

As Introduced

133rd General Assembly

Regular Session

2019-2020

H. B. No. 800

Representatives Wilkin, Upchurch

A BILL

To amend sections 1710.01, 1710.04, 1710.06, 1
3706.01, 3706.03, 3706.041, and 3706.12 of the 2
Revised Code to modify the law governing the 3
financing of local solar and geothermal projects 4
and special improvement district projects. 5

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

Section 1. That sections 1710.01, 1710.04, 1710.06, 6
3706.01, 3706.03, 3706.041, and 3706.12 of the Revised Code be 7
amended to read as follows: 8

Sec. 1710.01. As used in this chapter: 9

(A) "Special improvement district" means a special 10
improvement district organized under this chapter. 11

(B) "Church" means a fellowship of believers, 12
congregation, society, corporation, convention, or association 13
that is formed primarily or exclusively for religious purposes 14
and that is not formed for the private profit of any person. 15

(C) "Church property" means property that is described as 16
being exempt from taxation under division (A) (2) of section 17
5709.07 of the Revised Code and that the county auditor has 18

entered on the exempt list compiled under section 5713.07 of the Revised Code. 19
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(D) "Municipal executive" means the mayor, city manager, or other chief executive officer of the municipal corporation in which a special improvement district is located. 21
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(E) "Participating political subdivision" means the municipal corporation or township, or each of the municipal corporations or townships, that has territory within the boundaries of a special improvement district created under this chapter. 24
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(F) "Legislative authority of a participating political subdivision" means, with reference to a township, the board of township trustees. 29
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(G) "Public improvement" means the planning, design, construction, reconstruction, enlargement, or alteration of any facility or improvement, including the acquisition of land, for which a special assessment may be levied under Chapter 727. of the Revised Code, and includes any special energy improvement project or shoreline improvement project. 32
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(H) "Public service" means any service that can be provided by a municipal corporation or any service for which a special assessment may be levied under Chapter 727. of the Revised Code. 38
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(I) "Special energy improvement project" means any property, device, structure, or equipment necessary for the acquisition, installation, equipping, and improvement of any real or personal property used for the purpose of creating a solar photovoltaic project, a solar thermal energy project, a geothermal energy project, a customer-generated energy project, 42
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~~or~~ an energy efficiency improvement, or an air contaminant 48
abatement project, including for the abatement of radon or lead, 49
whether such real or personal property is publicly or privately 50
owned. 51

(J) "Existing qualified nonprofit corporation" means a 52
nonprofit corporation that existed before the creation of the 53
corresponding district under this chapter, that is composed of 54
members located within or adjacent to the district, that has 55
established a police department under section 1702.80 of the 56
Revised Code, and that is organized for purposes that include 57
acquisition of real property within an area specified by its 58
articles for the subsequent transfer of such property to its 59
members exclusively for charitable, scientific, literary, or 60
educational purposes, or holding and maintaining and leasing 61
such property; planning for and assisting in the development of 62
its members; providing for the relief of the poor and distressed 63
or underprivileged in the area and adjacent areas; combating 64
community deterioration and lessening the burdens of government; 65
providing or assisting others in providing housing for low- or 66
moderate-income persons; and assisting its members by the 67
provision of public safety and security services, parking 68
facilities, transit service, landscaping, and parks. 69

(K) "Energy efficiency improvement" means energy 70
efficiency technologies, products, and activities that reduce or 71
support the reduction of energy consumption, allow for the 72
reduction in demand, or support the production of clean, 73
renewable energy and that are or will be permanently fixed to 74
real property. 75

(L) "Customer-generated energy project" means a wind, 76
biomass, or gasification facility for the production of 77

electricity that meets either of the following requirements:	78
(1) The facility is designed to have a generating capacity of two hundred fifty kilowatts of electricity or less.	79 80
(2) The facility is:	81
(a) Designed to have a generating capacity of more than two hundred fifty kilowatts of electricity;	82 83
(b) Operated in parallel with electric transmission and distribution facilities serving the real property at the site of the customer-generated energy project;	84 85 86
(c) Intended primarily to offset part or all of the facility owner's requirements for electricity at the site of the customer-generated energy project and is located on the facility owner's real property; and	87 88 89 90
(d) Not producing energy for direct sale by the facility owner to the public.	91 92
(M) "Reduction in demand" means a change in customer behavior or a change in customer-owned or operated assets that reduces or has the capability to reduce the demand for electricity as a result of price signals or other incentives.	93 94 95 96
(N) "Electric distribution utility" and "mercantile customer" have the same meanings as in section 4928.01 of the Revised Code.	97 98 99
(O) "Shoreline improvement project" means acquiring, constructing, installing, equipping, improving, maintaining, or repairing real or tangible personal property necessary or useful for making improvements to abate erosion along the Lake Erie shoreline.	100 101 102 103 104

