As Introduced

131st General Assembly
Regular Session H. B. No. 190
2015-2016

Representatives Burkley, Brown

A BILL

To amend section 5727.75 and to enact sections 4906.21, 4906.211, 4906.212, 4906.213, 4906.214, and 4906.215 of the Revised Code to permit counties to adopt resolutions establishing an alternative setback for wind farms and to extend by five years the deadlines for obtaining the qualified energy project tax exemption.

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

Section 1. That section 5727.75 be amended and sections 4906.21, 4906.211, 4906.212, 4906.213, 4906.214, and 4906.215 of the Revised Code be enacted to read as follows:

Sec. 4906.21. As used in sections 4906.211 to 4906.215 of the Revised Code, "wind farm" means an electric generating plant that consists of wind turbines and associated facilities with a single interconnection to the electrical grid that is designed for, or capable of, operation at an aggregate capacity of five megawatts or more.

Sec. 4906.211. (A) Notwithstanding sections 4906.20 and 4906.201 of the Revised Code, the board of county commissioners of a county may adopt, for either one specific wind farm
proposed to be located within the county or for any future wind farms proposed to be located within the county, a resolution establishing a minimum setback requirement described under division (B) of this section for the wind turbines of the wind farm or farms.

(B) The minimum setback shall be both of the following:

(1) Equal to a horizontal distance, from the turbine's base to the property line of the wind farm property, equal to one and one-tenth times the total height of the turbine structure as measured from its base to the tip of its highest blade;

(2) At least one thousand one hundred twenty-five feet in horizontal distance from the tip of the turbine's nearest blade at ninety degrees to the exterior of the nearest, habitable, residential structure, if any, located on adjacent property at the time that the certification application is filed under section 4906.06 or 4906.20 of the Revised Code.

Sec. 4906.212. Before adopting a resolution under section 4906.211 of the Revised Code, the board of county commissioners may consult with the power siting board. Any costs related to the consultation shall be paid by the person seeking to construct the wind farm for which the consultation is being made.

Sec. 4906.213. (A) Subject to division (B) of this section, a board of county commissioners that adopts a resolution under section 4906.211 of the Revised Code may adopt a resolution revoking the prior resolution at any time.

(B) Before a resolution has been revoked, a person seeking to construct a wind farm to which the resolution applies may
file notice of the intent to construct the wind farm with the board of county commissioners. If the board revokes the resolution after the notice is filed but before the wind farm has been constructed, the resolution that was revoked shall remain applicable to the wind farm for which the notice was filed, and the revocation, if the revoked resolution had applied generally to all future wind farms within the county, shall apply only prospectively from the time of the revocation.

Sec. 4906.214. The power siting board may increase the setback for any specific wind turbine of a wind farm that is subject to the setback requirements adopted pursuant to a resolution adopted under section 4906.211 of the Revised Code, in order to preserve the health, safety, and welfare of neighboring property owners.

Sec. 4906.215. Nothing in sections 4906.21 to 4906.214 of the Revised Code contravenes the power siting board's ultimate authority to issue certificates under this chapter for the construction of wind farms.

Sec. 5727.75. (A) For purposes of this section:

(1) "Qualified energy project" means an energy project certified by the director of development services pursuant to this section.

(2) "Energy project" means a project to provide electric power through the construction, installation, and use of an energy facility.

(3) "Alternative energy zone" means a county declared as such by the board of county commissioners under division (E)(1)(b) or (c) of this section.

(4) "Full-time equivalent employee" means the total number
of employee-hours for which compensation was paid to individuals employed at a qualified energy project for services performed at the project during the calendar year divided by two thousand eighty hours.

(5) "Solar energy project" means an energy project composed of an energy facility using solar panels to generate electricity.

(B)(1) Tangible personal property of a qualified energy project using renewable energy resources is exempt from taxation for tax years 2011 through 2021 if all of the following conditions are satisfied:

(a) On or before December 31, 2020, the owner or a lessee pursuant to a sale and leaseback transaction of the project submits an application to the power siting board for a certificate under section 4906.20 of the Revised Code, or if that section does not apply, submits an application for any approval, consent, permit, or certificate or satisfies any condition required by a public agency or political subdivision of this state for the construction or initial operation of an energy project.

(b) Construction or installation of the energy facility begins on or after January 1, 2009, and before January 1, 2021. For the purposes of this division, construction begins on the earlier of the date of application for a certificate or other approval or permit described in division (B)(1)(a) of this section, or the date the contract for the construction or installation of the energy facility is entered into.

