

As Introduced

131st General Assembly

Regular Session

2015-2016

H. B. No. 190

Representatives Burkley, Brown

A BILL

To amend section 5727.75 and to enact sections 1
4906.21, 4906.211, 4906.212, 4906.213, 4906.214, 2
and 4906.215 of the Revised Code to permit 3
counties to adopt resolutions establishing an 4
alternative setback for wind farms and to extend 5
by five years the deadlines for obtaining the 6
qualified energy project tax exemption. 7

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

Section 1. That section 5727.75 be amended and sections 8
4906.21, 4906.211, 4906.212, 4906.213, 4906.214, and 4906.215 of 9
the Revised Code be enacted to read as follows: 10

Sec. 4906.21. As used in sections 4906.211 to 4906.215 of 11
the Revised Code, "wind farm" means an electric generating plant 12
that consists of wind turbines and associated facilities with a 13
single interconnection to the electrical grid that is designed 14
for, or capable of, operation at an aggregate capacity of five 15
megawatts or more. 16

Sec. 4906.211. (A) Notwithstanding sections 4906.20 and 17
4906.201 of the Revised Code, the board of county commissioners 18
of a county may adopt, for either one specific wind farm 19

proposed to be located within the county or for any future wind 20
farms proposed to be located within the county, a resolution 21
establishing a minimum setback requirement described under 22
division (B) of this section for the wind turbines of the wind 23
farm or farms. 24

(B) The minimum setback shall be both of the following: 25

(1) Equal to a horizontal distance, from the turbine's 26
base to the property line of the wind farm property, equal to 27
one and one-tenth times the total height of the turbine 28
structure as measured from its base to the tip of its highest 29
blade; 30

(2) At least one thousand one hundred twenty-five feet in 31
horizontal distance from the tip of the turbine's nearest blade 32
at ninety degrees to the exterior of the nearest, habitable, 33
residential structure, if any, located on adjacent property at 34
the time that the certification application is filed under 35
section 4906.06 or 4906.20 of the Revised Code. 36

Sec. 4906.212. Before adopting a resolution under section 37
4906.211 of the Revised Code, the board of county commissioners 38
may consult with the power siting board. Any costs related to 39
the consultation shall be paid by the person seeking to 40
construct the wind farm for which the consultation is being 41
made. 42

Sec. 4906.213. (A) Subject to division (B) of this 43
section, a board of county commissioners that adopts a 44
resolution under section 4906.211 of the Revised Code may adopt 45
a resolution revoking the prior resolution at any time. 46

(B) Before a resolution has been revoked, a person seeking 47
to construct a wind farm to which the resolution applies may 48

file notice of the intent to construct the wind farm with the 49
board of county commissioners. If the board revokes the 50
resolution after the notice is filed but before the wind farm 51
has been constructed, the resolution that was revoked shall 52
remain applicable to the wind farm for which the notice was 53
filed, and the revocation, if the revoked resolution had applied 54
generally to all future wind farms within the county, shall 55
apply only prospectively from the time of the revocation. 56

Sec. 4906.214. The power siting board may increase the 57
setback for any specific wind turbine of a wind farm that is 58
subject to the setback requirements adopted pursuant to a 59
resolution adopted under section 4906.211 of the Revised Code, 60
in order to preserve the health, safety, and welfare of 61
neighboring property owners. 62

Sec. 4906.215. Nothing in sections 4906.21 to 4906.214 of 63
the Revised Code contravenes the power siting board's ultimate 64
authority to issue certificates under this chapter for the 65
construction of wind farms. 66

Sec. 5727.75. (A) For purposes of this section: 67

(1) "Qualified energy project" means an energy project 68
certified by the director of development services pursuant to 69
this section. 70

(2) "Energy project" means a project to provide electric 71
power through the construction, installation, and use of an 72
energy facility. 73

(3) "Alternative energy zone" means a county declared as 74
such by the board of county commissioners under division (E) (1) 75
(b) or (c) of this section. 76

(4) "Full-time equivalent employee" means the total number 77

of employee-hours for which compensation was paid to individuals 78
employed at a qualified energy project for services performed at 79
the project during the calendar year divided by two thousand 80
eighty hours. 81

(5) "Solar energy project" means an energy project 82
composed of an energy facility using solar panels to generate 83
electricity. 84

(B) (1) Tangible personal property of a qualified energy 85
project using renewable energy resources is exempt from taxation 86
for tax years 2011 through ~~2016~~2021 if all of the following 87
conditions are satisfied: 88

(a) On or before December 31, ~~2015~~2020, the owner or a 89
lessee pursuant to a sale and leaseback transaction of the 90
project submits an application to the power siting board for a 91
certificate under section 4906.20 of the Revised Code, or if 92
that section does not apply, submits an application for any 93
approval, consent, permit, or certificate or satisfies any 94
condition required by a public agency or political subdivision 95
of this state for the construction or initial operation of an 96
energy project. 97