Sec. 1710.04. (A) A special improvement district created 105
under this chapter shall be governed by the board of directors 106
of the special improvement district. The board shall consist of 107
at least five directors. The board shall include ~~a person~~ two 108
individuals appointed by the legislative authority of each 109
participating political subdivision ~~and the municipal executive~~ 110
~~of each municipal corporation with territory within the~~ 111
~~boundaries of the special improvement district.~~ The remainder of 112
the board's ~~members~~ directors shall be elected by members of the 113
district but are not required to be members of the district. 114
~~Except for the municipal executives and the appointees of the~~ 115
~~legislative authorities, and except as otherwise provided in~~ 116
~~this division,~~ Elected members of the board of directors shall 117
be elected at a meeting of the entire membership of the 118
district. The initial election of directors may occur at the 119
first meeting of the entire membership of the district after its 120
creation. All subsequent elections shall be held at a November 121
meeting of the membership. 122

~~Each municipal executive may designate one person who is~~ 123
~~an employee of the municipal corporation involved with its~~ 124
~~planning or economic development functions to serve in the~~ 125
~~municipal executive's stead. This designee shall serve at the~~ 126
~~pleasure of the municipal executive.~~ 127

In the case of a district created by an existing qualified 128
nonprofit corporation, the corporation's board of trustees or 129
other governing board, however denominated, shall be the board 130
of directors of the special improvement district for the 131
purposes of this chapter. The election of directors otherwise 132
required by this division shall not be required, and the 133
requirement that ~~municipal executives and~~ appointees of the 134
legislative authorities be members of the district's board of 135

directors may be satisfied by the membership on the 136
corporation's governing board of representatives of such 137
participating political subdivisions, or may be waived if 138
approved by resolution of the legislative authorities of the 139
participating political subdivisions. 140

(B) A director may file a written statement with the 141
district's secretary at least three days prior to any meeting of 142
the board to have a person act as proxy to carry out the 143
director's rights and responsibilities under this chapter at 144
that meeting. 145

A director may also appoint a designee to carry out the 146
director's rights and responsibilities under this chapter by 147
filing a written designation form with the district's secretary. 148
This form shall include the name and address of the director, 149
the name and address of the designee, and the expiration date, 150
if any, of the designation. 151

A proxy or designee need not be an elector or resident of 152
a participating political subdivision of the district or a 153
member of the district. The appointment of a proxy or designee 154
may be changed by filing a new form with the district's 155
secretary. The most current form filed with the secretary is the 156
valid appointment. Service of any notice upon a proxy or 157
designee at the proxy's or designee's address as shown on that 158
form satisfies any requirements for notification of the 159
director. 160

(C) Notice of the time, date, place, and agenda for any 161
meeting of the board of directors shall be by written notice to 162
each director, transmitted by certified mail, personal service, 163
or electronic device prior to the meeting. If possible, the 164
notice shall be served at least one week prior to the meeting. 165

The board shall act by a majority vote of those present 166
and authorized to vote at any meeting where proper notice has 167
been served. 168

(D) The board shall elect a chairperson, vice-chairperson, 169
secretary, and treasurer of the board. These officers shall 170
serve at the board's pleasure. A director may be elected to more 171
than one office, except that the director elected as treasurer 172
shall not be elected to any other office of the board. 173

By the first day of March of each year, the treasurer 174
shall submit to each member of the district and to the municipal 175
executive, chief fiscal officer, and legislative authority of 176
~~each municipal corporation with territory within the boundaries~~ 177
~~of the special improvement district and the board of township~~ 178
~~trustees of each township with territory within the boundaries~~ 179
~~of the special improvement district,~~participating subdivision a 180
report of the district's activities and financial condition for 181
the previous year. 182

(E) Divisions (B), (C), and (D) of this section do not 183
apply to a district created by an existing qualified nonprofit 184
corporation to the extent those divisions are not consistent 185
with the regulations of the corporation, in which case the 186
regulations of the corporation shall govern. 187

Sec. 1710.06. (A) The board of directors of a special 188
improvement district may develop and adopt one or more written 189
plans for public improvements or public services that benefit 190
all or any part of the district. Each plan shall set forth the 191
specific public improvements or public services that are to be 192
provided, identify the area in which they will be provided, and 193
specify the method of assessment to be used. Each plan for 194
public improvements or public services shall indicate the period 195

of time the assessments are to be levied for the improvements	196
and services and, if public services are included in the plan,	197
the period of time the services are to remain in effect. Plans	198
for public improvements may include the planning, design,	199
construction, reconstruction, enlargement, or alteration of any	200
public improvements and the acquisition of land for the	201
improvements. Plans for public improvements or public services	202
may also include, but are not limited to, provisions for the	203
following:	204
(1) Creating and operating the district and the nonprofit	205
corporation under this chapter, including hiring employees and	206
professional services, contracting for insurance, and purchasing	207
or leasing office space and office equipment and other	208
requirements of the district;	209
(2) Planning, designing, and implementing a public	210
improvements or public services plan, including hiring	211
architectural, engineering, legal, appraisal, insurance,	212
consulting, energy auditing, and planning services, and, for	213
public services, managing, protecting, and maintaining public	214
and private facilities, including public improvements;	215
(3) Conducting court proceedings to carry out this	216
chapter;	217
(4) Paying damages resulting from the provision of public	218
improvements or public services and implementing the plans;	219
(5) Paying the costs of issuing, paying interest on, and	220
redeeming notes and bonds issued for funding public improvements	221
and public services plans;	222
(6) Sale, lease, lease with an option to purchase,	223
conveyance of other interests in, or other contracts for the	224

acquisition, construction, maintenance, repair, furnishing, 225
equipping, operation, or improvement of any special energy 226
improvement project by the special improvement district, between 227
a participating political subdivision and the special 228
improvement district, and between the special improvement 229
district and any owner of real property in the special 230
improvement district on which a special energy improvement 231
project has been acquired, installed, equipped, or improved; and 232

