Bill Analysis

Bethany Boyd *Legislative Service Commission*

S.B. 287

123rd General Assembly
(As Introduced)

Sen. Blessing

BILL SUMMARY

- Reduces to 25% the tax assessment rate for all tangible personal property of a natural gas company, beginning tax year 2001.
- Revises the true value determination of current gas stored underground.
- On and after July 1, 2001, levies an excise tax (the MCF tax) on natural gas distribution companies at a variable rate that decreases with an increase in the natural gas distributed through the meter of an end user in this state.
- Establishes an MCF tax rate of $.02 per MCF of natural gas distributed to a "flex customer."
- Exempts the federal government and self-producing end users from paying the MCF tax.
- Based on an annual target of $90 million in collections, requires that the MCF tax be deposited in the General Revenue Fund (GRF), and in the existing Local Government and School District Property Tax Replacement Funds to be distributed, in the same manner as kilowatt-hour tax revenues, to school districts and other local governments to replace tax revenues lost as a result of the reduction in the assessment rate for natural gas company tangible personal property.
- Reduces the GRF share of the tax if the $90 million annual target is not met.
- Requires that property tax replacement payments distributed to county auditors and treasurers to reimburse them for administrative fee losses also

reimburse losses due to the reduction in the property tax assessment rate for natural gas companies.

- When apportioning the expenses of a general health district to a township or municipal corporation, requires county auditors to add to their taxable valuation property tax replacement payments.

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CONTENT AND OPERATION

Overview of the bill

In general, the bill reduces the tax assessment rate for natural gas company tangible personal property, from 88% to 25% of true value. To replace revenues lost from this assessment rate reduction, the bill levies an excise tax (the MCF tax) on natural gas distribution companies for every thousand cubic feet of natural gas distributed through the meter of an end user in Ohio. The bill credits part of the

MCF tax to the GRF, and the remainder to the existing School District Property Tax Replacement Fund and the Local Government Property Tax Replacement Fund established by Am. Sub. S.B. 3 of the 123rd General Assembly, commonly called the electric industry deregulation act. The bill adapts the existing property tax replacement payment methods to distribute the MCF tax revenues to school districts and other local governments.

Assessment of tangible personal property and reduction of the assessment rate

A natural gas company pays taxes on its tangible personal property that on December 31 of the preceding year was located in this state and owned by it, or leased by it under a sale and leaseback transaction.[1] Every year the Tax Commissioner determines the true value of this taxable property, and assesses it at a percentage of true value established in statute. The resulting assessed value is the portion to which the local tax rate is applied to determine the tangible personal property taxes due. The bill changes aspects of the true value determination and the assessment rate for natural gas tangible personal property.

Determination of taxable property's true value

(sec. 5727.11)

For the most part, the true value of a natural gas company's taxable property is determined by the Tax Commissioner by a method of valuation based on cost as capitalized on the company's books and records, less composite annual allowances as prescribed by the Commissioner. One exception is current gas stored underground, which typically is the quantity of gas expected to be sold in the next 24 months, and stored in underground rock formations, not wells. Its true value is the cost of that gas shown on the books and records of a public utility on December 31 of the preceding year.

Under the bill, for tax year 2001 and thereafter, the true value of current gas stored underground is to be determined the same way merchandise offered for sale is valued under existing law (sec. 5711.15). A public utility will have to estimate the average value of the gas in the utility's possession or under its control during the year ending on the day the gas is listed for taxation. The average value is ascertained by taking the value of the amount on hand in each month of such year in which the utility has been engaged in business, adding together those amounts,

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[1] *Under existing law (sec. 5727.01), any person is a "natural gas company" when engaged in the business of supplying natural gas for lighting, power, or heating purposes to consumers within Ohio.*

and dividing the resulting sum by the number of months that the utility has been in business during the year.[2]

Reduced assessment rate

(sec. 5727.111; Section 3)

After determining the true value of a natural gas company's taxable property, the Tax Commissioner assesses it at a percentage of that true value. This assessed value is the part of true value to which the local tax rate is applied to determine the tangible personal property taxes due. Beginning in tax year 2001, the bill reduces the percentage used to determine the assessed value of natural gas company personal property, from 88% of true value, to 25%.

