



COUNTY ADVISORY BULLETIN

CAB

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BULLETIN 2013-04

OCTOBER, 2013

ALTERNATIVE ENERGY TAX EXEMPTION

COMMISSIONERS GIVEN AUTHORITY TO EXEMPT A QUALIFYING ENERGY FACILITY FROM PROPERTY TAXATION AND REQUIRE A PAYMENT IN LIEU OF TAXES (P.I.L.O.T) TO BE MADE BASED UPON THE NAMEPLATE CAPACITY OF THE FACILITY

BILL: Am. Sub. S.B. 232 (128th General Assembly)

REVISED CODE SECTIONS EFFECTED:

ENACTS: 1710.061, 4935.10, and 5727.75

AMENDS: 717.25, 1710.01, 1710.02, 1710.06, 1710.07, 4928.01, 4928.64, 5709.53, 5713.30, 5713.34, 5727.01, 5727.02, 5727.06, 5727.11, 5727.111, 5727.15, 5727.30, and 5739.02

EFFECTIVE: June 17, 2010

LEAD SPONSORS: Senator Widener and Representative Letson

HOUSE COSPONSORS: Bolon, Book, Bubp, Celeste, Domenick, Driehaus, Evans, Fende, Garland, Garrison, Gerberry, Harris, Harwood, Hite, Koziura, McClain, Murray, Newcomb, O'Farrell, Otterman, Ruhl, Szollosi, Walter, Williams, B., Yuko

SENATE COSPONSORS: Goodman, Jones, Wagoner, Fedor, Harris, Miller, D., Miller, R., Morano, Turner, Wilson, Strahorn

BILL SUMMARY

Senate Bill 232 represents the Administration's and General Assembly's effort to encourage the development of alternative energy facilities in the state of Ohio by offering such projects an exemption from their tax liability. As you may recall, the state's first attempt to promote alternative energy was the enactment of an alternative energy standard portfolio under SB 221 (127th General Assembly). Subsequent to SB 221, the Legislature also addressed siting concerns, in particular in regards to wind projects, by passing House Bill 562 (127th General Assembly). More recently, the Legislature included language within the biennial state operating

budget (HB 59, 130th General Assembly) that modified a few of the various deadlines as well as established new minimum setbacks.¹

The bill exempts from property taxation the tangible personal property and related real property of an “energy facility” that generates electricity from “renewable energy resources,” “clean coal technology,” “advanced nuclear technology,” and “cogeneration technology” and has been certified by the Director of the Ohio Development Services Agency as a “qualified energy project.” The exemption does not apply to any facility used to supply electricity before December 31, 2009.

The legislation generally establishes four categories of such facilities with varying tax treatments. The category of primary interest for commissioners will be those projects with a “nameplate capacity” [defined at ORC 5727.01(Q)] of five megawatts or greater. For such projects, the law requires the board of county commissioners to approve any such exemption of property sited in their respective county.

If granted the property tax exemption, the qualified energy project is required to make an annual Payment in Lieu of Taxes (P.I.L.O.T.) which is comprised of two parts:

1. A **mandatory service payment** which is calculated based upon the percentage of Ohio jobs that were used during the installation and construction of the project and is distributed to the taxing jurisdictions in which the project is located; and
2. An **additional annual service payment** which is to be paid into the county’s general fund.

The sum of the two payments may not exceed \$9,000 per megawatt of nameplate capacity.

Before construction may begin on any “major utility facility” within the state of Ohio, which includes a wind farm of five megawatts (MW) or greater, a certificate of environmental compatibility and public need must be obtained from the Ohio Power Siting Board (OPSB). OPSB’s approval for construction is an entirely separate and distinct issue from the classification of the project as a qualified energy project by the Director of the Department of the Ohio Development Services Agency and the project owner’s subsequent request for property tax exemption from a board of commissioners. An energy project’s owners may choose to construct their project without seeking a tax exemption. They also may construct their project after being denied the tax exemption by a board of commissioners in which case the project will pay the full taxes levied on the assessed valuation of the project’s assets.