(7) Aggregating the renewable energy credits generated by 233
one or more special energy improvement projects within a special 234
improvement district, upon the consent of the owners of the 235
credits and for the purpose of negotiating and completing the 236
sale of such credits. 237

(B) Once the board of directors of the special improvement 238
district adopts a plan, it shall submit the plan to the 239
legislative authority of each participating political 240
subdivision and the municipal executive of each municipal 241
corporation in which the district is located, if any. The 242
legislative authorities and municipal executives shall review 243
the plan and, within sixty days after receiving it, may submit 244
their comments and recommendations about it to the district. 245
After reviewing these comments and recommendations, the board of 246
directors may amend the plan. It may then submit the plan, 247
amended or otherwise, in the form of a petition to members of 248
the district whose property may be assessed for the plan. Once 249
the petition is signed by those members who own at least sixty 250
per cent of the front footage of property that is to be assessed 251
and that abuts upon a street, alley, public road, place, 252
boulevard, parkway, park entrance, easement, or other public 253
improvement, or those members who own at least seventy-five per 254
cent of the area to be assessed for the improvement or service, 255

the petition may be submitted to each legislative authority for 256
approval. Except as provided in division (H) of section 1710.02 257
of the Revised Code, if the special improvement district was 258
created for the purpose of developing and implementing plans for 259
special energy improvement projects or shoreline improvement 260
projects, the petition required under this division shall be 261
signed by one hundred per cent of the owners of the area of all 262
real property located within the area to be assessed for the 263
special energy improvement project or shoreline improvement 264
project. 265

Each legislative authority shall, by resolution, approve 266
or reject the petition within sixty days after receiving it. If 267
the petition is approved by the legislative authority of each 268
participating political subdivision, the plan contained in the 269
petition shall be effective at the earliest date on which a 270
nonemergency resolution of the legislative authority with the 271
latest effective date may become effective. A plan may not be 272
resubmitted to the legislative authorities and municipal 273
executives more than three times in any twelve-month period. 274

(C) Each participating political subdivision shall levy, 275
by special assessment upon specially benefited property located 276
within the district, the costs of any public improvements or 277
public services plan contained in a petition approved by the 278
participating political subdivisions under this section or 279
division (F) of section 1710.02 of the Revised Code. The levy 280
shall be made in accordance with the procedures set forth in 281
Chapter 727. of the Revised Code, except that: 282

(1) The assessment for each improvements or services plan 283
may be levied by any one or any combination of the methods of 284
assessment listed in section 727.01 of the Revised Code, 285

provided that the assessment is uniformly applied.	286
(2) For the purpose of levying an assessment, the board of directors may combine one or more improvements or services plans or parts of plans and levy a single assessment against specially benefited property.	287 288 289 290
(3) For purposes of special assessments levied by a township pursuant to this chapter, references in Chapter 727. of the Revised Code to the municipal corporation shall be deemed to refer to the township, and references to the legislative authority of the municipal corporation shall be deemed to refer to the board of township trustees.	291 292 293 294 295 296
<u>(4) Collections of a special assessment for the cost of a special energy improvement project may be assigned and remitted to the Ohio air quality development authority pursuant to an agreement entered into under section 3706.12 of the Revised Code.</u>	297 298 299 300 301
Church property or property owned by a political subdivision, including any participating political subdivision in which a special improvement district is located, shall be included in and be subject to special assessments made pursuant to a plan adopted under this section or division (F) of section 1710.02 of the Revised Code, if the church or political subdivision has specifically requested in writing that its property be included within the special improvement district and the church or political subdivision is a member of the district or, in the case of a district created by an existing qualified nonprofit corporation, if the church is a member of the corporation.	302 303 304 305 306 307 308 309 310 311 312 313
(D) All rights and privileges of property owners who are	314

assessed under Chapter 727. of the Revised Code shall be granted 315
to property owners assessed under this chapter, including those 316
rights and privileges specified in sections 727.15 to 727.17 and 317
727.18 to 727.22 of the Revised Code and the right to notice of 318
the resolution of necessity and the filing of the estimated 319
assessment under section 727.13 of the Revised Code. Property 320
owners assessed for public services under this chapter shall 321
have the same rights and privileges as property owners assessed 322
for public improvements under this chapter. 323

Sec. 3706.01. As used in this chapter: 324

(A) "Governmental agency" means a department, division, or 325
other unit of state government, a municipal corporation, county, 326
township, and other political subdivision, or any other public 327
corporation or agency having the power to acquire, construct, or 328
operate air quality facilities, the United States or any agency 329
thereof, and any agency, commission, or authority established 330
pursuant to an interstate compact or agreement. 331

