



Sub. H.B. 251

126th General Assembly
(As Passed by the General Assembly)

Reps. Uecker, Kearns, Raga, J. McGregor, Martin, Schneider, Collier, Wagoner, Bubp, Law, Brown, Williams, Mason, Hagan, J. Stewart, Hartnett, Barrett, Blessing, Calvert, Carano, Cassell, Chandler, Domenick, C. Evans, Faber, Fende, Flowers, Garrison, Hughes, Miller, Mitchell, Oelslager, Otterman, T. Patton, Raussen, Reidelbach, Schlichter, Seitz, Setzer, Skindell, G. Smith, D. Stewart, Strahorn, Webster, Yates, Yuko

Sens. Niehaus, Goodman, Schuler, Wilson, Gardner, Kearney, Padgett, Fedor, Fingerhut

Effective date: *

ACT SUMMARY

- Extends state facility energy efficiency and conservation planning requirements to any state agency, department, division, bureau, office, unit, board, commission, authority, quasi-governmental entity, or institution, including those otherwise excluded from oversight by the Department of Administrative Services (DAS).
- Modifies the energy efficiency rule-making authority of DAS's Office of Energy Services (OES) by permitting its rules to allow for a waiver of compliance and to require that each state-funded facility (except a higher ed facility) be managed by at least one building operator certified under the Building Operator Certification Program or an equivalent program.
- Requires the Office of Energy Efficiency in the Department of Development (DOD) to work cooperatively with OES in identifying

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor. Also, the analysis does not address appropriations, fund transfers, and similar provisions. See the Legislative Service Commission's Fiscal Note for H.B. 251 for an analysis of such provisions.*

available energy efficiency and conservation opportunities in state purchasing and in providing technical assistance and training to state employees involved in purchasing.

- Extends the reimbursement DAS must receive from state agencies for administrative costs related to supplies or services to include costs relating to energy efficiency and conservation programs.
- Provides for the creation of an interuniversity committee to develop guidelines for the boards of trustees of state institutions of higher education to use in ensuring energy efficiency and conservation in on- and off-campus buildings.
- Requires that the guidelines (1) provide that each board develop its own 15-year plan for phasing-in energy efficiency and conservation projects, (2) incorporate best practices, (3) require that project impact assessments include the fiscal effects of energy efficiency and conservation recommendations and plans, (4) establish mechanisms for each board to report periodically to the committee on its progress relative to the guidelines, (5) include a goal of reducing on- and off-campus building energy consumption by at least 20% by 2014, and (6) prescribe minimum energy efficiency and conservation standards for any new, on- or off-campus capital improvement project with a construction cost of \$100,000 or more, and minimum standards for leased, off-campus spaces of at least 20,000 square feet.
- Requires each board of trustees to adopt rules that carry out those campus energy guidelines.
- Changes the Department of Development's Energy Efficiency Revolving Loan Program into the Advanced Energy Program for the purposes of providing advanced energy or economic development financial assistance.
- Provides that an "advanced energy project" must include technologies, products, activities, or management practices or strategies that facilitate the generation or use of electricity and that reduce or support the reduction of energy consumption or support the production of clean, renewable energy for consumers.
- Requires the Director of Development, before granting assistance, to determine that an advanced energy project will create new jobs or

preserve existing jobs in Ohio or use innovative technologies or materials.

- Requires state vehicles capable of using an alternative fuel to use at least one million gallons of "blended biodiesel," instead of "biodiesel," per calendar year by January 1, 2007.
- Increases the limit on the rate of assessment that may be charged to oil or natural gas producers to fund an oil and natural gas marketing program by providing that the rate cannot exceed 5¢ rather than 1¢ per gross barrel of oil and 1¢ rather than 1/10¢ per thousand cubic feet of natural gas.
- For the purposes of the natural gas pipeline safety standards, modifies the definition of "gas" to mean natural gas, flammable gas, or gas which is toxic or corrosive.
- Requires the Ohio School Facilities Commission to issue a report comparing the "LEED for Schools" Rating System to applicable provisions in its Ohio School Design Manual.