Terms in quotations are defined in: Appendix [DEFINITIONS]

¹ While this CAB generally does not address siting issues, HB 59 extended the minimum setback for wind turbines within an “economically significant wind farm.” The minimum setback for projects already approved and amendments thereto or for existing project applications is equal to one and one-tenth times the total height of the turbine structure as measured from its base to the tip of its highest blade and at least seven hundred and fifty feet in horizontal distance from the tip of turbines’ nearest blade at ninety degrees to the exterior of the nearest, habitable, residential structure, if any located on adjacent property at the time of the certification. For new projects subsequent to the effective date of HB 59 (September 29, 2013), the horizontal distance minimum setback is extended to one thousand one hundred twenty feet.

The overall deadlines for applying for an exemption were extended by an additional two years through a provision contained in HB 153 of the 129th GA – the state biennial state budget bill. These extensions have been updated in this CAB.

TAX EXEMPTION AUTHORIZED BY THE LEGISLATION

SB 232 establishes four categories of such facilities with varying tax treatments for:

1. Projects generating less than 250 KW;
2. Energy projects generating between 250 kilowatts (KW) and 5 MW in which the power produced is sold;
3. Government energy projects not producing energy for sale; and
4. Projects in excess of 5 MW.

For a more detailed discussion of the first three categories, please see *SMALL PRODUCER/GOVERNMENT EXEMPTION* on page 10 of this CAB.

Current law subjects public utilities to property and excise taxation assessed under ORC Chapter 5727. Electricity-related public utility companies are subject to the real and tangible personal property taxes, the commercial activity tax, and, if the company distributes electricity to end users in Ohio, to the kilowatt-hour tax, which is an annual tax, measured by the number of kilowatt-hours distributed.

The bill creates an "energy company" as a new type of electricity-related public utility. An energy company is defined to be a person engaged in the business of generating, transmitting, or distributing electricity in Ohio for use by others from an energy facility with an aggregate nameplate capacity in excess of 250 kilowatts.

The bill allows an exemption from the tangible personal property and real property (up to a ½ acre per turbine in the case of a wind project) of an energy project certified by the Director of the Ohio Development Services Agency as a qualified energy project. An energy project is defined to be a project to provide electric power through the construction, installation, and use of an energy facility. However, for energy projects of five megawatts or greater, a board of county commissioners must approve the exemption. If a board of county commissioners determines to grant an exemption for energy projects of five megawatts or greater in the county, the board must adopt a resolution granting the property tax exemption.

A board's adoption of a resolution rejecting an application for tax exemption or its failure to adopt a resolution approving the application for exemption does not affect the tax-exempt status of the qualified energy project's property that is located in another county. In other words, if a project lies in County A and County B, the decision of board of commissioners in County A as to whether to grant an exemption for turbines in County A is wholly separate from any determination by the board of commissioners in County B as to whether to grant an exemption for turbines within County B.

The tangible personal property and real property of an energy project using renewable energy resources that is certified by the Director of the Ohio Development Services Agency as a

qualified energy project and approved by resolution of the board of county commissioners for an exemption from taxation is exempt from taxation for tax years 2011 through 2016.

If the tangible personal property of a qualified energy project using renewable energy resources was exempt for tax years 2011 through 2016, the tangible personal property of the project is tax-exempt for tax year 2017 and all ensuing tax years if the property was placed into service before January 1, 2017, and the owner or lessee satisfies other statutory criteria. *Thus, projects not placed into service before 2017, are subject to the real and tangible personal property tax.*

PROCESS TO OBTAIN AND MAINTAIN TAX EXEMPTION

Application made to the Director of the Ohio Development Services Agency

To obtain a tax exemption, the owner or lessee of an energy project must apply to the Director of the Ohio Development Services Agency for certification as a qualified energy project before on or before December 31, 2015 for energy projects using renewable energy resources, and on or before December 31, 2017 for energy projects using clean coal, advanced nuclear, or cogeneration technology.

In addition, an energy project using renewable energy resources [including wind turbines] must meet the following time lines in order to be eligible to apply for the property tax exemption:

1. On or before December 31, 2015, if applicable, the owner or lessee of the project submits an application to the Power Siting Board for a certificate to construct a project;
2. Project construction must have begun on or after January 1, 2009, and before January 1, 2016;
3. Project property must be placed in service before January 1, 2017.