(c) For a qualified energy project with a nameplate capacity of five megawatts or greater, a board of county
commissioners of a county in which property of the project is located has adopted a resolution under division (E)(1)(b) or (c) of this section to approve the application submitted under division (E) of this section to exempt the property located in that county from taxation. A board's adoption of a resolution rejecting an application or its failure to adopt a resolution approving the application does not affect the tax-exempt status of the qualified energy project's property that is located in another county.

(2) If tangible personal property of a qualified energy project using renewable energy resources was exempt from taxation under this section beginning in any of tax years 2011–2012, 2013, 2014, 2015, or 2016 through 2021, and the certification under division (E)(2) of this section has not been revoked, the tangible personal property of the qualified energy project is exempt from taxation for tax year 2017–2022 and all ensuing tax years if the property was placed into service before January 1, 2017–2022, as certified in the construction progress report required under division (F)(2) of this section. Tangible personal property that has not been placed into service before that date is taxable property subject to taxation. An energy project for which certification has been revoked is ineligible for further exemption under this section. Revocation does not affect the tax-exempt status of the project's tangible personal property for the tax year in which revocation occurs or any prior tax year.

(C) Tangible personal property of a qualified energy project using clean coal technology, advanced nuclear technology, or cogeneration technology is exempt from taxation for the first tax year that the property would be listed for taxation and all subsequent years if all of the following
circumstances are met:

(1) The property was placed into service before January 1, 2021. Tangible personal property that has not been placed into service before that date is taxable property subject to taxation.

(2) For such a qualified energy project with a nameplate capacity of five megawatts or greater, a board of county commissioners of a county in which property of the qualified energy project is located has adopted a resolution under division (E)(1)(b) or (c) of this section to approve the application submitted under division (E) of this section to exempt the property located in that county from taxation. A board's adoption of a resolution rejecting the application or its failure to adopt a resolution approving the application does not affect the tax-exempt status of the qualified energy project's property that is located in another county.

(3) The certification for the qualified energy project issued under division (E)(2) of this section has not been revoked. An energy project for which certification has been revoked is ineligible for exemption under this section. Revocation does not affect the tax-exempt status of the project's tangible personal property for the tax year in which revocation occurs or any prior tax year.

(D) Except as otherwise provided in this section, real property of a qualified energy project is exempt from taxation for any tax year for which the tangible personal property of the qualified energy project is exempted under this section.

(E)(1)(a) A person may apply to the director of development services for certification of an energy project as a
qualified energy project on or before the following dates:

(i) December 31, 2015, for an energy project using renewable energy resources;

(ii) December 31, 2017, for an energy project using clean coal technology, advanced nuclear technology, or cogeneration technology.

(b) The director shall forward a copy of each application for certification of an energy project with a nameplate capacity of five megawatts or greater to the board of county commissioners of each county in which the project is located and to each taxing unit with territory located in each of the affected counties. Any board that receives from the director a copy of an application submitted under this division shall adopt a resolution approving or rejecting the application unless it has adopted a resolution under division (E)(1)(c) of this section. A resolution adopted under division (E)(1)(b) or (c) of this section may require an annual service payment to be made in addition to the service payment required under division (G) of this section. The sum of the service payment required in the resolution and the service payment required under division (G) of this section shall not exceed nine thousand dollars per megawatt of nameplate capacity located in the county. The resolution shall specify the time and manner in which the payments required by the resolution shall be paid to the county treasurer. The county treasurer shall deposit the payment to the credit of the county's general fund to be used for any purpose for which money credited to that fund may be used.

The board shall send copies of the resolution by certified mail to the owner of the facility and the director within thirty days after receipt of the application, or a longer period of
time if authorized by the director.

    (c) A board of county commissioners may adopt a resolution declaring the county to be an alternative energy zone and declaring all applications submitted to the director of development services under this division after the adoption of the resolution, and prior to its repeal, to be approved by the board.

    All tangible personal property and real property of an energy project with a nameplate capacity of five megawatts or greater is taxable if it is located in a county in which the board of county commissioners adopted a resolution rejecting the application submitted under this division or failed to adopt a resolution approving the application under division (E)(1)(b) or (c) of this section.

    (2) The director shall certify an energy project if all of the following circumstances exist:

    (a) The application was timely submitted.

    (b) For an energy project with a nameplate capacity of five megawatts or greater, a board of county commissioners of at least one county in which the project is located has adopted a resolution approving the application under division (E)(1)(b) or (c) of this section.