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CONTENT AND OPERATION

The act focuses on two general concerns. The first is energy consumption in state-funded facilities (including those of state institutions of higher education). As such, it focuses on OES and DAS authority regarding facility construction and leasing, state purchasing, and contracting, and on the authority of university and college boards of trustees regarding on- and off-campus construction and leasing. The second is changing the Department of Development's Energy Efficiency Revolving Loan Program into an Advanced Energy Program. OES and DAS authority is discussed first below, followed by the act's provisions regarding higher education, its provisions regarding the Advanced Energy Program, and other changes to energy-related law.

OES/DAS authority

Construction/leasing

Scope of authority: definitions (R.C. 123.011(A)). Certain of the act's changes to the scope of OES/DAS authority occur in the context of defined terms. Under the act, OES/DAS facility construction and leasing authority extends to a "state-funded" facility, meaning any facility "funded in whole or in part through appropriation by the General Assembly or through the use of any guarantee provided by" the State of Ohio. Prior law referred to a "state-assisted facility," meaning a facility funded "in whole or in part with state or federal funds or with funds guaranteed or provided by or through a state agency."

The act revises the term "facility" to incorporate the idea that "facility" can mean *part* of a building or other structure and that, relevant to energy consumption, a "facility" is one that can include a heating, cooling, or hot water system, as in continuing law, or a refrigeration, ventilation, lighting, or other major energy consuming system, component, or equipment.

Additionally, the act defines the term "construct," with the objective that the facility construction/leasing law consistently uses the term to mean not just construction, but also reconstruction, improvement, renovation, enlargement, or other alteration of a facility.

To exclude state institutions of higher education expressly from the scope of OES/DAS authority regarding facility rulemaking (described below), the act



adds a definition of "state institution of higher education" which encompasses the University of Akron, Bowling Green, Central State, University of Cincinnati, Cleveland State, Kent State, Miami, Ohio University, Ohio State, Shawnee State, University of Toledo, Wright State, Youngstown State, and the Northeastern Ohio Universities College of Medicine, and includes their boards of trustees. The term also means any community college, state community college, university branch established under continuing law (R.C. Chapter 3355.), or technical college.

Facility planning and operation; rulemaking (R.C. 123.011(A), (C), (D), and (G)). Ongoing facility construction/leasing law prohibits state agencies, including those otherwise excluded from DAS's oversight,¹ from (1) constructing a facility of 5,000 square feet or more without having secured from the OES both an evaluation of life-cycle cost and an energy consumption analysis, prepared by a qualified architect or engineer, and (2) leasing a facility of 20,000 square feet or more without having secured an energy consumption analysis. The act expressly extends these prohibitions regarding state-funded facilities to any state agency, department, division, bureau, office, unit, board, commission, authority, quasi-governmental entity, or institution, including those otherwise excluded from DAS oversight. Under continuing law, the results of these analyses must be a primary consideration in design selection or the selection of a facility to be leased, and any request for release of capital improvement funds for facility construction must contain copies of all pertinent life-cycle cost analyses done for a facility.²

Regarding rulemaking, OES was required under prior law to promulgate rules and procedures, including energy conservation performance guidelines, for conducting a life-cycle cost analysis of alternative architectural and engineering designs and developing energy performance indices to evaluate the energy

¹ *As identified under exemptions provided in continuing R.C. 123.01(B) and (C), such agencies are the Adjutant General regarding certain military property and armories; the Department of Transportation regarding buildings for administration of the department; the Department of Public Safety regarding deputy registrar facilities or division or district offices; the State Highway Patrol regarding Patrol facilities; the Division of Liquor Control regarding retail outlets and warehouses; the Department of Development regarding the state's foreign offices; buildings under the Capitol Square Review and Advisory Board, the Rehabilitation Services Commission, the Bureau of Workers' Compensation, and the Departments of Job and Family Services, Mental Health, Mental Retardation and Developmental Disabilities, and Rehabilitation and Correction; and buildings of educational and benevolent institutions under the management and control of boards of trustees.*

² *The act's removal of former law's definition of "life-cycle costs" is not significant: it is removed in favor of incorporating the gist of the definition into the operative text of the statute.*

efficiency of competing designs in state-financed and -leased facilities. The act states that OES's rule-making authority is for the purpose of assisting DAS in its responsibility for the state-funded facilities subject to DAS oversight and of cost-effectively reducing the energy consumption of those and any other state-funded facilities, thereby promoting fiscal, economic, and environmental benefits to the state. The Department of Development's Office of Energy Efficiency (OEE) must cooperate in providing information and technical expertise to OES to ensure promulgation of rules of maximum effectiveness.

