 115
agencies, to the extent they have jurisdiction over the facility; 116
and the facility provides access to water to the public without 117
fee or charge. 118

(8) The facility is not recommended for removal by any 119
federal agency or agency of any state, to the extent the 120
particular agency has jurisdiction over the facility. 121

Sec. 4928.01. (A) As used in this chapter: 122

(1) "Ancillary service" means any function necessary to the 123
provision of electric transmission or distribution service to a 124
retail customer and includes, but is not limited to, scheduling, 125
system control, and dispatch services; reactive supply from 126
generation resources and voltage control service; reactive supply 127
from transmission resources service; regulation service; frequency 128
response service; energy imbalance service; operating 129
reserve-spinning reserve service; operating reserve-supplemental 130
reserve service; load following; back-up supply service; 131
real-power loss replacement service; dynamic scheduling; system 132
black start capability; and network stability service. 133

(2) "Billing and collection agent" means a fully independent 134
agent, not affiliated with or otherwise controlled by an electric 135
utility, electric services company, electric cooperative, or 136
governmental aggregator subject to certification under section 137
4928.08 of the Revised Code, to the extent that the agent is under 138
contract with such utility, company, cooperative, or aggregator 139
solely to provide billing and collection for retail electric 140
service on behalf of the utility company, cooperative, or 141

aggregator.	142
(3) "Certified territory" means the certified territory	143
established for an electric supplier under sections 4933.81 to	144
4933.90 of the Revised Code.	145
(4) "Competitive retail electric service" means a component	146
of retail electric service that is competitive as provided under	147
division (B) of this section.	148
(5) "Electric cooperative" means a not-for-profit electric	149
light company that both is or has been financed in whole or in	150
part under the "Rural Electrification Act of 1936," 49 Stat. 1363,	151
7 U.S.C. 901, and owns or operates facilities in this state to	152
generate, transmit, or distribute electricity, or a not-for-profit	153
successor of such company.	154
(6) "Electric distribution utility" means an electric utility	155
that supplies at least retail electric distribution service.	156
(7) "Electric light company" has the same meaning as in	157
section 4905.03 of the Revised Code and includes an electric	158
services company, but excludes any self-generator to the extent	159
that it consumes electricity it so produces, sells that	160
electricity for resale, or obtains electricity from a generating	161
facility it hosts on its premises.	162
(8) "Electric load center" has the same meaning as in section	163
4933.81 of the Revised Code.	164
(9) "Electric services company" means an electric light	165
company that is engaged on a for-profit or not-for-profit basis in	166
the business of supplying or arranging for the supply of only a	167
competitive retail electric service in this state. "Electric	168
services company" includes a power marketer, power broker,	169
aggregator, or independent power producer but excludes an electric	170
cooperative, municipal electric utility, governmental aggregator,	171
or billing and collection agent.	172

(10) "Electric supplier" has the same meaning as in section 173
4933.81 of the Revised Code. 174

(11) "Electric utility" means an electric light company that 175
has a certified territory and is engaged on a for-profit basis 176
either in the business of supplying a noncompetitive retail 177
electric service in this state or in the businesses of supplying 178
both a noncompetitive and a competitive retail electric service in 179
this state. "Electric utility" excludes a municipal electric 180
utility or a billing and collection agent. 181

(12) "Firm electric service" means electric service other 182
than nonfirm electric service. 183

(13) "Governmental aggregator" means a legislative authority 184
of a municipal corporation, a board of township trustees, or a 185
board of county commissioners acting as an aggregator for the 186
provision of a competitive retail electric service under authority 187
conferred under section 4928.20 of the Revised Code. 188

(14) A person acts "knowingly," regardless of the person's 189
purpose, when the person is aware that the person's conduct will 190
probably cause a certain result or will probably be of a certain 191
nature. A person has knowledge of circumstances when the person is 192
aware that such circumstances probably exist. 193

(15) "Level of funding for low-income customer energy 194
efficiency programs provided through electric utility rates" means 195
the level of funds specifically included in an electric utility's 196
rates on October 5, 1999, pursuant to an order of the public 197
utilities commission issued under Chapter 4905. or 4909. of the 198
Revised Code and in effect on October 4, 1999, for the purpose of 199
improving the energy efficiency of housing for the utility's 200
low-income customers. The term excludes the level of any such 201
funds committed to a specific nonprofit organization or 202
organizations pursuant to a stipulation or contract. 203