(b) Construction or installation of the energy facility 98
begins on or after January 1, 2009, and before January 1, ~~2016~~ 99
2021. For the purposes of this division, construction begins on 100
the earlier of the date of application for a certificate or 101
other approval or permit described in division (B) (1) (a) of this 102
section, or the date the contract for the construction or 103
installation of the energy facility is entered into. 104

(c) For a qualified energy project with a nameplate 105
capacity of five megawatts or greater, a board of county 106

commissioners of a county in which property of the project is 107
located has adopted a resolution under division (E) (1) (b) or (c) 108
of this section to approve the application submitted under 109
division (E) of this section to exempt the property located in 110
that county from taxation. A board's adoption of a resolution 111
rejecting an application or its failure to adopt a resolution 112
approving the application does not affect the tax-exempt status 113
of the qualified energy project's property that is located in 114
another county. 115

(2) If tangible personal property of a qualified energy 116
project using renewable energy resources was exempt from 117
taxation under this section beginning in any of tax years ~~2011,~~ 118
~~2012, 2013, 2014, 2015, or 2016~~ through 2021, and the 119
certification under division (E) (2) of this section has not been 120
revoked, the tangible personal property of the qualified energy 121
project is exempt from taxation for tax year ~~2017-2022~~ and all 122
ensuing tax years if the property was placed into service before 123
January 1, ~~2017-2022~~, as certified in the construction progress 124
report required under division (F) (2) of this section. Tangible 125
personal property that has not been placed into service before 126
that date is taxable property subject to taxation. An energy 127
project for which certification has been revoked is ineligible 128
for further exemption under this section. Revocation does not 129
affect the tax-exempt status of the project's tangible personal 130
property for the tax year in which revocation occurs or any 131
prior tax year. 132

(C) Tangible personal property of a qualified energy 133
project using clean coal technology, advanced nuclear 134
technology, or cogeneration technology is exempt from taxation 135
for the first tax year that the property would be listed for 136
taxation and all subsequent years if all of the following 137

circumstances are met: 138

(1) The property was placed into service before January 1, 139
~~2021~~2026. Tangible personal property that has not been placed 140
into service before that date is taxable property subject to 141
taxation. 142

(2) For such a qualified energy project with a nameplate 143
capacity of five megawatts or greater, a board of county 144
commissioners of a county in which property of the qualified 145
energy project is located has adopted a resolution under 146
division (E) (1) (b) or (c) of this section to approve the 147
application submitted under division (E) of this section to 148
exempt the property located in that county from taxation. A 149
board's adoption of a resolution rejecting the application or 150
its failure to adopt a resolution approving the application does 151
not affect the tax-exempt status of the qualified energy 152
project's property that is located in another county. 153

(3) The certification for the qualified energy project 154
issued under division (E) (2) of this section has not been 155
revoked. An energy project for which certification has been 156
revoked is ineligible for exemption under this section. 157
Revocation does not affect the tax-exempt status of the 158
project's tangible personal property for the tax year in which 159
revocation occurs or any prior tax year. 160

(D) Except as otherwise provided in this section, real 161
property of a qualified energy project is exempt from taxation 162
for any tax year for which the tangible personal property of the 163
qualified energy project is exempted under this section. 164

(E) (1) (a) A person may apply to the director of 165
development services for certification of an energy project as a 166

qualified energy project on or before the following dates: 167

(i) December 31, ~~2015~~2020, for an energy project using 168
renewable energy resources; 169

(ii) December 31, ~~2017~~2022, for an energy project using 170
clean coal technology, advanced nuclear technology, or 171
cogeneration technology. 172

(b) The director shall forward a copy of each application 173
for certification of an energy project with a nameplate capacity 174
of five megawatts or greater to the board of county 175
commissioners of each county in which the project is located and 176
to each taxing unit with territory located in each of the 177
affected counties. Any board that receives from the director a 178
copy of an application submitted under this division shall adopt 179
a resolution approving or rejecting the application unless it 180
has adopted a resolution under division (E) (1) (c) of this 181
section. A resolution adopted under division (E) (1) (b) or (c) of 182
this section may require an annual service payment to be made in 183
addition to the service payment required under division (G) of 184
this section. The sum of the service payment required in the 185
resolution and the service payment required under division (G) 186
of this section shall not exceed nine thousand dollars per 187
megawatt of nameplate capacity located in the county. The 188
resolution shall specify the time and manner in which the 189
payments required by the resolution shall be paid to the county 190
treasurer. The county treasurer shall deposit the payment to the 191
credit of the county's general fund to be used for any purpose 192
for which money credited to that fund may be used. 193