County commissioners approval of tax exemption [ORC 5727.75(E)(1)(b)]

The Director of the Ohio Development Services Agency is required to forward a copy of an application for certification as a qualified energy project of an energy project with a nameplate capacity of five megawatts or greater to the board of county commissioners of each county in which the project is located and to each taxing unit with territory located in each of the affected counties.

The board of commissioners may exercise one of two options for considering an application for a tax exemption. The board's action is taken by majority vote.

Option 1 - The board can consider each application on a case-by-case basis. Under this option, upon receiving a copy of an application for the tax exemption, the board of county commissioners has a period of 30 days in which to adopt a resolution to approve or reject the exemption. A longer period for consideration may be authorized at the discretion of the Director of the Ohio Development Services Agency. The board's failure to take any action within the 30 day period, or a longer time frame if authorized by the Director, results in a rejection of the request for tax exemption.

Option 2 – The board may adopt a resolution declaring the county to be an "alternative energy zone," providing for blanket approval of exemptions in the county for as long as the zone is in effect. This resolution may be repealed at any time.

If the board adopts a resolution approving the tax exemption, the owner or lessee of the project is required to make mandatory annual service payments to the local taxing districts in which the project is located during the life of the project. The amount to be paid will be determined based upon calculations made with regard to the total of "nameplate capacity" of the project located within that county and the percentage of Ohio jobs that are used during the installation and construction phase of the project.

The board also may choose at its discretion to impose an additional annual service payment to be paid into the county general fund. These two amounts cannot exceed \$9,000 per megawatt annually. [See: *PAYMENTS IN LIEU OF TAXES*, on page 6 of this CAB - for a thorough discussion of the compensation which may be provided through the P.I.L.O.T.]

If a qualified energy project is located in more than one county, the tax exemption applies only to that part of the project that is physically located in a county whose board of county commissioners adopts a resolution approving the exemption.

Maintaining certification as a "qualified energy project"

To retain the property tax exemption the owner or lessee of a qualified energy project also must comply with requirements enumerated in the nine paragraphs of ORC 5727.75(F):

1. Comply with all "applicable" regulations.
2. Certify to the Director of the Ohio Development Services Agency construction progress reports. The report must be submitted on or before March 1 of each year during the project facility's construction or installation, and must state the percentage of the project completed and the project's nameplate capacity as of the preceding December 31. The owner or lessee also must file a report with the Director on or before March 1 of each year after completion of construction or installation indicating the project's nameplate capacity as of the preceding December 31.
3. File with the Director of the Ohio Development Services Agency, as required by regulation, a report of the total number of full-time equivalent employees, and the total number of full-time equivalent Ohio-domiciled employees employed in the construction and installation of the facility.
4. For projects of five megawatts or greater, repair all roads, bridges, and culverts affected by the construction as reasonably required to restore them to their preconstruction condition as estimated by the county engineer in consultation with the local jurisdiction responsible for them.
5. Provide or facilitate training for fire and emergency responders for response to emergency situations related to the qualified energy project and, for projects of five megawatts or greater, equip the fire and emergency responders with proper equipment as reasonably required to enable them to respond to such emergency situations.

6. Maintain in the construction or installation of the project a ratio of Ohio-domiciled full-time equivalent employees to total full-time equivalent employees of 80% for solar energy projects, and 50% for all other energy projects.
7. For energy projects with a nameplate capacity in excess of two megawatts, establish a relationship with a university, apprenticeship program, or apprenticeship council to educate and train individuals for careers in the wind or solar energy industry.
8. Offer to sell power or renewable energy credits from the qualified energy project to electric distribution utilities or electric services companies that are subject to Ohio's renewable energy resource requirements and that have issued requests for proposal for such power or renewable energy credits.
9. Make the mandatory and any applicable additional annual service payments to the local taxing districts and county in lieu of property taxes otherwise due.

