

As Introduced

132nd General Assembly

Regular Session

2017-2018

H. B. No. 604

Representative Strahorn

**Cosponsors: Representatives Antonio, Holmes, Ashford, Boggs, Patterson, Miller,
Brown, Craig, O'Brien, West, Smith, K.**

A BILL

To amend sections 4906.20, 4906.201, and 5727.75 of 1
the Revised Code to alter the minimum setback 2
requirement for wind farms of five or more 3
megawatts and to make the authorization of 4
qualified energy project property tax exemptions 5
permanent. 6

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

Section 1. That sections 4906.20, 4906.201, and 5727.75 of 7
the Revised Code be amended to read as follows: 8

Sec. 4906.20. (A) No person shall commence to construct an 9
economically significant wind farm in this state without first 10
having obtained a certificate from the power siting board. An 11
economically significant wind farm with respect to which such a 12
certificate is required shall be constructed, operated, and 13
maintained in conformity with that certificate and any terms, 14
conditions, and modifications it contains. A certificate shall 15
be issued only pursuant to this section. The certificate may be 16
transferred, subject to the approval of the board, to a person 17
that agrees to comply with those terms, conditions, and 18

modifications. 19

(B) The board shall adopt rules governing the 20
certificating of economically significant wind farms under this 21
section. Initial rules shall be adopted within one hundred 22
twenty days after June 24, 2008. 23

(1) The rules shall provide for an application process for 24
certificating economically significant wind farms that is 25
identical to the extent practicable to the process applicable to 26
certificating major utility facilities under sections 4906.06, 27
4906.07, 4906.08, 4906.09, 4906.10, 4906.11, and 4906.12 of the 28
Revised Code and shall prescribe a reasonable schedule of 29
application filing fees structured in the manner of the schedule 30
of filing fees required for major utility facilities. 31

(2) Additionally, the rules shall prescribe reasonable 32
regulations regarding any wind turbines and associated 33
facilities of an economically significant wind farm, including, 34
but not limited to, their location, erection, construction, 35
reconstruction, change, alteration, maintenance, removal, use, 36
or enlargement and including erosion control, aesthetics, 37
recreational land use, wildlife protection, interconnection with 38
power lines and with regional transmission organizations, 39
independent transmission system operators, or similar 40
organizations, ice throw, sound and noise levels, blade shear, 41
shadow flicker, decommissioning, and necessary cooperation for 42
site visits and enforcement investigations. 43

(a) The rules also shall prescribe a minimum setback for a 44
wind turbine of an economically significant wind farm. That 45
minimum shall be equal to a horizontal distance, from the 46
turbine's base to the property line of the wind farm property, 47
equal to one and one-tenth times the total height of the turbine 48

structure as measured from its base to the tip of its highest 49
blade and be at least one thousand one hundred twenty-five feet 50
in horizontal distance from the tip of the turbine's nearest 51
blade at ninety degrees to ~~property line~~ the exterior of the 52
nearest habitable residential structure, if any, located on 53
adjacent property at the time of the certification application. 54

(b) (i) For any existing certificates and amendments 55
thereto, and existing certification applications that have been 56
found by the chairperson to be in compliance with division (A) 57
of section 4906.06 of the Revised Code before the effective date 58
of the amendment of this section by H.B. 59 of the 130th general 59
assembly, September 29, 2013, the distance shall be seven 60
hundred fifty feet instead of one thousand one hundred twenty- 61
five feet. 62

(ii) Any amendment made to an existing certificate after 63
the effective date of the amendment of this section by H.B. 483 64
of the 130th general assembly, September 15, 2014, and before 65
the effective date of the amendment of this section by ...B... 66
of the 132nd general assembly shall be subject to the setback 67
provision of this section as amended by ~~that act~~ H.B. 483 of the 68
130th general assembly. The amendments to this section by ~~that~~ 69
~~act~~ H.B. 483 of the 130th general assembly shall not be 70
construed to limit or abridge any rights or remedies in equity 71
or under the common law. 72

(iii) Any amendment made to an existing certificate after 73
the effective date of the amendment of this section by ...B... 74
of the 132nd general assembly shall be subject to the setback 75
provision of this section as amended by that act. The amendments 76
to this section by that act shall not be construed to limit or 77
abridge any rights or remedies in equity or under the common 78

law. 79

(c) The setback shall apply in all cases except ~~those in~~ 80
~~which all owners when an owner of property adjacent to the a~~ 81
~~parcel that abuts a parcel where a wind farm property waive~~ 82
~~turbine is located waives~~ application of the setback to that 83
~~property parcel~~ pursuant to a procedure the board shall 84
establish by rule and except in which, in a particular case, the 85
board determines that a setback greater than the minimum is 86
necessary. 87