The MCF tax

Levy of the new tax; rates

(secs. 5727.80 and 5727.811; Sections 7 and 8)

The bill levies a new excise tax on natural gas distribution companies, for the purpose of raising revenue for public education and state and local government operations. The tax is levied on every natural gas distribution company for all natural gas volumes billed by, or on behalf of, the company on and after July 1, 2001, and distributed through the "meter of an end user in this state."[3] For purposes of the tax, a "natural gas distribution company" is a person subject to regulation by the PUCO who distributes natural gas through a meter of an end user in this state, including a combined company that operates as a natural gas distribution company.[4] "Natural gas distribution company" does not include a municipal corporation or a natural gas company owned or operated by a municipal corporation that distributes gas through the meter of an end user in this state, or a pipe-line company (which transports natural gas, oil, or coal or its derivatives

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[2] Note that this provision applies to all public utilities that possess current gas, not just natural gas companies.

[3] The "meter of an end user in this state" is the last meter used to measure the MCF of natural gas distributed by a natural gas distribution company to a location in this state, the last meter located outside of this state that is used to measure the natural gas consumed at a location in this state, or, if no meter is used, the estimated MCF of natural gas distributed to an unmetered location in this state.

[4] Under existing law, a combined company is any person engaged in the activity of an electric company or rural electric company that is also engaged in the activity of a heating company or a natural gas company, or any combination thereof.

through pipes or tubing), notwithstanding the fact that a pipe-line company may transport natural gas to facilities owned by a consumer of natural gas in this state, including a meter of an end user in this state.

The tax is levied quarterly, at a rate that decreases as more natural gas is distributed. Distribution is measured by 1,000 cubic feet of gas, or "MCF." For the first 100 MCF per month distributed to an end user, the rate is $.1593 per MCF; for the next 101 to 2,000 MCF per month, the rate is $.0877; and for 2,001 MCF per month and above, the rate is $.0411.

For "flex customers," the rate is lower. A "flex customer" is an industrial or commercial end user of natural gas that purchases natural gas distribution services from a natural gas distribution company and whose rates or surcharges are discounted, based on a mutual agreement between the natural gas distribution company and the customer. If the natural gas is distributed through the meter of a flex customer, the natural gas distribution company must pay the tax at the rate of $.02 per MCF, and, correspondingly, must reduce the per MCF rate it charges the flex customer for natural gas distribution services by $.02 per MCF of natural gas.

The bill requires that not later than 90 days after its effective date, each natural gas company in this state must file with the Public Utilities Commission (PUCO) revised schedules that provide for the collection of the MCF tax through a rider. The PUCO must direct that the MCF tax be reflected on bills as a separately identified line item. Also within this 90 days, each natural gas company must file with the PUCO revised schedules that reduce natural gas MCF rates for all customers, except "flex customers," effective January 1, 2001, in an amount equal to the amount included in rates in each company's last base rate case for the differential resulting from the reduction in the personal property tax assessment rate. The PUCO must approve these revised schedules within 30 days of filing.

Payment of the MCF tax

(secs. 5727.33(E), 5727.811(B) and (D), 5727.82(A), and 5727.83)

A natural gas distribution company must base the excise tax on the MCF of natural gas distributed to an end user through the meter of the end user in Ohio that is estimated to be consumed by that end user as reflected on the customer statement from the natural gas distribution company. The company is required to pay the tax to the Treasurer of State by the 20th day of May, August, November, and February, by filing a return prescribed by the Tax Commissioner and paying the full amount of tax due for the preceding quarter. The first payment must be made on or before November 20, 2001, for the quarter ending September 30, 2001.