(16) "Low-income customer assistance programs" means the	204
percentage of income payment plan program, the home energy	205
assistance program, the home weatherization assistance program,	206
and the targeted energy efficiency and weatherization program.	207
(17) "Market development period" for an electric utility	208
means the period of time beginning on the starting date of	209
competitive retail electric service and ending on the applicable	210
date for that utility as specified in section 4928.40 of the	211
Revised Code, irrespective of whether the utility applies to	212
receive transition revenues under this chapter.	213
(18) "Market power" means the ability to impose on customers	214
a sustained price for a product or service above the price that	215
would prevail in a competitive market.	216
(19) "Mercantile customer" means a commercial or industrial	217
customer if the electricity consumed is for nonresidential use and	218
the customer consumes more than seven hundred thousand kilowatt	219
hours per year or is part of a national account involving multiple	220
facilities in one or more states.	221
(20) "Municipal electric utility" means a municipal	222
corporation that owns or operates facilities to generate,	223
transmit, or distribute electricity.	224
(21) "Noncompetitive retail electric service" means a	225
component of retail electric service that is noncompetitive as	226
provided under division (B) of this section.	227
(22) "Nonfirm electric service" means electric service	228
provided pursuant to a schedule filed under section 4905.30 of the	229
Revised Code or pursuant to an arrangement under section 4905.31	230
of the Revised Code, which schedule or arrangement includes	231
conditions that may require the customer to curtail or interrupt	232
electric usage during nonemergency circumstances upon notification	233
by an electric utility.	234

(23) "Percentage of income payment plan arrears" means funds 235
eligible for collection through the percentage of income payment 236
plan rider, but uncollected as of July 1, 2000. 237

(24) "Person" has the same meaning as in section 1.59 of the 238
Revised Code. 239

(25) "Advanced energy project" means any technologies, 240
products, activities, or management practices or strategies that 241
facilitate the generation or use of electricity or energy and that 242
reduce or support the reduction of energy consumption or support 243
the production of clean, renewable energy for industrial, 244
distribution, commercial, institutional, governmental, research, 245
not-for-profit, or residential energy users, including, but not 246
limited to, advanced energy resources and renewable energy 247
resources. "Advanced energy project" also includes any project 248
described in division (A), (B), or (C) of section 4928.621 of the 249
Revised Code. 250

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

recent rate or accounting application proceeding addressing such 267
costs; the undepreciated costs of safety and radiation control 268
equipment on nuclear generating plants owned or leased by an 269
electric utility; and fuel costs currently deferred pursuant to 270
the terms of one or more settlement agreements approved by the 271
commission. 272

(27) "Retail electric service" means any service involved in 273
supplying or arranging for the supply of electricity to ultimate 274
consumers in this state, from the point of generation to the point 275
of consumption. For the purposes of this chapter, retail electric 276
service includes one or more of the following "service 277
components": generation service, aggregation service, power 278
marketing service, power brokerage service, transmission service, 279
distribution service, ancillary service, metering service, and 280
billing and collection service. 281

(28) "Starting date of competitive retail electric service" 282
means January 1, 2001. 283

(29) "Customer-generator" means a user of a net metering 284
system. 285

(30) "Net metering" means measuring the difference in an 286
applicable billing period between the electricity supplied by an 287
electric service provider and the electricity generated by a 288
customer-generator that is fed back to the electric service 289
provider. 290

(31) "Net metering system" means a facility for the 291
production of electrical energy that does all of the following: 292

(a) Uses as its fuel either solar, wind, biomass, landfill 293
gas, or hydropower, or uses a microturbine or a fuel cell; 294

(b) Is located on a customer-generator's premises; 295

(c) Operates in parallel with the electric utility's 296

transmission and distribution facilities;	297
(d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.	298 299
(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, whether the facility is installed or operated by the owner or by an agent under a contract.	300 301 302 303 304 305
(33) "Rate plan" means the standard service offer in effect on the effective date of the amendment of this section by S.B. 221 of the 127th general assembly, July 31, 2008.	306 307 308
(34) "Advanced energy resource" means any of the following:	309
(a) 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;	310 311 312 313 314
(b) Any distributed generation system consisting of customer cogeneration of electricity and thermal output simultaneously <u>technology</u> ;	315 316 317
(c) Clean coal technology that includes a carbon-based product that is chemically altered before combustion to demonstrate a reduction, as expressed as ash, in emissions of nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or sulfur trioxide in accordance with the American society of testing and materials standard D1757A or a reduction of metal oxide emissions in accordance with standard D5142 of that society, or clean coal technology that includes the design capability to control or prevent the emission of carbon dioxide, which design capability the commission shall adopt by rule and shall be based	318 319 320 321 322 323 324 325 326 327

on economically feasible best available technology or, in the 328
absence of a determined best available technology, shall be of the 329
highest level of economically feasible design capability for which 330
there exists generally accepted scientific opinion; 331

(d) Advanced nuclear energy technology consisting of 332
generation III technology as defined by the nuclear regulatory 333
commission; other, later technology; or significant improvements 334
to existing facilities; 335

(e) Any fuel cell used in the generation of electricity, 336
including, but not limited to, a proton exchange membrane fuel 337
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 338
solid oxide fuel cell; 339

(f) Advanced solid waste or construction and demolition 340
debris conversion technology, including, but not limited to, 341
advanced stoker technology, and advanced fluidized bed 342
gasification technology, that results in measurable greenhouse gas 343
emissions reductions as calculated pursuant to the United States 344
environmental protection agency's waste reduction model (WARM). 345

(g) Demand-side management and any energy efficiency 346
improvement. 347

(35) "Air contaminant source" has the same meaning as in 348
section 3704.01 of the Revised Code. 349