(B) "Person" means any individual, firm, partnership, 332
association, or corporation, or any combination thereof. 333

(C) "Air contaminant" means particulate matter, dust, 334
fumes, gas, mist, smoke, noise, vapor, heat, radioactivity, 335
radiation, or odorous substance, or any combination thereof. 336

(D) "Air pollution" means the presence in the ambient air 337
of one or more air contaminants in sufficient quantity and of 338
such characteristics and duration as to injure human health or 339
welfare, plant or animal life, or property, or that unreasonably 340
interferes with the comfortable enjoyment of life or property. 341

(E) "Ambient air" means that portion of the atmosphere 342
outside of buildings and other enclosures, stacks, or ducts that 343

surrounds human, plant, or animal life, or property.	344
(F) "Emission" means the release into the outdoor atmosphere of an air contaminant.	345 346
(G) "Air quality facility" means any of the following:	347
(1) Any method, modification or replacement of property, process, device, structure, or equipment that removes, reduces, prevents, contains, alters, conveys, stores, disperses, or disposes of air contaminants or substances containing air contaminants, or that renders less noxious or reduces the concentration of air contaminants in the ambient air, including, without limitation, facilities and expenditures that qualify as air pollution control facilities under section 103 (C) (4) (F) of the Internal Revenue Code of 1954, as amended, and regulations adopted thereunder;	348 349 350 351 352 353 354 355 356 357
(2) Motor vehicle inspection stations operated in accordance with, and any equipment used for motor vehicle inspections conducted under, section 3704.14 of the Revised Code and rules adopted under it;	358 359 360 361
(3) Ethanol or other biofuel facilities, including any equipment used at the ethanol or other biofuel facility for the production of ethanol or other biofuels;	362 363 364
(4) Any property or portion thereof used for the collection, storage, treatment, utilization, processing, or final disposal of a by-product or solid waste resulting from any method, process, device, structure, or equipment that removes, reduces, prevents, contains, alters, conveys, stores, disperses, or disposes of air contaminants, or that renders less noxious or reduces the concentration of air contaminants in the ambient air;	365 366 367 368 369 370 371 372

(5) Any property, device, or equipment that promotes the reduction of emissions of air contaminants into the ambient air through improvements in the efficiency of energy utilization or energy conservation;	373 374 375 376
(6) Any coal research and development project conducted under Chapter 1555. of the Revised Code;	377 378
(7) As determined by the director of the Ohio coal development office, any property or portion thereof that is used for the collection, storage, treatment, utilization, processing, or final disposal of a by-product resulting from a coal research and development project as defined in section 1555.01 of the Revised Code or from the use of clean coal technology, excluding any property or portion thereof that is used primarily for other subsequent commercial purposes;	379 380 381 382 383 384 385 386
(8) Any property or portion thereof that is part of the FutureGen project of the United States department of energy or related to the siting of the FutureGen project;	387 388 389
(9) Any property, device, or equipment that promotes the reduction of emissions of air contaminants into the ambient air through the generation of clean, renewable energy with renewable energy resources or advanced energy resources as defined in section 3706.25 of the Revised Code;	390 391 392 393 394
(10) Any property, device, structure, or equipment necessary for the manufacture and production of equipment described as an air quality facility under this chapter;	395 396 397
(11) Any property, device, or equipment related to the recharging or refueling of vehicles that promotes the reduction of emissions of air contaminants into the ambient air through the use of an alternative fuel as defined in section 125.831 of	398 399 400 401

the Revised Code or the use of a renewable energy resource as 402
defined in section 3706.25 of the Revised Code; 403

(12) Any special energy improvement project, as that term 404
is defined in section 1710.01 of the Revised Code, for the 405
improvement of housing. 406

"Air quality facility" further includes any property or 407
system to be used in whole or in part for any of the purposes in 408
divisions (G) (1) to ~~(11)~~ (12) of this section, whether another 409
purpose is also served, and any property or system incidental to 410
or that has to do with, or the end purpose of which is, any of 411
the foregoing. Air quality facilities ~~that are defined in this~~ 412
~~division described in divisions (G) (1) to (11) of this section~~ 413
shall be for industry, commerce, distribution, or research, 414
including public utility companies, and are hereby determined to 415
be those that qualify as facilities for the control of air 416
pollution and thermal pollution related to air under Section 13 417
of Article VIII, Ohio Constitution. Air quality facilities 418
described in division (G) (12) of this section are hereby 419
determined to be those that qualify as facilities for the 420
improvement of publicly or privately owned housing under Section 421
16 of Article VIII, Ohio Constitution. 422

(H) "Project" or "air quality project" means any air 423
quality facility, including undivided or other interests 424
therein, acquired or to be acquired or constructed or to be 425
constructed by the Ohio air quality development authority under 426
this chapter, or acquired or to be acquired or constructed or to 427
be constructed by a governmental agency or person with all or a 428
part of the cost thereof being paid from a loan or grant from 429
the authority under this chapter or otherwise paid from the 430
proceeds of air quality revenue bonds, including all buildings 431

and facilities that the authority determines necessary for the 432
operation of the project, together with all property, rights, 433
easements, and interests that may be required for the operation 434
of the project. 435