Failure to timely file a return and pay the tax subjects a natural gas distribution company to a charge of $50 or 10% of the tax required to be paid for the reporting period, whichever is greater. Additionally, if any tax due is not timely paid, a natural gas distribution company must pay interest, calculated by adding 3% to the federal short-term rate determined by the Tax Commissioner, which is 8% per annum for 2000.

As in existing law for electric distribution companies, a natural gas distribution company must remit tax payments by electronic funds transfer in the manner prescribed by rules adopted by the Treasurer of State.

A natural gas distribution company is required to pay the MCF tax if natural gas is distributed by the company through a meter of an end user in this state; the company is distributing natural gas through a meter located in another state, but the natural gas is consumed in Ohio in the manner prescribed by the Tax Commissioner; or the company is distributing natural gas in this state without the use of a meter, but the natural gas is consumed in Ohio as estimated and in the manner prescribed by the Commissioner.

The bill requires that in determining the gross receipts of a natural gas company for purposes of the natural gas company (gross receipts) excise tax, the Commissioner must exclude receipts the company received to pay the MCF tax.

Exemptions

(sec. 5727.811(E))

The MCF tax does not apply to the distribution of natural gas to the federal government, or any natural gas produced by an end user in this state that is consumed by that end user or its affiliates and is not distributed through the facilities of a natural gas company.

Disposition of MCF tax revenues

(secs. 5727.84(C) and 5727.85(A))

The bill requires that MCF tax revenues be placed in specific funds and distributed in the same manner as kilowatt-hour taxes are under S.B. 3. The MCF tax must be credited as follows:

(1) 70%, less an amount equal to 30% of the total "state education aid offset," must be credited to the School District Property Tax Replacement Fund for the purpose of making property tax replacement payments to school districts and joint vocational school districts (see "***Property tax replacement payments***," below;

(2) 30% must be credited to the Local Government Property Tax Replacement Fund for the purpose of making property tax replacement payments to local governments;

(3) An amount equal to 30% of the total "state education aid offset" must be credited to the GRF. The "state education aid offset" represents the additional money paid by the state to school districts through the Foundation Formula attributable to the bill's reduction of tangible personal property tax assessment rates. The offset is determined by the Department of Education and is the amount by which state education aid (the sum of state basic aid and state special education aid computed under the school foundation program law) exceeds the amount of state education aid that would be computed for the current fiscal year if the school district's adjusted total taxable value included the tax value loss certified by the Tax Commissioner (see "***Natural gas company tax value loss***," below).

Beginning in the fiscal year in which payments are required to be made under the property tax replacement payment law, if the revenue arising from the MCF tax is less than $90 million, the amount credited to the GRF must be reduced by the amount necessary to credit to the School District and Local Government Property Tax Replacement Funds the amount that each Fund would have received if the MCF tax did raise $90 million for that fiscal year. The Tax Commissioner is required to certify to the Director of Budget and Management the amounts that are so credited.

Administration and enforcement of the MCF tax; assessments, interest, refunds, and penalties

(secs. 4933.33, 5703.052, and 5727.88 to 5727.95; Section 7)

The Tax Commissioner is charged with administering the bill's MCF tax provisions. The Commissioner may adopt any necessary rules, prescribe forms, and request information from the PUCO regarding a natural gas distribution company. (Sec. 5727.88.)

The Tax Commissioner has the same powers to make assessments against natural gas distribution companies for MCF taxes as for electric distribution companies under the kilowatt-hour tax. The same four-year statute of limitations on assessments that applies under the kilowatt-hour tax law applies to assessments against natural gas distribution companies. (Secs. 5727.89 and 5727.90.)

Natural gas distribution companies have the same right to appeal assessments as electric distribution companies, beginning with administrative appeals before the Tax Commissioner, which are appealable to the Board of Tax Appeals. Assessments not paid bear interest in the same manner as under the kilowatt-hour tax. Money collected from an MCF tax assessment or interest is paid to the Treasurer of State, and is treated as revenue from the MCF tax. (Sec. 5727.89.)