The board shall send copies of the resolution by certified 194
mail to the owner of the facility and the director within thirty 195
days after receipt of the application, or a longer period of 196

time if authorized by the director. 197

(c) A board of county commissioners may adopt a resolution 198
declaring the county to be an alternative energy zone and 199
declaring all applications submitted to the director of 200
development services under this division after the adoption of 201
the resolution, and prior to its repeal, to be approved by the 202
board. 203

All tangible personal property and real property of an 204
energy project with a nameplate capacity of five megawatts or 205
greater is taxable if it is located in a county in which the 206
board of county commissioners adopted a resolution rejecting the 207
application submitted under this division or failed to adopt a 208
resolution approving the application under division (E) (1) (b) or 209
(c) of this section. 210

(2) The director shall certify an energy project if all of 211
the following circumstances exist: 212

(a) The application was timely submitted. 213

(b) For an energy project with a nameplate capacity of 214
five megawatts or greater, a board of county commissioners of at 215
least one county in which the project is located has adopted a 216
resolution approving the application under division (E) (1) (b) or 217
(c) of this section. 218

(c) No portion of the project's facility was used to 219
supply electricity before December 31, 2009. 220

(3) The director shall deny a certification application if 221
the director determines the person has failed to comply with any 222
requirement under this section. The director may revoke a 223
certification if the director determines the person, or 224
subsequent owner or lessee pursuant to a sale and leaseback 225

transaction of the qualified energy project, has failed to 226
comply with any requirement under this section. Upon 227
certification or revocation, the director shall notify the 228
person, owner, or lessee, the tax commissioner, and the county 229
auditor of a county in which the project is located of the 230
certification or revocation. Notice shall be provided in a 231
manner convenient to the director. 232

(F) The owner or a lessee pursuant to a sale and leaseback 233
transaction of a qualified energy project shall do each of the 234
following: 235

(1) Comply with all applicable regulations; 236

(2) File with the director of development services a 237
certified construction progress report before the first day of 238
March of each year during the energy facility's construction or 239
installation indicating the percentage of the project completed, 240
and the project's nameplate capacity, as of the preceding 241
thirty-first day of December. Unless otherwise instructed by the 242
director of development services, the owner or lessee of an 243
energy project shall file a report with the director on or 244
before the first day of March each year after completion of the 245
energy facility's construction or installation indicating the 246
project's nameplate capacity as of the preceding thirty-first 247
day of December. Not later than sixty days after June 17, 2010, 248
the owner or lessee of an energy project, the construction of 249
which was completed before June 17, 2010, shall file a 250
certificate indicating the project's nameplate capacity. 251

(3) File with the director of development services, in a 252
manner prescribed by the director, a report of the total number 253
of full-time equivalent employees, and the total number of full- 254
time equivalent employees domiciled in Ohio, who are employed in 255

the construction or installation of the energy facility; 256

(4) For energy projects with a nameplate capacity of five 257
megawatts or greater, repair all roads, bridges, and culverts 258
affected by construction as reasonably required to restore them 259
to their preconstruction condition, as determined by the county 260
engineer in consultation with the local jurisdiction responsible 261
for the roads, bridges, and culverts. In the event that the 262
county engineer deems any road, bridge, or culvert to be 263
inadequate to support the construction or decommissioning of the 264
energy facility, the road, bridge, or culvert shall be rebuilt 265
or reinforced to the specifications established by the county 266
engineer prior to the construction or decommissioning of the 267
facility. The owner or lessee of the facility shall post a bond 268
in an amount established by the county engineer and to be held 269
by the board of county commissioners to ensure funding for 270
repairs of roads, bridges, and culverts affected during the 271
construction. The bond shall be released by the board not later 272
than one year after the date the repairs are completed. The 273
energy facility owner or lessee pursuant to a sale and leaseback 274
transaction shall post a bond, as may be required by the Ohio 275
power siting board in the certificate authorizing commencement 276
of construction issued pursuant to section 4906.10 of the 277
Revised Code, to ensure funding for repairs to roads, bridges, 278
and culverts resulting from decommissioning of the facility. The 279
energy facility owner or lessee and the county engineer may 280
enter into an agreement regarding specific transportation plans, 281
reinforcements, modifications, use and repair of roads, 282
financial security to be provided, and any other relevant issue. 283

(5) Provide or facilitate training for fire and emergency 284
responders for response to emergency situations related to the 285
energy project and, for energy projects with a nameplate 286