(I) "Cost" as applied to an air quality project means the 436
cost of acquisition and construction, the cost of acquisition of 437
all land, rights-of-way, property rights, easements, franchise 438
rights, and interests required for such acquisition and 439
construction, the cost of demolishing or removing any buildings 440
or structures on land so acquired, including the cost of 441
acquiring any lands to which such buildings or structures may be 442
moved, the cost of acquiring or constructing and equipping a 443
principal office and sub-offices of the authority, the cost of 444
diverting highways, interchange of highways, and access roads to 445
private property, including the cost of land or easements for 446
such access roads, the cost of public utility and common carrier 447
relocation or duplication, the cost of all machinery, 448
furnishings, and equipment, financing charges, interest prior to 449
and during construction and for no more than eighteen months 450
after completion of construction, engineering, expenses of 451
research and development with respect to air quality facilities, 452
the cost of any commodity contract, including fees and expenses 453
related thereto, legal expenses, plans, specifications, surveys, 454
studies, estimates of cost and revenues, working capital, other 455
expenses necessary or incident to determining the feasibility or 456
practicability of acquiring or constructing such project, 457
administrative expense, and such other expense as may be 458
necessary or incident to the acquisition or construction of the 459
project, the financing of such acquisition or construction, 460
including the amount authorized in the resolution of the 461
authority providing for the issuance of air quality revenue 462

bonds to be paid into any special funds from the proceeds of 463
such bonds, and the financing of the placing of such project in 464
operation. Any obligation, cost, or expense incurred by any 465
governmental agency or person for surveys, borings, preparation 466
of plans and specifications, and other engineering services, or 467
any other cost described above, in connection with the 468
acquisition or construction of a project may be regarded as a 469
part of the cost of that project and may be reimbursed out of 470
the proceeds of air quality revenue bonds as authorized by this 471
chapter. 472

(J) "Owner" includes an individual, copartnership, 473
association, or corporation having any title or interest in any 474
property, rights, easements, or interests authorized to be 475
acquired by this chapter. 476

(K) "Revenues" means all rentals and other charges 477
received by the authority for the use or services of any air 478
quality project, any gift or grant received with respect to any 479
air quality project, any moneys received with respect to the 480
lease, sublease, sale, including installment sale or conditional 481
sale, or other disposition of an air quality project, moneys 482
received in repayment of and for interest on any loans made by 483
the authority to a person or governmental agency, whether from 484
the United States or any department, administration, or agency 485
thereof, or otherwise, proceeds of such bonds to the extent that 486
use thereof for payment of principal of, premium, if any, or 487
interest on the bonds is authorized by the authority, amounts 488
received or otherwise derived from a commodity contract or from 489
the sale of the related commodity under such a contract, 490
proceeds from any insurance, condemnation, or guaranty 491
pertaining to a project or property mortgaged to secure bonds or 492
pertaining to the financing of the project, and income and 493

profit from the investment of the proceeds of air quality	494
revenue bonds or of any revenues.	495
(L) "Public roads" includes all public highways, roads,	496
and streets in the state, whether maintained by the state,	497
county, city, township, or other political subdivision.	498
(M) "Public utility facilities" includes tracks, pipes,	499
mains, conduits, cables, wires, towers, poles, and other	500
equipment and appliances of any public utility.	501
(N) "Construction," unless the context indicates a	502
different meaning or intent, includes reconstruction,	503
enlargement, improvement, or providing furnishings or equipment.	504
(O) "Air quality revenue bonds," unless the context	505
indicates a different meaning or intent, includes air quality	506
revenue notes, air quality revenue renewal notes, and air	507
quality revenue refunding bonds, except that notes issued in	508
anticipation of the issuance of bonds shall have a maximum	509
maturity of five years as provided in section 3706.05 of the	510
Revised Code and notes or renewal notes issued as the definitive	511
obligation may be issued maturing at such time or times with a	512
maximum maturity of forty years from the date of issuance of the	513
original note.	514
(P) "Solid waste" means any garbage; refuse; sludge from a	515
waste water treatment plant, water supply treatment plant, or	516
air pollution control facility; and other discarded material,	517
including solid, liquid, semisolid, or contained gaseous	518
material resulting from industrial, commercial, mining, and	519
agricultural operations, and from community activities, but not	520
including solid or dissolved material in domestic sewage, or	521
solid or dissolved material in irrigation return flows or	522

industrial discharges that are point sources subject to permits 523
under section 402 of the "Federal Water Pollution Control Act 524
Amendments of 1972," 86 Stat. 880, 33 U.S.C.A. 1342, as amended, 525
or source, special nuclear, or byproduct material as defined by 526
the "Atomic Energy Act of 1954," 68 Stat. 921, 42 U.S.C.A. 2011, 527
as amended. 528

(Q) "Sludge" means any solid, semisolid, or liquid waste, 529
other than a recyclable by-product, generated from a municipal, 530
commercial, or industrial waste water treatment plant, water 531
supply plant, or air pollution control facility or any other 532
such wastes having similar characteristics and effects. 533