Refunds of the MCF tax must be requested and paid from the Tax Refund Fund in the State Treasury, in the same manner as refunds of the kilowatt-hour tax. Additionally, any natural gas distribution company that can substantiate to the Tax Commissioner that the MCF tax was paid on natural gas distributed via its facilities and consumed at a location outside Ohio may claim a refund. (Secs. 5703.052 and 5727.91.)

As is the case for electric distribution companies, natural gas distribution companies must keep distribution records as required by the Tax Commissioner for four years after a return is due or filed, whichever is later. The records must be available for inspection by the Commissioner or an authorized agent. (Sec. 5727.92.)

Under the bill, natural gas distribution companies must register with the Commissioner as a natural gas distribution company prior to distributing gas in Ohio. No person may distribute natural gas to a meter of an end user in this state without holding a valid registration. Those companies that are in existence on the bill's effective date must register before July 1, 2001. (Secs. 5727.93 and 5727.95; Section 7.)

Each natural gas distribution company annually (or more frequently if it wishes) must state on each customer bill, or distribute to each of its customers a statement that explains, that the amount billed the customer includes MCF taxes (stating the rate) and assessments to assist in the support of PUCO operations and the Office of the Consumers' Counsel. (Secs. 4933.33 and 5727.94.)

The penalty for failure to comply with any of the bill's MCF tax provisions or rules adopted by the Tax Commissioner is the same for natural gas distribution companies as for electric distribution companies; violations are first degree misdemeanors, with subsequent offenses being fourth degree felonies. (Sec. 5727.99, not in the bill.)

Property tax replacement payments

The bill requires that school districts, joint vocational school districts, and other local governments receive property tax replacement payments for revenues lost due to the reduction in the tangible personal property tax assessment rate for natural gas companies, in the same manner as S.B. 3 did for the reduction in such rates for electric and rural electric companies. The payments are to be made from the existing Local Government Property Tax Replacement Fund and the School

District Property Tax Replacement Fund, created by S.B. 3, into which revenues from new the MCF tax must be deposited. The bill also requires that county auditors and treasurers receive replacement payments for losses incurred in their administrative fees. Calculation of the new payments, discusses in some detail below, are to be accomplished by adding to the S.B. 3 replacement payment framework a component representing the reduction in assessment rates on natural gas company personal property.

Determination of the electric company and natural gas company tax value losses, fixed-rate levy loss, and fixed-sum levy loss used in replacement payment computations

(sec. 5727.84)

The bill requires the Tax Commissioner, by January 1, 2002, to ascertain for each taxing district (a municipal corporation or township) its "natural gas company tax value loss." This amount is added to the tax value losses caused by the reduction in electric and rural electric company tangible personal property assessment rates under S.B. 3 to obtain an aggregate number representing the tax value loss attributable to the reduction in the assessment rate on both electric and gas company property (sec. 5727.84(A)).

The property tax replacement payment calculated for each school district, joint vocational school district, and local taxing unit includes its "fixed-rate levy loss" and "fixed-sum levy loss." These also must be determined by the Tax Commissioner by January 1, 2002. Under existing law and the bill, the Tax Commissioner is required, when computing the tax value loss, fixed-rate levy loss, and fixed-sum levy loss, to use the greater of the 1998 or 1999 tax rate in the case of levy losses associated with the electric company tax value loss, but excluding any levy approved after June 30, 1999, and the greater of the 1999 or 2000 tax rate in the case of losses associated with the natural gas company tax value loss, excluding any tax levy approved after March 7, 2000. (Sec. 5727.84(I).)