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; 290

(6) Maintain a ratio of Ohio-domiciled full-time 291
equivalent employees employed in the construction or 292
installation of the energy project to total full-time equivalent 293
employees employed in the construction or installation of the 294
energy project of not less than eighty per cent in the case of a 295
solar energy project, and not less than fifty per cent in the 296
case of any other energy project. In the case of an energy 297
project for which certification from the power siting board is 298
required under section 4906.20 of the Revised Code, the number 299
of full-time equivalent employees employed in the construction 300
or installation of the energy project equals the number actually 301
employed or the number projected to be employed in the 302
certificate application, if such projection is required under 303
regulations adopted pursuant to section 4906.03 of the Revised 304
Code, whichever is greater. For all other energy projects, the 305
number of full-time equivalent employees employed in the 306
construction or installation of the energy project equals the 307
number actually employed or the number projected to be employed 308
by the director of development services, whichever is greater. 309
To estimate the number of employees to be employed in the 310
construction or installation of an energy project, the director 311
shall use a generally accepted job-estimating model in use for 312
renewable energy projects, including but not limited to the job 313
and economic development impact model. The director may adjust 314
an estimate produced by a model to account for variables not 315
accounted for by the model. 316

(7) For energy projects with a nameplate capacity in 317

excess of two megawatts, establish a relationship with a member 318
of the university system of Ohio as defined in section 3345.011 319
of the Revised Code or with a person offering an apprenticeship 320
program registered with the employment and training 321
administration within the United States department of labor or 322
with the apprenticeship council created by section 4139.02 of 323
the Revised Code, to educate and train individuals for careers 324
in the wind or solar energy industry. The relationship may 325
include endowments, cooperative programs, internships, 326
apprenticeships, research and development projects, and 327
curriculum development. 328

(8) Offer to sell power or renewable energy credits from 329
the energy project to electric distribution utilities or 330
electric service companies subject to renewable energy resource 331
requirements under section 4928.64 of the Revised Code that have 332
issued requests for proposal for such power or renewable energy 333
credits. If no electric distribution utility or electric service 334
company issues a request for proposal on or before December 31, 335
2010, or accepts an offer for power or renewable energy credits 336
within forty-five days after the offer is submitted, power or 337
renewable energy credits from the energy project may be sold to 338
other persons. Division (F) (8) of this section does not apply 339
if: 340

(a) The owner or lessee is a rural electric company or a 341
municipal power agency as defined in section 3734.058 of the 342
Revised Code. 343

(b) The owner or lessee is a person that, before 344
completion of the energy project, contracted for the sale of 345
power or renewable energy credits with a rural electric company 346
or a municipal power agency. 347

(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: 378

(a) If the project maintains during the construction or 379
installation of the energy facility a ratio of Ohio-domiciled 380
full-time equivalent employees to total full-time equivalent 381
employees of not less than seventy-five per cent, six thousand 382
dollars per megawatt of nameplate capacity located in the county 383
as of the thirty-first day of December of the preceding tax 384
year; 385

(b) If the project maintains during the construction or 386
installation of the energy facility a ratio of Ohio-domiciled 387
full-time equivalent employees to total full-time equivalent 388
employees of less than seventy-five per cent but not less than 389
sixty per cent, seven thousand dollars per megawatt of nameplate 390
capacity located in the county as of the thirty-first day of 391
December of the preceding tax year; 392

(c) If the project maintains during the construction or 393
installation of the energy facility a ratio of Ohio-domiciled 394
full-time equivalent employees to total full-time equivalent 395
employees of less than sixty per cent but not less than fifty 396
per cent, eight thousand dollars per megawatt of nameplate 397
capacity located in the county as of the thirty-first day of 398
December of the preceding tax year. 399

(3) In the case of an energy project using clean coal 400
technology, advanced nuclear technology, or cogeneration 401
technology, the following: 402

(a) If the project maintains during the construction or 403
installation of the energy facility a ratio of Ohio-domiciled 404
full-time equivalent employees to total full-time equivalent 405
employees of not less than seventy-five per cent, six thousand 406

dollars per megawatt of nameplate capacity located in the county 407
as of the thirty-first day of December of the preceding tax 408
year; 409

(b) If the project maintains during the construction or 410
installation of the energy facility a ratio of Ohio-domiciled 411
full-time equivalent employees to total full-time equivalent 412
employees of less than seventy-five per cent but not less than 413
sixty per cent, seven thousand dollars per megawatt of nameplate 414
capacity located in the county as of the thirty-first day of 415
December of the preceding tax year; 416

(c) If the project maintains during the construction or 417
installation of the energy facility a ratio of Ohio-domiciled 418
full-time equivalent employees to total full-time equivalent 419
employees of less than sixty per cent but not less than fifty 420
per cent, eight thousand dollars per megawatt of nameplate 421
capacity located in the county as of the thirty-first day of 422
December of the preceding tax year. 423

(H) The director of development services in consultation 424
with the tax commissioner shall adopt rules pursuant to Chapter 425
119. of the Revised Code to implement and enforce this section. 426

Section 2. That existing section 5727.75 of the Revised 427
Code is hereby repealed. 428