ORC 5727.75(H) requires the Director of the Ohio Development Services Agency, in consultation with the Tax Commissioner, to adopt rules to implement and enforce these nine exemption requirements. The rulemaking procedure is to be governed by the Administrative Procedure Act (ORC Chapter 119.). The Director must adopt these rules prior to September 15, 2010, which is 90 days after the bill's effective date.

Revocation of certification as a “qualified energy project” – loss of tax exemption

If the Director of the Ohio Development Services Agency determines that an owner or lessee of a qualified energy project has failed to meet any of requirements contained in ORC 5727.75(F), the Director may revoke the project's certification [R.C. 5727.75(E)(3)].

Revocation of certification terminates the tax exemption beginning with the tax year following the year in which revocation occurs, and the project is not eligible for further exemption. Revocation does not affect the tax-exempt status of a project for the year in which revocation occurs or prior years. Upon revocation, the Director must notify the owner or lessee, the Tax Commissioner, and the county auditor of the county in which the project is located

PAYMENT IN LIEU OF TAXES

The Payment in Lieu of Taxes [P.I.L.O.T.] established by a board of county commissioners may consist of two parts. There is a mandatory requirement that the energy project make annual service payments to the local taxing districts in which the project is located. This amount will be six, seven, or eight thousand dollars per megawatt of nameplate capacity depending upon the percentage of Ohio jobs that are used during the installation and construction phase of the project. The board also may, at its discretion, choose to impose an additional annual service payment to be paid into the county general fund. These two amounts cannot exceed \$9,000 per megawatt of nameplate capacity annually.

Mandatory service payments in lieu of property taxes [ORC 5727.75(G)]

The owner or lessee of a qualified energy project that is exempted from property taxation by a board of commissioners is required to make mandatory annual service payments in lieu of real and tangible personal property taxes. The amount of the payments is based on the project

facility's nameplate megawatt capacity as well as the percentage of project construction and installation employees who are domiciled in Ohio. Payments are to be made to the county on or before the final dates for payment of taxes on public utility property for each tax year of which the project property is exempt. Payments are to be distributed to taxing districts on the basis of where the property is located and in the ratio of an individual taxing district's proportionate share of the total millage levied by the taxing districts.

For a solar energy project, the mandatory annual service payment for tax years 2011 through 2017 each equals \$7,000 per megawatt of nameplate capacity as of the preceding December 31 if the Ohio-domiciled full-time equivalent employee to total full-time equivalent employee ratio is at least 80%. For tax years 2015 and thereafter the payment is based on the project's nameplate capacity as of December 31, 2014.

For all other alternative energy projects, the payment for a tax year equals one of the following amounts, scaled according to Ohio-resident construction and installation employment ratios:

1. \$6,000 per megawatt of nameplate capacity as of the preceding December 31, if the Ohio-domiciled full-time equivalent employee to total full-time equivalent employee ratio is at least 75%;
2. \$7,000 per megawatt of nameplate capacity as of the preceding December 31, if the ratio is less than 75% but at least 60%;
3. \$8,000 per megawatt of nameplate capacity as of the preceding December 31, if the ratio is less than 60% but at least 50%.

Additional annual service payment [ORC 5727.75(E)(1)(b)]

The board may include a requirement in its resolution approving the application for tax exemption of a qualified energy project which has been submitted to it by the Director of the Ohio Development Services Agency that an additional annual service payment be made in addition to the mandatory service payment required to be made to the local taxing districts. Since the amount of the mandatory service payment and the additional service payment required by the board cannot exceed \$9,000 per megawatt of nameplate capacity, it is anticipated, although not required, that a board will chose to adopt an amount that when totaled with the mandatory payment will equal \$9,000. Thus, the additional annual service agreement would be up to \$2,000 for an eligible solar project and between \$1,000 and \$3,000 for all other eligible alternative energy projects, depending upon the amount of the mandatory payment.

It is important to note that, unlike the mandatory service payment, the law specifically states that this additional annual service payment shall be deposited "to the credit of the county's general fund to be used for any purpose for which money credited to that fund may be used."