Natural gas company tax value loss. Basically, the natural gas company tax value loss is determined in the same manner as the electric company tax value loss under S.B. 3, by looking at the difference in the value of a natural gas company's tangible personal property before and after the assessment rate on it is reduced. Under the bill, the natural gas company tax value loss is the **sum** of (1) the value of the natural gas company's current gas and (2) all of its other tangible personal property. The value of its current gas is determined by computing the three-year average assessed value of current gas for tax years 1997, 1998, and 1999, as apportioned in the taxing district for those respective years **minus** the three-year average assessed value from the same current gas for the same tax years, using an assessment rate of 25%. The value of all other natural gas company tangible personal property is determined by computing the value, as assessed for tax year 1999 and apportioned to the taxing district for tax year 1999 **minus** the value of that same property as assessed for the same tax year had the property been apportioned to the taxing district for tax year 2001, and assessed at 25%. The sum of the resulting value of current gas and all other natural gas tangible personal property is the natural gas company tax value loss. (Sec. 5727.84(E).)

Fixed-sum levy loss. Continuing law defines a "fixed-sum levy" as a tax levied on property at whatever rate is required to produce a specified amount of tax money or to pay debt charges, and includes school district emergency levies (sec. 5727.84(A)(12)). The fixed-sum levy loss is determined as under existing law, using the electric company tax value loss; the bill includes in the computation the natural gas company tax value loss. The fixed-sum levy loss is the **sum** of the electric company and natural gas company tax value loss **multiplied** by the respective 1998 and 1999 tax rates, for fixed-sum levies for all taxing districts within each school district, joint vocational school district, and local taxing unit **minus** the total taxable value in tax year 1998 for the electric company tax value loss and 1999 for the natural gas company tax value loss multiplied by one-fourth of one mill. (Sec. 5727.84(H).)

For years 2002 through 2006, the fixed-sum levy loss computation includes school district emergency levies that existed in 1998 for the electric company tax value loss, and 1999 for the natural gas company tax value loss, and all other fixed-sum levies that existed in those respective years that continue to be charged in the tax year preceding the distribution year.

For years 2007 through 2016, the fixed-sum levy loss computation excludes all school district emergency levies, and all other fixed-sum levies that existed in 1998 in the case of the electric company tax value loss and 1999 in the case of the natural gas company tax value loss, but are no longer in effect in the tax year preceding the distribution year. The bill provides that an emergency tax levy that existed in 1998, for the electric company tax value loss, and 1999, for the natural gas company tax value loss, continues to exist in years 2007 through 2016 if the school district levies in that year emergency taxes at least equal to the emergency taxes levied in 1998 or 1999, respectively, less the fixed-sum levy loss reimbursed with respect to that levy for 2002. (Sec. 5727.84(H).)

If the amount computed for any school district, joint vocational school district, or local taxing unit is greater than zero, that amount must equal the fixed-sum levy loss, and the one-fourth of one mill that was subtracted in the computation of the loss must be apportioned among all contributing fixed-sum levies levied within each school district, joint vocational school district, or local taxing unit.

Fixed-rate levy loss. A fixed-rate levy is any tax levied on property, other than a fixed-sum levy (sec. 5727.84(A)(10)). The loss for a school district, joint vocational school district, or local taxing unit is the total sum of (1) the electric company tax value loss multiplied by the tax rate in effect in tax year 1998 for fixed-rate levies and (2) the natural gas company tax value loss multiplied by the tax rate in effect in tax year 1999 for fixed-rate levies. (Sec. 5727.84(G).)

Replacement payments for schools

(secs. 5727.84(A) and 5727.85(C), (D), and (E))

After computing the tax value loss, fixed-sum levy loss, and fixed-rate levy loss, the Tax Commissioner then uses them to determine the property tax replacement payments to be made from the School District Property Tax Replacement Fund to city, local, exempted village, and joint vocational school districts for tax revenue losses incurred in their fixed-sum and fixed-rate levies. Generally, payments for fixed-rate levy losses must be made twice a year, beginning in February 2002 and each August and February thereafter until August 2016. Payments for fixed-sum levy losses must be made in those same months, but may extend past 2016 because they are required to be made until fixed-sum levies, in effect in 1998 to June 30, 1999, for levy losses associated with the electric company tax value loss, or 1999 to March 7, 2000, for levy losses associated with the natural gas company tax value loss, are no longer in effect.