The rules must specify cost-effective, energy efficiency and conservation standards that can govern the lease, design, construction, operation, and maintenance of all state-funded facilities except facilities of state institutions of higher education. The energy standards may draw from or incorporate, by reference or otherwise and in whole or in part, standards already developed or implemented by any competent public or private standards organization or program.

While preserving ongoing law's specifications for life-cycle cost and energy consumption analyses, as well as energy performance indices, the act also provides that the rules can include an application process by which a project manager, as to a specified state-funded facility, may apply for a waiver of compliance with the rules.

The rules further may include a requirement that, not later than two years after the act's effective date, each state-funded facility (except a higher ed facility) be managed by at least one building operator certified under the Building Operator Certification³ Program or any equivalent program or standards as must be prescribed in the rules and are considered reasonably equivalent.

The act adds an express requirement that each state agency, department, division, bureau, office, unit, board, commission, authority, quasi-governmental entity, institution, and state institution of higher education must comply with any applicable provision of state facility energy consumption law or of an OES rule promulgated under that law.

³ On its web site, Building Operator Certification is described as "a nationally recognized professional certification for facilities operations and maintenance staff" that is "competency-based." See <http://www.theboc.info/sponsors.html>.

State purchasing

(R.C. 123.011(E))

Law changed in part by the act requires OES to promulgate rules to ensure the consideration of energy efficiency and conservation in state purchasing, using minimum standards based on federal testing and labeling where available or on standards developed by DAS. The act specifies that OES rules apply to the purchase of products and equipment, except motor vehicles, by any state agency, department, division, bureau, office, unit, board, commission, authority, quasi-governmental entity, or institution. It allows for minimum energy efficiency standards based on federal testing and labeling where available or on standards developed by OES. Two specific activities for which DOD's OEE must work cooperatively with OES are identifying available energy efficiency and conservation opportunities and providing technical assistance and training to state employees involved in purchasing. The act eliminates a requirement that the DOD advise the OES on the state of the art of energy efficiency.

Fleet fuel economy standards

(R.C. 123.011(F) and (G))

Under ongoing law, OES authority to determine the requisite fleet average fuel economy of passenger automobiles acquired in a fiscal year extends to all agencies, departments, commissions, boards, authorities, quasi-governmental entities, state institutions, universities, and colleges. Under the act, OES fleet economy authority extends to state agencies, departments, divisions, bureaus, offices, units, commissions, boards, authorities, quasi-governmental entities, institutions, and state institutions of higher education. Also, the act provides that the OES rules prescribing the fuel economy standards be promulgated in accordance with fuel economy standards established pursuant to federal law, and eliminates a requirement that the rules be no less stringent than the federal standards. The act additionally makes technical drafting changes to OES fuel economy authority.

The act expressly requires that each state agency, department, division, bureau, office, unit, board, commission, authority, quasi-governmental entity, institution, and state institution of higher education comply with OES fleet fuel economy law.

OES staffing

(R.C. 123.011(B))

Law modified by the act requires that the DAS Director assign employees, equipment, and supplies to OES as the Director considers necessary for the *proper* performance of its duties. The act refers to the *performance* of OES's duties (dropping "proper").

Reimbursement to DAS

(R.C. 125.15)

Ongoing law requires all state agencies that must secure any equipment, materials, supplies, or services from DAS to reimburse DAS for them, including a sum for administrative costs. The act extends this reimbursement to include costs relating to energy efficiency and conservation programs.

State institutions of higher education

(R.C. 3345.69)

The act provides for the creation of an interuniversity committee to develop guidelines for university boards of trustees to use in ensuring energy efficiency and conservation in on- and off-campus buildings.