Receipt of the service payments

The new valuation of the energy project property is first recognized, taxed, and placed upon the tax duplicate the year in which the project goes into service. Given the time constraints placed upon a project to qualify for the tax exemption, it is reasonable to assume that the first generation of electricity from a project would occur sometime in 2012. This means that the exempted property would not be subject to making the P.I.L.O.T. payment until tax year 2013.

Since property taxes are paid a year in arrears the first payment of the P.I.L.O.T. (or for that matter, the property tax) would not occur until the first half tax settlement date in 2014.

CONSIDERATION OF THE EFFECTS OF TAX ABATEMENT UPON SCHOOLS

The tax abatement process of SB 232 places commissioners in the very difficult position of potentially serving as the “tax abator” of schools, townships, and special taxing districts. This is particularly unfortunate since the CCAO has always maintained that one local government should not be in the position to abate another local government’s taxes.

While the consideration of the effects of granting the abatement and receiving a P.I.L.O.T. payment as opposed to rejecting the abatement request and requiring the energy project to pay the full amount of its taxes is relatively straightforward for the counties, townships, and special taxing districts, the decision process is quite complicated and confusing when trying to evaluate which option is in the best interests of a school district. CCAO is extremely hesitant to suggest that abatement is automatically the best option for a school district, especially when numerous stakeholders, including the educational community, legislatively sought a minimum P.I.L.O.T. between \$12,000 to \$15,000 per megawatt of nameplate capacity, but the law at maximum only provides \$9,000.

As a result, commissioners are strongly urged to seek the advice of their school district superintendents and treasurers upon receiving an application from the Director of the Ohio Development Services Agency seeking your approval of tax abatement for a qualified energy project. Generally speaking, the application will contain the information regarding the nature, extent and location of the project’s assets.

The bill requires assessment of taxable production equipment of an energy company (generation assets of the project) at 24% of true value, and all other taxable property (transmission and distribution property associated with the project) at 85% of true value. Current law apportions the taxable value of production equipment to the taxing district where the property is physically located while all other taxable property is apportioned according to the percentage of the total cost of such property (in Ohio) that is located in the taxing district. Based upon this information, the school district should be able to calculate the actual valuation and corresponding tax liability that the energy project would normally pay in taxes.

Another issue arises when a new tax levy is to be proposed. When property exempted from utility tangible personal property tax cannot be included as a source of revenue for the district, other taxpayers in the school district have to pay more. In other words, the tax base is not as broad as it would be if the new development were part of the base.

SB 232 goes beyond the exemption of the utility tangible personal property tax. Real property taxes are also exempt for qualifying projects. This means that even current real property tax revenue will be lost.

If a school district levies a permanent improvement levy, the exemption of property valuation always will cost the district the lost revenue. Exempt property means that the bond rate will be somewhat higher than it otherwise would have been. (Bond levies for schools work exactly the same as bond levies approved in other kinds of local governments.) Emergency school levies function very much like bond levies. The school district has authority to levy a constant dollar amount for up to 10 years. Exemptions shrink the base from which that dollar amount must

come. Therefore, the tax rate on all remaining taxable property must be somewhat higher than it otherwise would be to charge the authorized amount.

And, finally, the State's school foundation formula may affect the new revenue equation. Recently changed in HB 59, the new formula has multiple steps and components, many of which use measures of wealth for determining levels of state aid for that component. Since each school district is different, the effects of changes (or lack of changes) in property values due to a wind farm project will be different from one district to the next and uniquely affect the calculation of its state aid component. A more definitive explanation of school foundation formula impacts will take more time. The Ohio School Boards Association is still in the process of fully analyzing the effect of these abatements on schools based on the new funding formula.

ROAD IMPROVEMENT AND MAINTENCE TO ACCOMMODATE CONSTRUCTION

The potential for damage to county and township roads is of significant concern given the nature and extent of the size, dimensions and weight of the component parts and equipment necessary to construct "wind farms" in general. Consequently there are specific provisions which must be met by the owner or lessee of a qualified energy project of 5 MW or greater in order to retain the property tax exemption contained in ORC 5727.75(F)(4).