Replacement payments for other local governments

(sec. 5727.86)

The Tax Commissioner also uses the tax value loss, fixed-sum levy loss, and fixed-rate levy loss to compute the property tax replacement payments to be made from the Local Government Property Tax Replacement Fund to local taxing units. The bill requires that the losses from the reduction in the natural gas company property tax assessment rate be reflected in these payments. Generally, fixed-rate levy losses must be reimbursed under existing law at a decreasing percentage in years 2002 through 2016. Fixed-sum levy losses must be paid under existing law at 100% of the loss from 2002 until the levy expires. Fixed-rate and fixed-sum levy loss payments are made at the same time as property tax replacement payments to school districts are.

S.B. 3 permits the Tax Commissioner to make a one-time early payoff of property tax replacement payments. The law that allows the Commissioner to do this for school districts designates the fund from which the payments are paid, requires that the amounts be distributed to the proper local taxing unit as if they had been levied and collected as taxes, and directs the local taxing unit to apportion the amounts so received among its funds in the same proportions as if those amounts had been levied and collected as taxes. The bill establishes this same requirement for one-time payments made to local taxing units from the Local Government Property Tax Replacement Fund.

Replacement of certain administrative fees

(sec. 5727.87)

County auditors and county treasurers collect administrative fees for services rendered in collecting personal property and classified property taxes (secs. 319.54 and 321.26). The fees are imposed at a percentage of the moneys collected in the county. S.B. 3 required that a portion of the Local Government and School District Property Tax Replacement Funds be distributed until August 10, 2011, to county auditors and treasurers to reimburse them for administrative fee losses incurred as a result of the reduction in assessment rates on electric and rural electric company tangible personal property. The bill amends this requirement to provide that losses from the reduction in the natural gas company property tax assessment rate must be included in calculating the fee losses that are to be reimbursed.

Effect of replacement payments on local tax budgets

(sec. 5705.34)

S.B. 3 requires county auditors, when estimating the rate at which a tax for a fixed sum of money or to pay debt charges must be set in order to raise a required amount, to reduce the amount such taxes must raise by the amount of property tax replacement payments received. The bill clarifies that property tax replacement payments made for fixed-sum levy losses are those that are to be excluded.

Effect of replacement payments on apportionment of general health district expenses

(sec. 3709.28)

Continuing law requires that the county auditor apportion the expenses of a general health district among the townships and municipal corporations composing the health district. The bill provides that in making the apportionment for each year from 2002 through 2016, the county auditor must add to the taxable valuation of each township and municipal corporation the tax value loss determined for it, multiplied by the percentage used for that year in determining property tax replacement payments for fixed-rate levy losses (for instance, for 2011, 80% of the fixed-rate levy loss). The Tax Commissioner must certify to the county auditor the tax value loss for each township and municipal corporation for which the auditor must make an apportionment.

Public Utility Property Tax Study Committee

(sec. 5727.85(J))

The bill renames the existing Electric Property Tax Study Committee the Public Utility Property Tax Study Committee, and requires that, in addition to reporting, in 2011, the extent to which each school district has been compensated for its property tax losses caused by the reduction in assessment rates for electric company and rural electric company personal property, it also must consider natural gas company property.

Technical changes

(sec. 5727.33; Sections 5 and 6)

In moving electric companies from the public utility excise tax to the corporation franchise tax under S.B. 3, and at the same time moving natural gas companies from the public utility excise tax to their new excise tax under Am. Sub. H.B. 283 of the 123rd General Assembly, provisions that appeared in both acts regarding the gross receipts of rural electric companies and receipts derived from providing electricity to a qualified former owner of a production facility were inadvertently eliminated due to the overlapping effective dates of the provisions. The bill reinstates those provisions and applies them only to tax years prior to tax year 2002, which is when electric companies and rural electric companies cease paying the public utility excise tax.

HISTORY

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Introduced	04-11-00	p. 1585

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