(C) As used in this section, "parcel" has the same meaning 88
as in section 2329.66 of the Revised Code. 89

Sec. 4906.201. (A) An electric generating plant that 90
consists of wind turbines and associated facilities with a 91
single interconnection to the electrical grid that is designed 92
for, or capable of, operation at an aggregate capacity of fifty 93
megawatts or more is subject to the minimum setback requirements 94
established in rules adopted by the power siting board under 95
division (B) (2) of section 4906.20 of the Revised Code. 96

(B) (1) For any existing certificates and amendments 97
thereto, and existing certification applications that have been 98
found by the chairperson to be in compliance with division (A) 99
of section 4906.06 of the Revised Code before the effective date 100
of the amendment of this section by H.B. 59 of the 130th general 101
assembly, September 29, 2013, the distance shall be seven 102
hundred fifty feet instead of one thousand one hundred twenty- 103
five feet. 104

(2) Any amendment made to an existing certificate after 105
the effective date of the amendment of this section by H.B. 483 106
of the 130th general assembly, September 15, 2014, and before 107

the effective date of the amendment of this section by ...B... 108
of the 132nd general assembly shall be subject to the setback 109
provision of this section as amended by ~~that act~~ H.B. 483 of the 110
130th general assembly. The amendments to this section by ~~that~~ 111
~~act~~ H.B. 483 of the 130th general assembly shall not be 112
construed to limit or abridge any rights or remedies in equity 113
or under the common law. 114

(3) Any amendment made to an existing certificate after 115
the effective date of the amendment of this section by ...B... 116
of the 132nd general assembly shall be subject to the setback 117
provision of this section as amended by that act. The amendments 118
to this section by that act shall not be construed to limit or 119
abridge any rights or remedies in equity under the common law. 120

Sec. 5727.75. (A) For purposes of this section: 121

(1) "Qualified energy project" means an energy project 122
certified by the director of development services pursuant to 123
this section. 124

(2) "Energy project" means a project to provide electric 125
power through the construction, installation, and use of an 126
energy facility. 127

(3) "Alternative energy zone" means a county declared as 128
such by the board of county commissioners under division (E) (1) 129
~~(b)~~ (a) or ~~(e)~~ (b) of this section. 130

(4) "Full-time equivalent employee" means the total number 131
of employee-hours for which compensation was paid to individuals 132
employed at a qualified energy project for services performed at 133
the project during the calendar year divided by two thousand 134
eighty hours. 135

(5) "Solar energy project" means an energy project 136

composed of an energy facility using solar panels to generate 137
electricity. 138

(B) (1) Tangible personal property of a qualified energy 139
project using renewable energy resources is exempt from taxation 140
~~for tax years 2011 through 2021~~ if all both of the following 141
conditions, as applicable, are satisfied: 142

(a) ~~On or before December 31, 2020, the~~ The owner or a 143
lessee pursuant to a sale and leaseback transaction of the 144
project submits an application to the power siting board for a 145
certificate under section 4906.20 of the Revised Code, or if 146
that section does not apply, submits an application for any 147
approval, consent, permit, or certificate or satisfies any 148
condition required by a public agency or political subdivision 149
of this state for the construction or initial operation of an 150
energy project. 151

(b) ~~Construction or installation of the energy facility~~ 152
~~begins on or after January 1, 2009, and before January 1, 2021.~~ 153
~~For the purposes of this division, construction begins on the~~ 154
~~earlier of the date of application for a certificate or other~~ 155
~~approval or permit described in division (B) (1) (a) of this~~ 156
~~section, or the date the contract for the construction or~~ 157
~~installation of the energy facility is entered into.~~ 158

~~(e)~~ For a qualified energy project with a nameplate 159
capacity of five megawatts or greater, a board of county 160
commissioners of a county in which property of the project is 161
located has adopted a resolution under division (E) (1) ~~(b)~~ (a) or 162
~~(e)~~ (b) of this section to approve the application submitted 163
under division (E) of this section to exempt the property 164
located in that county from taxation. A board's adoption of a 165
resolution rejecting an application or its failure to adopt a 166

resolution approving the application does not affect the tax- 167
exempt status of the qualified energy project's property that is 168
located in another county. 169