Committee composition

The act requires the chairperson of the Interuniversity Council of Ohio and the secretary of the Ohio Association of Community Colleges to assist in coordinating the organization and operation of a committee comprised of the presidents of the state institutions of higher education or their designees. "State institution of higher education" has the same meaning as in the facility construction/leasing law (see "*Scope of authority: definitions*," above).

Energy guidelines

The committee must develop the campus energy guidelines in consultation with OES. Initial guidelines must be adopted within 90 days of the act's effective date.

The act requires that the guidelines provide that each board of trustees develop its own 15-year plan for phasing-in energy efficiency and conservation projects. The guidelines must incorporate best practices into energy efficiency standards and plans and must provide that project impact assessments include the fiscal effects of energy efficiency and conservation recommendations and plans.

And, they must establish mechanisms for each board to report periodically to the committee on its progress relative to the guidelines.

Further, the guidelines must include a goal of reducing on- and off-campus building energy consumption by at least 20% by 2014, using calendar year 2004 as the benchmark year. The act authorizes the guidelines to recognize the diverse nature and different energy demands and uses of such buildings, as well as measures already taken to increase building efficiency and conservation.

The guidelines also must prescribe minimum energy efficiency and conservation standards for any new, on- or off-campus capital improvement project with a construction cost of \$100,000 or more. Those standards must be based on general building type and cost-effectiveness. Additionally, the guidelines must prescribe minimum standards for leased, off-campus spaces of at least 20,000 square feet.

Duty of a board of trustees

The act requires each board of trustees to adopt rules to carry out the campus energy guidelines, including carrying out the guidelines under the board's ongoing authority to enter into energy conservation contracts (R.C. 3345.62 to 3345.66, not in the act).⁴

Advanced Energy Program

Generally, the act changes the Department of Development's Energy Efficiency Revolving Loan Program into the Advanced Energy Program and the Energy Efficiency Revolving Loan Fund into the Advanced Energy Fund and makes modifications to reflect these changes. The act provides that the Director of Development can use money in the Advanced Energy Fund for financial, technical, and related assistance for advanced energy projects or for economic development assistance.

Advanced energy project

(R.C. 4928.01(A)(25))

Former law provided for the Energy Efficiency Revolving Loan Program, which began on the starting date of competitive retail electric service (generally January 1, 2001). The Director of Development administered the program and could authorize the use of moneys in the Energy Efficiency Revolving Loan Fund for financial assistance for projects in Ohio. "Project" was defined as any real or

⁴ *The rules must be adopted under R.C. 111.15.*

personal property connected with all or part of an industrial, distribution, commercial, or research facility, not-for-profit facility, or residence that was to be acquired, constructed, reconstructed, enlarged, improved, furnished, or equipped with aid furnished pursuant to the Energy Efficiency Revolving Loan Program for the purposes of not-for-profit, industrial, commercial, distribution, residential, and research development in the state. "Project" could include any small-scale renewables project.

The act changes "project" to "advanced energy project" and defines it as technologies, products, activities, or management practices or strategies that facilitate the generation or use of electricity and that reduce or support the reduction of energy consumption or support the production of clean, renewable energy for industrial, distribution, commercial, institutional, governmental, research, not-for-profit, or residential energy users. The act specifies that such energy can include wind power; geothermal energy; solar thermal energy; and energy produced by micro turbines in distributed generation applications with high electric efficiencies, by combined heat and power applications, by fuel cells powered by hydrogen derived from wind, solar, biomass, hydroelectric, landfill gas, or geothermal sources, or by solar electric generation, landfill gas, or hydroelectric generation.

Program funding

(R.C. 122.075 and 4928.61)

Law retained in part by the act requires all energy efficiency revenues remitted to the Director of Development to be deposited into the Energy Efficiency Revolving Loan Fund for the Energy Efficiency Revolving Loan Program. Interest on the fund must be credited to it. Energy efficiency revenues are generated by the following:

- (1) A temporary rider on retail electric distribution service rates (the rider cannot exceed \$5 million per year after 2005 and ends ten years after the start of competitive retail electric service or when the fund reaches \$100 million, whichever is first);
- (2) Revenues from Energy Efficiency Revolving Loan Program loan repayments and payments from Program loan collections;
- (3) Revenues collected by a participating municipal electric utility or electric cooperative.