(R) "Ethanol or other biofuel facility" means a plant at 534
which ethanol or other biofuel is produced. 535

(S) "Ethanol" means fermentation ethyl alcohol derived 536
from agricultural products, including potatoes, cereal, grains, 537
cheese whey, and sugar beets; forest products; or other 538
renewable or biomass resources, including residue and waste 539
generated from the production, processing, and marketing of 540
agricultural products, forest products, and other renewable or 541
biomass resources, that meets all of the specifications in the 542
American society for testing and materials (ASTM) specification 543
D 4806-88 and is denatured as specified in Parts 20 and 21 of 544
Title 27 of the Code of Federal Regulations. 545

(T) "Biofuel" means any fuel that is made from cellulosic 546
biomass resources, including renewable organic matter, crop 547
waste residue, wood, aquatic plants and other crops, animal 548
waste, solid waste, or sludge, and that is used for the 549
production of energy for transportation or other purposes. 550

(U) "FutureGen project" means the buildings, equipment, 551

and real property and functionally related buildings, equipment, 552
and real property, including related research projects that 553
support the development and operation of the buildings, 554
equipment, and real property, designated by the United States 555
department of energy and the FutureGen industrial alliance, 556
inc., as the coal-fueled, zero-emissions power plant designed to 557
prove the technical and economic feasibility of producing 558
electricity and hydrogen from coal and nearly eliminating carbon 559
dioxide emissions through capture and permanent storage. 560

(V) "Commodity contract" means a contract or series of 561
contracts entered into in connection with the acquisition or 562
construction of air quality facilities for the purchase or sale 563
of a commodity that is eligible for prepayment with the proceeds 564
of federally tax exempt bonds under sections 103, 141, and 148 565
of the Internal Revenue Code of 1986, as amended, and 566
regulations adopted under it. 567

Sec. 3706.03. It is hereby declared to be the public 568
policy of the state through the operations of the Ohio air 569
quality development authority under this chapter to contribute 570
toward one or more of the following: to provide for the 571
conservation of air as a natural resource of the state, and to 572
prevent or abate the pollution thereof, to provide for the 573
comfort, health, safety, and general welfare of all employees, 574
as well as all other inhabitants of the state, to assist in the 575
financing of air quality facilities for, as applicable to the 576
facility, industry, commerce, distribution, and research, 577
including public utility companies, or the improvement of 578
housing, to create or preserve jobs and employment opportunities 579
or improve the economic welfare of the people, or assist and 580
cooperate with governmental agencies in achieving such purposes. 581
In furtherance of such public policy the Ohio air quality 582

development authority may initiate, acquire, construct, 583
maintain, repair, and operate air quality projects or cause the 584
same to be operated pursuant to a lease, sublease, or agreement 585
with any person or governmental agency; may make loans and 586
grants to governmental agencies for the acquisition or 587
construction of air quality facilities by such governmental 588
agencies; may make loans to persons for the acquisition or 589
construction of air quality facilities by such persons; may 590
enter into commodity contracts with, or make loans for the 591
purpose of entering into commodity contracts to, any person, 592
governmental agency, or entity located within or without the 593
state in connection with the acquisition or construction of air 594
quality facilities; and may issue air quality revenue bonds of 595
this state payable solely from revenues, to pay the cost of such 596
projects, including any related commodity contracts. Any air 597
quality project shall be determined by the authority to be not 598
inconsistent with any applicable air quality standards duly 599
established and then required to be met pursuant to the "Clean 600
Air Act," 84 Stat. 1679 (1970), 42 U.S.C.A. 1857, as amended. 601
Any resolution of the authority providing for acquiring or 602
constructing such projects or for making a loan or grant for 603
such projects shall include a finding by the authority that such 604
determination has been made. Determinations by resolution of the 605
authority that a project is an air quality facility under this 606
chapter and is consistent with the purposes of this chapter and 607
section 13 or Section 16 of Article VIII, Ohio Constitution, ~~and~~ 608
~~this chapter~~ as applicable to the facility, shall be conclusive 609
as to the validity and enforceability of the air quality revenue 610
bonds issued to finance such project and of the resolutions, 611
trust agreements or indentures, leases, subleases, sale 612
agreements, loan agreements, and other agreements made in 613
connection therewith, all in accordance with their terms. 614

Sec. 3706.041. (A) With respect to projects, and the 615
financing thereof, for industry, commerce, distribution, or 616
research, including public utility companies, or for the 617
improvement of housing, as applicable to the facility, under 618
agreements whereby the person to whom the project is to be 619
leased, subleased, or sold, or to whom a loan is to be made for 620
the project, is to make payments sufficient to pay all of the 621
principal of, premium, if any, and interest on the air quality 622
revenue bonds issued for the project, or the counterparty under 623
any related commodity contract agrees to make payments 624
sufficient in amount to pay all of the principal of, premium, if 625
any, and interest on the related air quality revenue bonds, the 626
Ohio air quality development authority may, in addition to other 627
powers under this chapter: 628