    (c) No portion of the project's facility was used to supply electricity before December 31, 2009.

    (3) The director shall deny a certification application if the director determines the person has failed to comply with any requirement under this section. The director may revoke a certification if the director determines the person, or subsequent owner or lessee pursuant to a sale and leaseback
transaction of the qualified energy project, has failed to comply with any requirement under this section. Upon certification or revocation, the director shall notify the person, owner, or lessee, the tax commissioner, and the county auditor of a county in which the project is located of the certification or revocation. Notice shall be provided in a manner convenient to the director.

(F) The owner or a lessee pursuant to a sale and leaseback transaction of a qualified energy project shall do each of the following:

(1) Comply with all applicable regulations;

(2) File with the director of development services a certified construction progress report before the first day of March of each year during the energy facility's construction or installation indicating the percentage of the project completed, and the project's nameplate capacity, as of the preceding thirty-first day of December. Unless otherwise instructed by the director of development services, the owner or lessee of an energy project shall file a report with the director on or before the first day of March each year after completion of the energy facility's construction or installation indicating the project's nameplate capacity as of the preceding thirty-first day of December. Not later than sixty days after June 17, 2010, the owner or lessee of an energy project, the construction of which was completed before June 17, 2010, shall file a certificate indicating the project's nameplate capacity.

(3) File with the director of development services, in a manner prescribed by the director, a report of the total number of full-time equivalent employees, and the total number of full-time equivalent employees domiciled in Ohio, who are employed in
the construction or installation of the energy facility;

(4) For energy projects with a nameplate capacity of five megawatts or greater, repair all roads, bridges, and culverts affected by construction as reasonably required to restore them to their preconstruction condition, as determined by the county engineer in consultation with the local jurisdiction responsible for the roads, bridges, and culverts. In the event that the county engineer deems any road, bridge, or culvert to be inadequate to support the construction or decommissioning of the energy facility, the road, bridge, or culvert shall be rebuilt or reinforced to the specifications established by the county engineer prior to the construction or decommissioning of the facility. The owner or lessee of the facility shall post a bond in an amount established by the county engineer and to be held by the board of county commissioners to ensure funding for repairs of roads, bridges, and culverts affected during the construction. The bond shall be released by the board not later than one year after the date the repairs are completed. The energy facility owner or lessee pursuant to a sale and leaseback transaction shall post a bond, as may be required by the Ohio power siting board in the certificate authorizing commencement of construction issued pursuant to section 4906.10 of the Revised Code, to ensure funding for repairs to roads, bridges, and culverts resulting from decommissioning of the facility. The energy facility owner or lessee and the county engineer may enter into an agreement regarding specific transportation plans, reinforcements, modifications, use and repair of roads, financial security to be provided, and any other relevant issue.

(5) Provide or facilitate training for fire and emergency responders for response to emergency situations related to the energy project and, for energy projects with a nameplate
capacity of five megawatts or greater, at the person's expense, 287
equip the fire and emergency responders with proper equipment as 288
reasonably required to enable them to respond to such emergency 289
situations;
(6) Maintain a ratio of Ohio-domiciled full-time 290
equivalent employees employed in the construction or 291
installation of the energy project to total full-time equivalent 292
employees employed in the construction or installation of the 293
energy project of not less than eighty per cent in the case of a 294
solar energy project, and not less than fifty per cent in the 295
case of any other energy project. In the case of an energy 296
project for which certification from the power siting board is 297
required under section 4906.20 of the Revised Code, the number 298
of full-time equivalent employees employed in the construction 299
or installation of the energy project equals the number actually 300
employed or the number projected to be employed in the 301
certificate application, if such projection is required under 302
regulations adopted pursuant to section 4906.03 of the Revised 303
Code, whichever is greater. For all other energy projects, the 304
number of full-time equivalent employees employed in the 305
construction or installation of the energy project equals the 306
number actually employed or the number projected to be employed 307
by the director of development services, whichever is greater. 308
To estimate the number of employees to be employed in the 309
collection shall use a generally accepted job-estimating model in use for 310
renewable energy projects, including but not limited to the job 311
and economic development impact model. The director may adjust 312
an estimate produced by a model to account for variables not 313
accounted for by the model.
(7) For energy projects with a nameplate capacity in 314
excess of two megawatts, establish a relationship with a member
of the university system of Ohio as defined in section 3345.011
of the Revised Code or with a person offering an apprenticeship
program registered with the employment and training
administration within the United States department of labor or
with the apprenticeship council created by section 4139.02 of
the Revised Code, to educate and train individuals for careers
in the wind or solar energy industry. The relationship may
include endowments, cooperative programs, internships,
apprenticeships, research and development projects, and
curriculum development.