Law modified by the act requires each electric distribution utility in Ohio to remit to the Director on a quarterly basis the revenues described above. These remittances began the first quarter following the starting date of competitive retail

electric service. Each participating electric cooperative and participating municipal electric utility also must remit the revenues to the Director on a quarterly basis. These remittances must begin with the first quarter following the participating cooperative's or utility's decision to participate.

The act makes modifications to these provisions to refer to energy efficiency revenues as advanced energy revenues and to change the Energy Efficiency Revolving Loan Fund into the Advanced Energy Fund. The act also adds as advanced energy revenue, interests earnings on the Advanced Energy Fund. The act does not change the temporary nature of the electric distribution service rate rider.

The act also modifies the remittance schedule to require payment of the revenues to the state within 30 days after the end of each calendar quarter for electric distribution utilities and participating electric cooperatives and municipal utilities. Additionally, the act expressly states that participation by an electric cooperative or municipal utility in the Energy Efficiency Revolving Loan Fund does not constitute a decision to participate in the Advanced Energy Fund.

Program assistance

(R.C. 4928.62(A))

Law that the act retains requires, to the extent feasible given approved applications for assistance, program assistance to be distributed among the certified territories of electric distribution utilities and participating electric cooperatives, and among the service areas of participating municipal electric utilities, in amounts proportionate to the remittances of each utility and cooperative to the Fund. Assistance can take the form of direct loans or grants, or loan participation agreements or linked deposits. Formerly, the Director could not authorize financial assistance under the Program unless the Director first determined all of the following:

(1) The project included an investment in products, technologies, or services, including energy efficiency for low-income housing, for residential, commercial and industrial business, local government, educational institution, nonprofit entity, or agricultural customers of an electric distribution utility or a participating municipal electric utility or electric cooperative.

(2) The project improved energy efficiency in a cost-efficient manner by using both the most appropriate national, federal, or other standards for products as determined by the Director, and the best practices for use of technology, products, or services in the context of the total facility or building.

(3) The project benefited the economic and environmental welfare of Ohio's citizens.

(4) The receipt of financial assistance was a major factor in the applicant's decision to proceed with or invest in the project.

The act removes these determination requirements and instead requires the Director to condition assistance on a determination that a project will create new jobs or preserve existing jobs in Ohio or use innovative technologies or materials. The act also eliminates a requirement that the total of grants provided in a fiscal year cannot exceed 10% of the revenues paid into the fund the previous fiscal year.

Director's authority

(R.C. 4928.57 and 4928.62(B))

In carrying out the Energy Efficiency Revolving Loan Program requirements, the Director could acquire property, make and enter into all necessary contracts and agreements, retain necessary employees or agents, adopt applicable rules, and do all things necessary for the operation of the program.

The act retains these provisions for the Advanced Energy Program, and specifies that the Director can award grants, contracts, loans, loan participation agreements, linked deposits, and energy production incentives to further the public interest in advanced energy projects and economic development. The act also permits the Director to hold ownership of any unclaimed energy efficiency and renewable energy emission allowances that result from advanced energy projects that receive funding from the Advanced Energy Fund.

Existing projects

(R.C. 4928.62(E))

The act further expresses that the changes regarding the Advanced Energy Fund do not affect any pending or effected assistance, purchases, or contracts in existence prior to the act's effective date under the Energy Efficiency Revolving Loan Program.

Geothermal systems for school districts

(R.C. 4928.62(F))

The act specifies that any assistance a school district receives for an advanced energy project, including a geothermal heating, ventilating, and air conditioning (HVAC) system, is to be in addition to any assistance provided under

the Ohio School Facilities Commission Law and cannot be included as part of the district or state portion of the basic project cost under that Law.