(1) Make loans for the acquisition or construction of the 629
project to such person upon such terms as the authority may 630
determine or authorize, including secured or unsecured loans, 631
and, in connection therewith, enter into loan agreements and 632
other agreements, including commodity contracts, accept notes 633
and other forms of obligation to evidence such indebtedness and 634
mortgages, liens, pledges, assignments, or other security 635
interests to secure such indebtedness, which may be prior or 636
subordinate to or on a parity with other indebtedness, 637
obligations, mortgages, pledges, assignments, other security 638
interests, or liens or encumbrances, and take such actions as 639
may be considered by it appropriate to protect such security and 640
safeguard against losses, including, without limitation thereto, 641
foreclosure and the bidding upon and purchase of property upon 642
foreclosure or other sale. 643

(2) Sell such project under such terms as it may 644
determine, including, without limitation thereto, sale by 645

conditional sale or installment sale, under which title may pass 646
prior to or after completion of the project or payment or 647
provisions for payment of all principal of, premium, if any, and 648
interest on such bonds, or at any other time provided in such 649
agreement pertaining to such sale, and including sale under an 650
option to purchase at a price which may be a nominal amount or 651
less than true value at the time of purchase. 652

(3) Grant a mortgage, lien, or other encumbrance on, or 653
pledge or assignment of, or other security interest with respect 654
to, all or any part of the project, revenues, reserve funds, or 655
other funds established in connection with such bonds, or on, 656
of, or with respect to any lease, sublease, sale, conditional 657
sale or installment sale agreement, loan agreement, or other 658
agreement pertaining to the lease, sublease, sale, or other 659
disposition of a project or pertaining to a loan made for a 660
project, or any guaranty or insurance agreement made with 661
respect thereto, or any interest of the authority therein, or 662
any other interest granted, assigned, or released to secure 663
payments of the principal of, premium, if any, or interest on 664
the bonds or to secure any other payments to be made by the 665
authority, which mortgage, lien, encumbrance, pledge, 666
assignment, or other security interest may be prior or 667
subordinate to or on a parity with any other mortgage, 668
assignment, other security interest, or lien or encumbrance. 669

(4) Provide that the interest on such bonds may be at a 670
variable rate or rates changing from time to time in accordance 671
with a base or formula as authorized by the authority. 672

(5) Contract for the acquisition or construction of such 673
project or any part thereof, including any related commodity 674
contracts, and for the leasing, subleasing, sale or other 675

disposition of such project in a manner determined by the 676
authority in its sole discretion, without necessity for 677
competitive bidding or performance bonds. 678

(B) Property comprising a project, except a project 679
authorized by the Ohio air quality development authority under 680
division (G) (12) of section 3706.01 of the Revised Code, shall 681
not be subject to taxes or assessments and so long as the bonds 682
or notes issued to finance the costs of such project are 683
outstanding, and the transfer of title to or possession of such 684
property to the person to whom a loan or installment sale or 685
conditional sale with respect to such project is made shall not 686
be subject to the taxes levied pursuant to Chapters 5739. and 687
5741. of the Revised Code. 688

The authority shall certify the property comprising a 689
project which is exempt from taxes and assessments pursuant to 690
this section, and shall send, by certified mail, copies of such 691
certification to the owner of such exempt property, to the tax 692
commissioner, and to the county auditor of the county or 693
counties in which any such exempt property is located. 694

Each county auditor shall maintain a separate list of all 695
property exempt pursuant to this section and sections 6121.044 696
and 6123.041 of the Revised Code, in addition to the list of 697
exempt property required to be maintained pursuant to section 698
5713.07 of the Revised Code. 699

(C) The authority, in the lease, sale or loan agreement 700
with respect to a project referred to in division (A) of this 701
section, shall make appropriate provision for adequate 702
maintenance of the project. 703

(D) With respect to the projects referred to in this 704

section, the authority granted by this section is cumulative and 705
supplementary to all other authority granted in this chapter. 706
The authority granted by this section does not alter or impair 707
any similar authority granted elsewhere in this chapter for or 708
with respect to other projects. 709

Sec. 3706.12. The Ohio air quality development authority 710
may charge, alter, and collect rentals or other charges for the 711
use or services of any air quality project and contract in the 712
manner provided by this section with one or more persons, one or 713
more governmental agencies, or any combination thereof, desiring 714
the use or services of such project, and fix the terms, 715
conditions, rentals, or other charges for such use or services. 716
Such rentals or other charges shall not be subject to 717
supervision or regulation by any other authority, commission, 718
board, bureau, or agency of the state and such contract may 719
provide for acquisition by such person or governmental agency of 720
all or any part of such air quality project for such 721
consideration payable over the period of the contract or 722
otherwise as the authority in its sole discretion determines to 723
be appropriate, but subject to the provisions of any resolution 724
authorizing the issuance of air quality revenue bonds or notes 725
or air quality revenue refunding bonds of the authority or any 726
trust agreement securing the same. Any governmental agency that 727
has power to construct, operate, and maintain air quality 728
facilities may enter into a contract or lease with the authority 729
whereby the use or services of any air quality project of the 730
authority will be made available to such governmental agency and 731
may pay for such use or services such rentals or other charges 732
as may be agreed to by the authority and such governmental 733
agency. 734