If the county engineer determines that any road, bridge, or culvert is inadequate to support a facility's construction or decommissioning, the engineer may require the facility owner or lessee to reinforce or rebuild the road, bridge, or culvert to specifications. The key provision in the law authorizes the facility owner or lessee and the county engineer to enter into an agreement regarding transportation plans, reinforcements, modifications, use and repair of roads, financial security to be provided, and other relevant issues. This language suggests that the county engineer, in their discretion and in consultation with the affected local subdivision, will be able to establish road construction and maintenance specifications designed to protect the integrity of the roads and assure compliance with these specifications.

The bill also requires the facility owner or lessee to post two bonds, one to ensure funding for repairs after the facility's construction and the other to ensure funding for repairs after the facility's decommissioning. The first bond is to be held by the board of county commissioners and must be released not later than one year after repairs have been completed. The bill, however, does not specify who is to hold the second bond or when it must be released.

EMERGENCY RESPONSE ISSUES

Concerns over emergency response to incidents involving "wind farm" projects and their generation of electricity led the Legislature to incorporate requirements for the owner or lessee of a project to train fire and emergency personnel to deal with the unique aspects of risk associated with these projects. ORC 5727.75(F)(5) requires the owner or lessee of a project to provide or facilitate training for fire and emergency responders for response to emergency situations related to the qualified energy project and, for projects of five megawatts or greater, provide and pay for the proper equipment reasonably required for emergency responders to enable them to respond to such emergency situations.

ENERGY FACILITY'S EFFECT ON CAUV

Current law allows an owner of agricultural land to file, and subsequently renew, an application

requesting the county auditor of the county in which such land is located to value the land for real property tax purposes at the current value such land has for agricultural use (CAUV) [ORC Sections 5713.30 through .37]. If the land is converted to a non-agricultural use, a portion of the tax savings authorized for the land is recouped by levying a charge on the land in an amount equal to the amount of the tax savings on the converted land during the three tax years immediately preceding the year in which the conversion occurs.

The bill specifies that if an energy facility is constructed or installed on a portion of a tract, lot, or parcel of land that is devoted exclusively to agricultural use, the remaining part of the land will not be considered a conversion of agricultural land if it continues to be devoted exclusively to agricultural use [ORC 5713.30(b)(4)]. The bill also prohibits levying a recoupment charge for conversion of a portion of a tract, lot, or parcel of land devoted to agricultural use if the conversion is incidental to the construction or installation of an energy facility and the remaining portion of the tract, lot, or parcel continues to be devoted exclusively to agricultural use [ORC 5713.34(A)(3)].

SMALL PRODUCER/GOVERNMENT EXEMPTION

As noted above, there is varying tax treatment for an energy project. In addition to the treatment of projects in excess of 5 MW, there are three other categories.

Any energy project that has an aggregate nameplate capacity of 250 kilowatts or less is not considered to be "supplying electricity"--and therefore is not to be taxed as a public utility, even if the project engages in "net metering" [ORC 5727.02(A)(3)(c)]. These projects are also exempt from real property taxation if construction or installation of the project is completed on or after January 1, 2010 [ORC 5709.53]. This, in essence, means that a family farm or private property owner can build a small wind turbine on its property to generate electricity for their own use without being subject to the tangible personal property tax or real property tax.

Projects between 250 kilowatts and 5 megawatts may also be exempted from the real and tangible personal property tax by the Director of the Ohio Development Services Agency if they meet the aforementioned exemption criteria in ORC 5727.75(F). *[See "Maintaining certification as a qualified energy project" on page 5 of this CAB]*

The bill also provides an Ohio county, township, municipal corporation, or other local body responsible for government activities that owns an energy facility is not considered to be "supplying electricity", regardless of the facility's nameplate capacity, if the primary purpose of the facility is to supply electricity for its own use [ORC 5727.02(A)(3)(d)]. Thus, the associated energy facility is also not to be taxed a public utility and its assets, as governmental property, remain exempt from taxation.