Purposes of the program

(R.C. 4928.58, 4928.62(A), and 4928.63)

Law retained in part by the act provides that the powers and duties of the Director and the Public Benefits Advisory Board regarding the Energy Efficiency Revolving Loan Program exist in order to promote the welfare of the people of Ohio, to stabilize the economy, to assist in the improvement and development within Ohio of not-for-profit entity, industrial, commercial, distribution, residential, and research buildings and activities required for the people of Ohio, to improve the economic welfare of the people of Ohio, and to assist in the improvement of air, water, or thermal pollution control facilities and solid waste disposal facilities.⁵

The act modifies these purposes with respect to the Advanced Energy Program to provide that the improvement in economic welfare is to occur by reducing energy costs and reducing energy usage in a cost-efficient manner using, as determined by the Director, both the most appropriate national, federal, or other standards for products and the best practices for the use of technology, products, or services in the context of a total facility or building. The purpose concerning pollution is restated as assisting in the lowering of energy demand to reduce air, water, or thermal pollution.

The act provides that advanced energy and economic development assistance granted under the program is to be made in furtherance of these purposes.

Effective date of Advanced Energy Program provisions

(Section 10)

The act provides that the provisions relating to the newly created Advanced Energy Fund take effect immediately when the act becomes law.

⁵ *The Public Benefits Advisory Board advised the Director on the administration of the Energy Efficiency Revolving Loan Program, and its duties are continued with respect to the Advanced Energy Program. The Board consists of 21 members including members from state agencies, members of the House of Representatives and Senate, and members appointed by the Governor representing various interested parties and consumers.*

State fleet fuel use requirements

(R.C. 125.834(C))

Under ongoing law, within 90 days after October 12, 2006, all motor vehicles owned or leased by the state that are capable of using an alternative fuel must use that fuel if it is reasonably available at a reasonable price. Subject to rules adopted by the Director of DAS, the motor vehicles must use at least 60,000 gallons of E85 blend fuel per calendar year by January 1, 2007, with an increase of 5,000 gallons per year each calendar year thereafter, and at least one million gallons of *biodiesel* per calendar year by that date, with increases of 100,000 gallons per calendar year each year thereafter. The act makes a change to require "blended biodiesel" usage under this schedule instead of "biodiesel." "Blended biodiesel" means a blend of biodiesel with petroleum based diesel fuel in which the resultant product contains not less than 20% biodiesel that meets the American Society for Testing and Materials specification for blended diesel fuel and any other standards that the Director of DAS adopts by rule.

Oil and natural gas marketing program

(R.C. 1510.04)

Continuing law establishes procedures by which independent producers of oil or natural gas may present a petition to the Division of Mineral Resources Management Technical Advisory Council in the Department of Natural Resources to hold a referendum to establish a marketing program for oil and natural gas or to amend an existing program. At the time of the presentation of the petition, the petitioners also must propose a rate of assessment to be made on the production of oil and natural gas in Ohio to fund the program. Formerly, the rate could not exceed 1¢ per gross barrel of oil and 1/10¢ per thousand cubic feet of natural gas. The act increases the limit on the rate of assessment by providing that it cannot exceed 5¢ per gross barrel of oil and 1¢ per thousand cubic feet of natural gas.

Natural gas pipeline safety standards

(R.C. 4905.90)

For the purposes of the natural gas pipeline safety standards law, the act modifies the definition of "gas" to which the law applies. Under prior law, "gas" meant (1) natural gas, synthetic natural gas, or a mixture of those gases, and (2) petroleum gas when used in the transmission or distribution system of a natural gas or gas company. The act changes the definition of gas to make it consistent

with federal law. Under the act, "gas" means natural gas, flammable gas, or gas which is toxic or corrosive.⁶

LEED for Schools

(Section 9)

The U.S. Green Building Council (USGBC) is a nonprofit organization consisting of more than 6,900 building industry organizations that develop the Leadership in Energy and Environmental Design (LEED) Green Building Rating System. LEED is a voluntary, consensus-based national rating system for developing high-performance, sustainable buildings. The "LEED for Schools" Rating System, expected in February 2007, addresses issues specific to schools such as classroom acoustics, master planning, and mold prevention.

The act requires the Ohio School Facilities Commission to study the USGBC's "LEED for Schools" Rating System and to issue a written report to the General Assembly by October 1, 2007, comparing that system to applicable standards set forth in the Commission's most current Ohio School Design Manual.

HISTORY

ACTION	DATE
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⁶ As a result of the change in the definition of gas, the act also removes the definition of "synthetic natural gas" in the natural gas pipeline safety standards law.