Any governmental agency or combination of governmental 735

agencies may cooperate with the authority in the acquisition or 736
construction of an air quality project and shall enter into such 737
agreements with the authority as may be necessary, with a view 738
to effective cooperative action and safeguarding of the 739
respective interests of the parties thereto, which agreements 740
shall provide for such contributions by the parties thereto in 741
such proportion as may be agreed upon and such other terms as 742
may be mutually satisfactory to the parties including without 743
limitation the authorization of the construction of the project 744
by one of the parties acting as agent for all of the parties and 745
the ownership and control of the project by the authority to the 746
extent necessary or appropriate for purposes of the issuance of 747
air quality revenue bonds by the authority. Any governmental 748
agency may provide the funds for the payment of such 749
contribution as is required under such agreements by the levy of 750
taxes, assessments, or rentals and other charges for the use of 751
the utility system of which the air quality project is a part or 752
to which it is connected, if otherwise authorized by the laws 753
governing such governmental agency in the construction of the 754
type of air quality project provided for in the agreements, and 755
may pay the proceeds from the collection of such taxes, 756
assessments, utility rentals, or other charges to the authority 757
pursuant to such agreements; or the governmental agency may 758
issue bonds or notes, if authorized by such laws, in 759
anticipation of the collection of such taxes, assessments, 760
utility rentals, or other charges and may pay the proceeds of 761
such bonds or notes to the authority pursuant to such 762
agreements. In addition any governmental agency may provide the 763
funds for the payment of such contribution by the appropriation 764
of money or, if otherwise authorized by law, by the issuance of 765
bonds or notes and may pay such appropriated money or the 766
proceeds of such bonds or notes to the authority pursuant to 767

such agreements. The agreement by the governmental agency to 768
provide such contribution, whether from appropriated money or 769
from the proceeds of such taxes, assessments, utility rentals, 770
or other charges, or such bonds or notes, or any combination 771
thereof, shall not be subject to Chapter 133. of the Revised 772
Code or any regulations or limitations contained therein. The 773
proceeds from the collection of such taxes or assessments, and 774
any interest earned thereon, shall be paid into a special fund 775
immediately upon the collection thereof by the governmental 776
agency for the purpose of providing such contribution at the 777
times required under such agreements. 778

When the contribution of any governmental agency is to be 779
made over a period of time from the proceeds of the collection 780
of special assessments, the interest accrued and to accrue 781
before the first installment of such assessments shall be 782
collected which is payable by such governmental agency on such 783
contribution under the terms and provisions of such agreements 784
shall be treated as part of the cost of the improvement for 785
which such assessments are levied, and that portion of such 786
assessments as are collected in installments shall bear interest 787
at the same rate as such governmental agency is obligated to pay 788
on such contribution under the terms and provisions of such 789
agreements and for the same period of time as the contribution 790
is to be made under such agreements. If the assessment or any 791
installment thereof is not paid when due, it shall bear interest 792
until the payment thereof at the same rate as such contribution 793
and the county auditor shall annually place on the tax list and 794
duplicate the interest applicable to such assessment and the 795
penalty and additional interest thereon as otherwise authorized 796
by law. 797

Any governmental agency, pursuant to a favorable vote of 798

the electors in an election held before or after June 1, 1970, 799
for the purpose of issuing bonds to provide funds to acquire, 800
construct, or equip, or provide real estate and interests in 801
real estate for, an air quality facility, whether or not such 802
governmental agency, at the time of such election, had the 803
authority to pay the proceeds from such bonds or notes issued in 804
anticipation thereof to the authority as provided in this 805
section, may issue such bonds or notes in anticipation of the 806
issuance thereof and pay the proceeds thereof to the authority 807
in accordance with its agreement with the authority; provided, 808
that the legislative authority of the governmental agency find 809
and determine that the air quality project to be acquired or 810
constructed by the authority in cooperation with such 811
governmental agency will serve the same public purpose and meet 812
substantially the same public need as the facility otherwise 813
proposed to be acquired or constructed by the governmental 814
agency with the proceeds of such bonds or notes. 815

The Ohio air quality development authority may enter into 816
an agreement under this section with a municipal corporation or 817
a special improvement district created under Chapter 1710. of 818
the Revised Code whereby the authority issues air quality 819
revenue bonds or notes under section 3706.05 of the Revised Code 820
and remits the proceeds to the municipal corporation or district 821
to fund the cost of special energy improvement projects, and the 822
municipal corporation or district assigns and remits the 823
proceeds of a special assessment assessed under Chapter 727. or 824
section 1710.06 of the Revised Code for paying the costs of 825
those projects to the authority for the purpose of servicing 826
those bonds and notes. Such an agreement may require that the 827
bonds and notes issued by the authority be secured by a trust 828
agreement between the authority and a corporate trustee pursuant 829

to section 3706.07 of the Revised Code. 830

Section 2. That existing sections 1710.01, 1710.04, 831
1710.06, 3706.01, 3706.03, 3706.041, and 3706.12 of the Revised 832
Code are hereby repealed. 833