(2) If tangible personal property of a qualified energy 170
project using renewable energy resources ~~was~~ is exempt from 171
taxation under this section ~~beginning in any of tax years 2011-~~ 172
~~through 2021,~~ and the certification under division (E) (2) of 173
this section has not been revoked, the tangible personal 174
property of the qualified energy project is exempt from taxation 175
for the first tax year 2022 that the property would be listed 176
for taxation and all ~~ensuing subsequent tax years if after the~~ 177
property was placed into service ~~before January 1, 2022,~~ as 178
certified in the construction progress report required under 179
division (F) (2) of this section. ~~Tangible personal property that~~ 180
~~has not been placed into service before that date is taxable~~ 181
~~property subject to taxation. An~~, except that an energy project 182
for which certification has been revoked ~~is ineligible for~~ 183
~~further exemption under this section~~ shall be listed for 184
taxation for the tax year following the tax year in which the 185
certification is revoked and ensuing tax years. Revocation does 186
not affect the tax-exempt status of the project's tangible 187
personal property for the tax year in which revocation occurs or 188
any prior tax year. 189

(C) Tangible personal property of a qualified energy 190
project using clean coal technology, advanced nuclear 191
technology, or cogeneration technology is exempt from taxation 192
for the first tax year that the property would be listed for 193
taxation and all subsequent years if ~~all~~ both of the following 194
circumstances, as applicable, are met: 195

(1) ~~The property was placed into service before January 1,~~ 196

~~2021. Tangible personal property that has not been placed into
service before that date is taxable property subject to
taxation.~~ 197
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~~(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)~~ (a) or ~~(c)~~ (b) 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. 200
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~~(3)~~ (2) 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 shall be~~
listed for taxation for the tax year following the tax year in
which the certification is revoked and ensuing tax years. 211
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Revocation does not affect the tax-exempt status of the 217
project's tangible personal property for the tax year in which 218
revocation occurs or any prior tax year. 219

(D) Except as otherwise provided in this section, real 220
property of a qualified energy project is exempt from taxation 221
for any tax year for which the tangible personal property of the 222
qualified energy project is exempted under this section. 223

(E) (1) (a) A person may apply to the director of 224
development services for certification of an energy project as a 225
qualified energy project ~~on or before the following dates:~~ 226

~~(i) December 31, 2020, for an energy project using
renewable energy resources;~~ 227
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~~(ii) December 31, 2017, for an energy project using clean
coal technology, advanced nuclear technology, or cogeneration
technology.~~ 229
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~~(b) The~~ and the director shall forward a copy of each 232
application for certification of an energy project with a 233
nameplate capacity of five megawatts or greater to the board of 234
county commissioners of each county in which the project is 235
located and to each taxing unit with territory located in each 236
of the affected counties. Any board that receives from the 237
director a copy of an application submitted under this division 238
shall adopt a resolution approving or rejecting the application 239
unless it has adopted a resolution under division (E) (1) ~~(e)~~ (b) 240
of this section. A resolution adopted under division (E) (1) ~~(b)~~ 241
(a) or ~~(e)~~ (b) of this section may require an annual service 242
payment to be made in addition to the service payment required 243
under division (G) of this section. The sum of the service 244
payment required in the resolution and the service payment 245
required under division (G) of this section shall not exceed 246
nine thousand dollars per megawatt of nameplate capacity located 247
in the county. The resolution shall specify the time and manner 248
in which the payments required by the resolution shall be paid 249
to the county treasurer. The county treasurer shall deposit the 250
payment to the credit of the county's general fund to be used 251
for any purpose for which money credited to that fund may be 252
used. 253

The board shall send copies of the resolution by certified 254
mail to the owner of the facility and the director within thirty 255
days after receipt of the application, or a longer period of 256

time if authorized by the director. 257

~~(e)-(b)~~ A board of county commissioners may adopt a 258
resolution declaring the county to be an alternative energy zone 259
and declaring all applications submitted to the director of 260
development services under this division after the adoption of 261
the resolution, and prior to its repeal, to be approved by the 262
board. 263

All tangible personal property and real property of an 264
energy project with a nameplate capacity of five megawatts or 265
greater is taxable if it is located in a county in which the 266
board of county commissioners adopted a resolution rejecting the 267
application submitted under this division or failed to adopt a 268
resolution approving the application under division (E) (1) ~~(b)~~ 269
(a) or ~~(e)-(b)~~ of this section. 270

(2) The director shall certify an energy project if ~~all~~ 271
both of the following circumstances exist: 272