(8) Offer to sell power or renewable energy credits from
the energy project to electric distribution utilities or
electric service companies subject to renewable energy resource
requirements under section 4928.64 of the Revised Code that have
issued requests for proposal for such power or renewable energy
credits. If no electric distribution utility or electric service
company issues a request for proposal on or before December 31,
2010, or accepts an offer for power or renewable energy credits
within forty-five days after the offer is submitted, power or
renewable energy credits from the energy project may be sold to
other persons. Division (F)(8) of this section does not apply
if:

(a) The owner or lessee is a rural electric company or a
municipal power agency as defined in section 3734.058 of the
Revised Code.

(b) The owner or lessee is a person that, before
completion of the energy project, contracted for the sale of
power or renewable energy credits with a rural electric company
or a municipal power agency.
(c) The owner or lessee contracts for the sale of power or renewable energy credits from the energy project before June 17, 2010.

(9) Make annual service payments as required by division (G) of this section and as may be required in a resolution adopted by a board of county commissioners under division (E) of this section.

(G) The owner or a lessee pursuant to a sale and leaseback transaction of a qualified energy project shall make annual service payments in lieu of taxes to the county treasurer on or before the final dates for payments of taxes on public utility personal property on the real and public utility personal property tax list for each tax year for which property of the energy project is exempt from taxation under this section. The county treasurer shall allocate the payment on the basis of the project’s physical location. Upon receipt of a payment, or if timely payment has not been received, the county treasurer shall certify such receipt or non-receipt to the director of development services and tax commissioner in a form determined by the director and commissioner, respectively. Each payment shall be in the following amount:

(1) In the case of a solar energy project, seven thousand dollars per megawatt of nameplate capacity located in the county as of December 31, 2010, for tax year 2011, as of December 31, 2011, for tax year 2012, as of December 31, 2012, for tax year 2013, as of December 31, 2013, for tax year 2014, as of December 31, 2014, for tax year 2015, as of December 31, 2015, for tax year 2016, and as of December 31, 2016, for tax year 2017 and each tax year thereafter;

(2) In the case of any other energy project using
renewable energy resources, the following:

(a) If the project maintains during the construction or installation of the energy facility a ratio of Ohio-domiciled full-time equivalent employees to total full-time equivalent employees of not less than seventy-five per cent, six thousand dollars per megawatt of nameplate capacity located in the county as of the thirty-first day of December of the preceding tax year;

(b) If the project maintains during the construction or installation of the energy facility a ratio of Ohio-domiciled full-time equivalent employees to total full-time equivalent employees of less than seventy-five per cent but not less than sixty per cent, seven thousand dollars per megawatt of nameplate capacity located in the county as of the thirty-first day of December of the preceding tax year;

(c) If the project maintains during the construction or installation of the energy facility a ratio of Ohio-domiciled full-time equivalent employees to total full-time equivalent employees of less than sixty per cent but not less than fifty per cent, eight thousand dollars per megawatt of nameplate capacity located in the county as of the thirty-first day of December of the preceding tax year.

(3) In the case of an energy project using clean coal technology, advanced nuclear technology, or cogeneration technology, the following:

(a) If the project maintains during the construction or installation of the energy facility a ratio of Ohio-domiciled full-time equivalent employees to total full-time equivalent employees of not less than seventy-five per cent, six thousand
dollars per megawatt of nameplate capacity located in the county as of the thirty-first day of December of the preceding tax year;

(b) If the project maintains during the construction or installation of the energy facility a ratio of Ohio-domiciled full-time equivalent employees to total full-time equivalent employees of less than seventy-five per cent but not less than sixty per cent, seven thousand dollars per megawatt of nameplate capacity located in the county as of the thirty-first day of December of the preceding tax year;

(c) If the project maintains during the construction or installation of the energy facility a ratio of Ohio-domiciled full-time equivalent employees to total full-time equivalent employees of less than sixty per cent but not less than fifty per cent, eight thousand dollars per megawatt of nameplate capacity located in the county as of the thirty-first day of December of the preceding tax year.

(H) The director of development services in consultation with the tax commissioner shall adopt rules pursuant to Chapter 119. of the Revised Code to implement and enforce this section.

Section 2. That existing section 5727.75 of the Revised Code is hereby repealed.