(36) "Cogeneration technology" means technology that produces 350
electricity and useful thermal output simultaneously. 351

(37) "Renewable energy resource" means solar photovoltaic or 352
solar thermal energy, wind energy, power produced by a 353
hydroelectric facility, geothermal energy, fuel derived from solid 354
wastes, as defined in section 3734.01 of the Revised Code, through 355
fractionation, biological decomposition, or other process that 356
does not principally involve combustion, biomass energy, energy 357
produced by cogeneration technology that is placed into service on 358

or before December 31, 2015, and for which more than ninety per 359
cent of the total annual energy input is from combustion of a 360
waste or byproduct gas from an air contaminant source in this 361
state, which source has been in operation since on or before 362
January 1, 1985, provided that the cogeneration technology is a 363
part of a facility located in a county having a population of more 364
than three hundred sixty-five thousand but less than three hundred 365
seventy thousand according to the most recent federal decennial 366
census, biologically derived methane gas, or energy derived from 367
nontreated by-products of the pulping process or wood 368
manufacturing process, including bark, wood chips, sawdust, and 369
lignin in spent pulping liquors. "Renewable energy resource" 370
includes, but is not limited to, any fuel cell used in the 371
generation of electricity, including, but not limited to, a proton 372
exchange membrane fuel cell, phosphoric acid fuel cell, molten 373
carbonate fuel cell, or solid oxide fuel cell; wind turbine 374
located in the state's territorial waters of Lake Erie; methane 375
gas emitted from an abandoned coal mine; storage facility that 376
will promote the better utilization of a renewable energy resource 377
that primarily generates off peak; or distributed generation 378
system used by a customer to generate electricity from any such 379
energy. As used in division (A)~~(35)~~(37) of this section, 380
"hydroelectric facility" means a hydroelectric generating facility 381
that is located at a dam on a river, or on any water discharged to 382
a river, that is within or bordering this state or within or 383
bordering an adjoining state and meets all of the following 384
standards: 385

(a) The facility provides for river flows that are not 386
detrimental for fish, wildlife, and water quality, including 387
seasonal flow fluctuations as defined by the applicable licensing 388
agency for the facility. 389

(b) The facility demonstrates that it complies with the water 390

quality standards of this state, which compliance may consist of 391
certification under Section 401 of the "Clean Water Act of 1977," 392
91 Stat. 1598, 1599, 33 U.S.C. 1341, and demonstrates that it has 393
not contributed to a finding by this state that the river has 394
impaired water quality under Section 303(d) of the "Clean Water 395
Act of 1977," 114 Stat. 870, 33 U.S.C. 1313. 396

(c) The facility complies with mandatory prescriptions 397
regarding fish passage as required by the federal energy 398
regulatory commission license issued for the project, regarding 399
fish protection for riverine, anadromous, and catadromous fish. 400

(d) The facility complies with the recommendations of the 401
Ohio environmental protection agency and with the terms of its 402
federal energy regulatory commission license regarding watershed 403
protection, mitigation, or enhancement, to the extent of each 404
agency's respective jurisdiction over the facility. 405

(e) The facility complies with provisions of the "Endangered 406
Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 to 1544, as 407
amended. 408

(f) The facility does not harm cultural resources of the 409
area. This can be shown through compliance with the terms of its 410
federal energy regulatory commission license or, if the facility 411
is not regulated by that commission, through development of a plan 412
approved by the Ohio historic preservation office, to the extent 413
it has jurisdiction over the facility. 414

(g) The facility complies with the terms of its federal 415
energy regulatory commission license or exemption that are related 416
to recreational access, accommodation, and facilities or, if the 417
facility is not regulated by that commission, the facility 418
complies with similar requirements as are recommended by resource 419
agencies, to the extent they have jurisdiction over the facility; 420
and the facility provides access to water to the public without 421

fee or charge. 422

(h) The facility is not recommended for removal by any 423
federal agency or agency of any state, to the extent the 424
particular agency has jurisdiction over the facility. 425

(B) For the purposes of this chapter, a retail electric 426
service component shall be deemed a competitive retail electric 427
service if the service component is competitive pursuant to a 428
declaration by a provision of the Revised Code or pursuant to an 429
order of the public utilities commission authorized under division 430
(A) of section 4928.04 of the Revised Code. Otherwise, the service 431
component shall be deemed a noncompetitive retail electric 432
service. 433

Section 2. That existing sections 3706.25 and 4928.01 of the 434
Revised Code are hereby repealed. 435

Section 3. Section 4928.01 of the Revised Code is presented 436
in this act as a composite of the section as amended by both Am. 437
Sub. S.B. 181 and Am. Sub. S.B. 232 of the 128th General Assembly. 438
The General Assembly, applying the principle stated in division 439
(B) of section 1.52 of the Revised Code that amendments are to be 440
harmonized if reasonably capable of simultaneous operation, finds 441
that the composite is the resulting version of the section in 442
effect prior to the effective date of the section as presented in 443
this act. 444