(a) ~~The application was timely submitted.~~ 273

~~(b)~~ For an energy project with a nameplate capacity of 274
five megawatts or greater, a board of county commissioners of at 275
least one county in which the project is located has adopted a 276
resolution approving the application under division (E) (1) ~~(b)~~ 277
(a) or ~~(e)-(b)~~ of this section. 278

~~(e)-(b)~~ No portion of the project's facility was used to 279
supply electricity before December 31, 2009. 280

(3) The director shall deny a certification application if 281
the director determines the person has failed to comply with any 282
requirement under this section. The director may revoke a 283
certification if the director determines the person, or 284
subsequent owner or lessee pursuant to a sale and leaseback 285

transaction of the qualified energy project, has failed to 286
comply with any requirement under this section. Upon 287
certification or revocation, the director shall notify the 288
person, owner, or lessee, the tax commissioner, and the county 289
auditor of a county in which the project is located of the 290
certification or revocation. Notice shall be provided in a 291
manner convenient to the director. 292

(F) The owner or a lessee pursuant to a sale and leaseback 293
transaction of a qualified energy project shall do each of the 294
following: 295

(1) Comply with all applicable regulations; 296

(2) File with the director of development services a 297
certified construction progress report before the first day of 298
March of each year during the energy facility's construction or 299
installation indicating the percentage of the project completed, 300
and the project's nameplate capacity, as of the preceding 301
thirty-first day of December. Unless otherwise instructed by the 302
director of development services, the owner or lessee of an 303
energy project shall file a report with the director on or 304
before the first day of March each year after completion of the 305
energy facility's construction or installation indicating the 306
project's nameplate capacity as of the preceding thirty-first 307
day of December. ~~Not later than sixty days after June 17, 2010,~~ 308
~~the owner or lessee of an energy project, the construction of~~ 309
~~which was completed before June 17, 2010, shall file a~~ 310
~~certificate indicating the project's nameplate capacity.~~ 311

(3) File with the director of development services, in a 312
manner prescribed by the director, a report of the total number 313
of full-time equivalent employees, and the total number of full- 314
time equivalent employees domiciled in Ohio, who are employed in 315

the construction or installation of the energy facility; 316

(4) For energy projects with a nameplate capacity of five 317
megawatts or greater, repair all roads, bridges, and culverts 318
affected by construction as reasonably required to restore them 319
to their preconstruction condition, as determined by the county 320
engineer in consultation with the local jurisdiction responsible 321
for the roads, bridges, and culverts. In the event that the 322
county engineer deems any road, bridge, or culvert to be 323
inadequate to support the construction or decommissioning of the 324
energy facility, the road, bridge, or culvert shall be rebuilt 325
or reinforced to the specifications established by the county 326
engineer prior to the construction or decommissioning of the 327
facility. The owner or lessee of the facility shall post a bond 328
in an amount established by the county engineer and to be held 329
by the board of county commissioners to ensure funding for 330
repairs of roads, bridges, and culverts affected during the 331
construction. The bond shall be released by the board not later 332
than one year after the date the repairs are completed. The 333
energy facility owner or lessee pursuant to a sale and leaseback 334
transaction shall post a bond, as may be required by the Ohio 335
power siting board in the certificate authorizing commencement 336
of construction issued pursuant to section 4906.10 of the 337
Revised Code, to ensure funding for repairs to roads, bridges, 338
and culverts resulting from decommissioning of the facility. The 339
energy facility owner or lessee and the county engineer may 340
enter into an agreement regarding specific transportation plans, 341
reinforcements, modifications, use and repair of roads, 342
financial security to be provided, and any other relevant issue. 343

(5) Provide or facilitate training for fire and emergency 344
responders for response to emergency situations related to the 345
energy project and, for energy projects with a nameplate 346

capacity of five megawatts or greater, at the person's expense, 347
equip the fire and emergency responders with proper equipment as 348
reasonably required to enable them to respond to such emergency 349
situations; 350

(6) Maintain a ratio of Ohio-domiciled full-time 351
equivalent employees employed in the construction or 352
installation of the energy project to total full-time equivalent 353
employees employed in the construction or installation of the 354
energy project of not less than eighty per cent in the case of a 355
solar energy project, and not less than fifty per cent in the 356
case of any other energy project. In the case of an energy 357
project for which certification from the power siting board is 358
required under section 4906.20 of the Revised Code, the number 359
of full-time equivalent employees employed in the construction 360
or installation of the energy project equals the number actually 361
employed or the number projected to be employed in the 362
certificate application, if such projection is required under 363
regulations adopted pursuant to section 4906.03 of the Revised 364
Code, whichever is greater. For all other energy projects, the 365
number of full-time equivalent employees employed in the 366
construction or installation of the energy project equals the 367
number actually employed or the number projected to be employed 368
by the director of development services, whichever is greater. 369
To estimate the number of employees to be employed in the 370
construction or installation of an energy project, the director 371
shall use a generally accepted job-estimating model in use for 372
renewable energy projects, including but not limited to the job 373
and economic development impact model. The director may adjust 374
an estimate produced by a model to account for variables not 375
accounted for by the model. 376

