

**As Reported by the Senate Energy and Public Utilities Committee**

**129th General Assembly**

**Regular Session**

**2011-2012**

**Sub. S. B. No. 289**

**Senators Coley, Schiavoni**

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

**Manning, Seitz, Turner, Eklund, Lehner, Oelslager, Sawyer**

—

**A B I L L**

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

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

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

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

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

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 <del>of electricity and thermal output simultaneously</del> <u>technology</u> , primarily to meet the energy needs of the customer's facilities;	26 27 28 29
(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;	30 31 32 33
(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;	34 35 36 37
(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).	38 39 40 41 42 43
(C) <u>"Air contaminant source" has the same meaning as in section 3704.01 of the Revised Code.</u>	44 45
(D) <u>"Cogeneration technology" means technology that produces electricity and useful thermal output simultaneously.</u>	46 47
(E) "Renewable energy resource" means solar photovoltaic or	48

solar thermal energy, wind energy, power produced by a 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 that is placed into service on or before December 31, 2015, and for which more than ninety per cent of the total annual energy input is from combustion of 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, provided that the cogeneration technology is a part of a facility located in a county having a population of more than three hundred sixty-five thousand but less than three hundred seventy thousand according to the most recent federal decennial census, 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 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 298

customer-generator's requirements for electricity. 299

(32) "Self-generator" means an entity in this state that owns 300  
or hosts on its premises an electric generation facility that 301  
produces electricity primarily for the owner's consumption and 302  
that may provide any such excess electricity to another entity, 303  
whether the facility is installed or operated by the owner or by 304  
an agent under a contract. 305

(33) "Rate plan" means the standard service offer in effect 306  
on the effective date of the amendment of this section by S.B. 221 307  
of the 127th general assembly, July 31, 2008. 308

(34) "Advanced energy resource" means any of the following: 309

(a) Any method or any modification or replacement of any 310  
property, process, device, structure, or equipment that increases 311  
the generation output of an electric generating facility to the 312  
extent such efficiency is achieved without additional carbon 313  
dioxide emissions by that facility; 314

(b) Any distributed generation system consisting of customer 315  
~~cogeneration of electricity and thermal output simultaneously~~ 316  
technology; 317

(c) Clean coal technology that includes a carbon-based 318  
product that is chemically altered before combustion to 319  
demonstrate a reduction, as expressed as ash, in emissions of 320  
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 321  
sulfur trioxide in accordance with the American society of testing 322  
and materials standard D1757A or a reduction of metal oxide 323  
emissions in accordance with standard D5142 of that society, or 324  
clean coal technology that includes the design capability to 325  
control or prevent the emission of carbon dioxide, which design 326  
capability the commission shall adopt by rule and shall be based 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