ADDITIONAL PROVISIONS OF THE BILL

Alternative energy revolving loan program

The current low-cost solar panel revolving loan program which may be established by a municipality under ORC 717.25 is renamed the alternative energy revolving loan program and expanded to include assistance for the installation of alternative energy and energy efficiency technologies. The bill also specifies that assistance is provided to "owners" of real property within a municipal corporation (the original language used "residents") with the installation and

implementation of alternative energy technologies and energy efficiency technologies, products, and activities instead of just solar panels on their real property.

Special energy improvement projects within special improvement districts

The bill expands the authority of a special improvement district (S.I.D.) to undertake special energy improvement projects to include wind energy projects, geothermal energy projects, biomass energy or gasification projects, and energy efficiency improvements and permits special improvement district plans for public improvements and public services to include hiring consulting and energy auditing services and makes those services allowable plan costs.

Appendix - DEFINITIONS

"Advanced nuclear technology" includes technology consisting of generation III technology as defined by the federal Nuclear Regulatory Commission; other, later technology; or significant improvements to existing facilities.

"Alternative energy project" means an advanced energy resource or renewable energy resource, as defined in section 4928.01 of the Revised Code that has a placed-in-service date of January 1, 1998, or after.

"Clean coal technology" includes a carbon-based product that is chemically altered before combustion to demonstrate a reduction, as expressed as ash, in emissions of nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or sulfur trioxide in accordance with the American Society of Testing and Materials standard D1757A or a reduction of metal oxide emissions in accordance with standard D5142 of that society, or clean coal technology that includes the design capability to control or prevent the emission of carbon dioxide, which design capability the commission must adopt by rule and must be based on economically feasible best available technology or, in the absence of a determined best available technology, shall be of the highest level of economically feasible design capability for which there exists generally accepted scientific opinion.

"Cogeneration technology" includes any distributed generation system consisting of customer cogeneration of electricity and thermal output simultaneously, primarily to meet the energy needs of the customer's facilities.

"Energy facility" is one or more interconnected wind turbines, solar panels, or other tangible personal property used to generate electricity from an energy resource. The facility includes all interconnection equipment, devices, and related apparatus connected to the tangible personal property; and all cables, equipment, devices, and related apparatus that connect the generators to an electricity grid or to a building or facility that directly consumes the electricity produced, that facilitate the transmission of electrical energy from the generators to the grid, building, or facility, and, where applicable, that transform voltage before ultimate delivery of electricity to the grid, building, or facility. Also included in the definition of energy facility are buildings, structures, improvements, or fixtures exclusively used to house, support, or stabilize tangible personal property constituting the facility or that are otherwise necessary for the operation of that property; and so much of the land on which such tangible personal property is situated as is required for operation of the facility and is not devoted to some other use, not to exceed, in the case of wind turbines, one-half acre for each wind turbine, and regardless of whether the land is

owned by the owner or lessee of the tangible personal property or by another person. [See: ORC 5727.01(P) and ORC 5727.75(B), (C), and (E)]

“Major Utility Facility” is defined as the following:

- A generating plant of 50 MW or more;
- Any Wind farm of 5 MW or more;
- An electric transmission line of 125 kilovolts (kV) or more; or
- A gas or natural gas transmission line capable of transporting gas at more than 125 pounds per square inch of pressure.

“Nameplate Capacity” means the original interconnected maximum rated alternating current output of a generator or other electric production equipment under specific conditions designated by the manufacturer, expressed in the number of kilowatts or megawatts [ORC 5727.01(Q)]

“Renewable energy resource” includes solar photovoltaic or solar thermal energy, wind energy, power produced by a hydroelectric facility, geothermal energy, fuel derived from solid wastes, biomass energy, biologically derived methane gas, or energy derived from nontreated by-products of the pulping process or wood manufacturing process, and also includes any fuel cell used in the generation of electricity, a storage facility that will promote the better utilization of a renewable energy resource that primarily generates off peak; or a distributed generation system used by a customer to generate electricity from any such energy.

“Qualified energy project” means an energy project certified by the Director of the Ohio Development Services Agency as having met the application timelines required by ORC 5727.75(E)(1)(a); not being used to supply electricity before December 31, 2009; and, having and remaining in compliance with the nine enumerated requirements of ORC 5727.75(F).