(7) For energy projects with a nameplate capacity in 377

excess of two megawatts, establish a relationship with a member 378
of the university system of Ohio as defined in section 3345.011 379
of the Revised Code or with a person offering an apprenticeship 380
program registered with the employment and training 381
administration within the United States department of labor or 382
with the apprenticeship council created by section 4139.02 of 383
the Revised Code, to educate and train individuals for careers 384
in the wind or solar energy industry. The relationship may 385
include endowments, cooperative programs, internships, 386
apprenticeships, research and development projects, and 387
curriculum development. 388

(8) Offer to sell power or renewable energy credits from 389
the energy project to electric distribution utilities or 390
electric service companies subject to renewable energy resource 391
requirements under section 4928.64 of the Revised Code that have 392
issued requests for proposal for such power or renewable energy 393
credits. If no electric distribution utility or electric service 394
company ~~issues a request for proposal on or before December 31,~~ 395
~~2010,~~ or accepts an offer for power or renewable energy credits 396
within forty-five days after the offer is submitted, power or 397
renewable energy credits from the energy project may be sold to 398
other persons. Division (F)(8) of this section does not apply 399
if: 400

(a) The owner or lessee is a rural electric company or a 401
municipal power agency as defined in section 3734.058 of the 402
Revised Code. 403

(b) The owner or lessee is a person that, before 404
completion of the energy project, contracted for the sale of 405
power or renewable energy credits with a rural electric company 406
or a municipal power agency. 407

(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: 438

(a) If the project maintains during the construction or 439
installation of the energy facility a ratio of Ohio-domiciled 440
full-time equivalent employees to total full-time equivalent 441
employees of not less than seventy-five per cent, six thousand 442
dollars per megawatt of nameplate capacity located in the county 443
as of the thirty-first day of December of the preceding tax 444
year; 445

(b) If the project maintains during the construction or 446
installation of the energy facility a ratio of Ohio-domiciled 447
full-time equivalent employees to total full-time equivalent 448
employees of less than seventy-five per cent but not less than 449
sixty per cent, seven thousand dollars per megawatt of nameplate 450
capacity located in the county as of the thirty-first day of 451
December of the preceding tax year; 452

(c) If the project maintains during the construction or 453
installation of the energy facility a ratio of Ohio-domiciled 454
full-time equivalent employees to total full-time equivalent 455
employees of less than sixty per cent but not less than fifty 456
per cent, eight thousand dollars per megawatt of nameplate 457
capacity located in the county as of the thirty-first day of 458
December of the preceding tax year. 459

(3) In the case of an energy project using clean coal 460
technology, advanced nuclear technology, or cogeneration 461
technology, the following: 462

(a) If the project maintains during the construction or 463
installation of the energy facility a ratio of Ohio-domiciled 464
full-time equivalent employees to total full-time equivalent 465
employees of not less than seventy-five per cent, six thousand 466

dollars per megawatt of nameplate capacity located in the county 467
as of the thirty-first day of December of the preceding tax 468
year; 469

(b) If the project maintains during the construction or 470
installation of the energy facility a ratio of Ohio-domiciled 471
full-time equivalent employees to total full-time equivalent 472
employees of less than seventy-five per cent but not less than 473
sixty per cent, seven thousand dollars per megawatt of nameplate 474
capacity located in the county as of the thirty-first day of 475
December of the preceding tax year; 476

(c) If the project maintains during the construction or 477
installation of the energy facility a ratio of Ohio-domiciled 478
full-time equivalent employees to total full-time equivalent 479
employees of less than sixty per cent but not less than fifty 480
per cent, eight thousand dollars per megawatt of nameplate 481
capacity located in the county as of the thirty-first day of 482
December of the preceding tax year. 483

(H) The director of development services in consultation 484
with the tax commissioner shall adopt rules pursuant to Chapter 485
119. of the Revised Code to implement and enforce this section. 486

Section 2. That existing sections 4906.20, 4906.201, and 487
5727.75 of the Revised Code are hereby repealed. 488