



## **Sub. H.B. 251**

126th General Assembly

(As Reported by H. Public Utilities and Energy)

**Reps. Uecker, Kearns, Raga, J. McGregor, Martin, Schneider, Collier, Wagoner, Bubp, Law, Brown, Williams, Mason, Hagan, J. Stewart, Hartnett**

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### **BILL SUMMARY**

- Extends current state facility 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), and also to any public school.
- Modifies the energy efficiency rule-making authority of DAS's Office of Energy Services (OES) by requiring that its rules include a specific standard for heating, refrigeration, and air conditioning systems in state-funded facilities (excluding facilities of state institutions of higher education); allow for a waiver of compliance for facilities where energy standards exceed those prescribed in the rules; and 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 (OEE) in the Department of Development (DOD) to work cooperatively with OES in identifying available energy efficiency and conservation opportunities in state purchasing and in providing technical assistance and training to state employees involved in purchasing.
- Requires that a bidder under a competitive sealed bid submitted to DAS include information regarding whether the product or service meets the energy efficiency guidelines set by the U.S. Environmental Protection Agency and Department of Energy and requires that, in awarding a state contract and after applying the preference for U.S and Ohio products,

DAS also give preference to lowest responsive and responsible bidders whose product or service meets those energy efficiency guidelines.

- 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 expenditures 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.

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## **CONTENT AND OPERATION**

The bill's general concern is energy consumption in state-funded facilities (including those of state institutions of higher education and public schools). As such, it focuses on OES and DAS authority regarding facility construction and leasing, state purchasing, competitive bidding, and contracting, and on the authority of university and college boards of trustees regarding on- and off-campus construction and leasing. OES and DAS authority is discussed first below, followed by the bill's provisions regarding higher education.

### **OES/DAS authority**

#### **Construction/leasing**

**Scope of authority: definitions** (R.C. 123.011(A)). Certain of the bill's changes to the scope of OES/DAS authority occur in the context of defined terms. Under the bill, 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." Current law refers 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 bill 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 current law, or a refrigeration, ventilation, lighting, or other major energy consuming system, component, or equipment.

Additionally, the bill 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 and fleet fuel economy standards (described below), the bill 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, the Northeastern Ohio Universities College of Medicine, and the Medical University of Ohio at Toledo, 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)). Current facility construction/leasing law prohibits state agencies, including those otherwise excluded from DAS's oversight,<sup>1</sup> from (1) constructing a facility of 5,000 square feet or more without having secured from the OES both an

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<sup>1</sup> 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.

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 bill 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, and also to any public school. 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.<sup>2</sup>

Regarding rulemaking, OES is required under current law to adopt 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 efficiency of competing designs in state-financed and -leased facilities. The bill 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 DOD's OEE must cooperate in providing information and technical expertise to OES to ensure adoption of rules of maximum effectiveness. Initial rules must be adopted within nine months of the bill's effective date.

The rules must specify cost-effective, energy efficiency and conservation standards that are to 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 current law's specifications for life-cycle cost and energy consumption analyses, as well as energy performance indices, the bill also provides that the rules require an energy efficiency design standard for heating, refrigeration, and air conditioning systems, components, and equipment in state-funded facilities (excepting facilities of state institutions of higher education) that is 20% above the applicable standard specified in the American Society of

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<sup>2</sup> *The bill's removal of current 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.*

Heating, Refrigerating, and Air-Conditioning Engineers Handbook, as the ASHRAE standard varies from time to time.

Additionally, the rules must 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 where, as documented in the application, the facility will meet energy efficiency and conservation standards that exceed the rules' standards. The bill requires OES to notify the applicant within 30 days of the application's filing date if more supporting information is desired. A waiver will be deemed approved unless, within that 30 days or within 30 days after the date that a later information request is sent, OES notifies the applicant that the waiver is denied.

The rules further must include a requirement that, not later than two years after the bill's effective date, each state-funded facility (except a higher ed facility) is managed by at least one building operator certified under the Building Operator Certification<sup>3</sup> Program or any equivalent program or standards as must be prescribed in the rules and are considered reasonably equivalent. The bill expressly states that this requirement does not preclude such a building operator from managing more than one state-funded facility.

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

### **State purchasing**

(R.C. 123.011(E))

Current law requires OES to adopt rules to ensure 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 DOD is required to advise OES on the state of the art of energy efficiency.

The bill specifies that OES rules apply to the purchase of products and equipment, excepting motor vehicles, by any state agency, department, division, bureau, office, unit, board, commission, authority, quasi-governmental entity, or institution. It requires minimum standards based on federal testing and labeling

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<sup>3</sup> On its website, 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>.

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.

**Fleet fuel economy standards**

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

Under current 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 bill, 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. The bill additionally makes technical drafting changes to that authority.

The bill 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); Section 3)

Current law requires that the DAS Director assign sufficient employees, equipment, and supplies to OES for the *proper* performance of its duties. The bill refers to the full performance of OES's duties and requires the Director to review the current operation of OES within 60 days after the bill's effective date and ensure that staffing levels and equipment and supplies are sufficient for it to fully perform its duties.

**Competitive bidding information**

(R.C. 125.09(B))

Continuing competitive sealed bidding law authorizes DAS to require a bidder to provide sufficient information about the energy efficiency or energy usage of the bidder's product or service. The bill makes provision of such information mandatory in all cases, and additionally provides that the bidder must include information regarding whether the product or service meets the energy efficiency guidelines set by the U.S. Environmental Protection Agency and Department of Energy.

### **Contract preferences**

(R.C. 125.11)

Continuing law authorizes several statutory exceptions to the general policy<sup>4</sup> that a state contract to purchase products must be awarded to the lowest responsive and responsible bidder. One such exception is the policy of buying U.S.-made or -mined products and, if there is sufficient competition to prevent an excessive price, a further preference for Ohio products.

The bill provides that, after applying the preference for domestic products, DAS also must give preference to lowest responsive and responsible bidders whose product or service meets the energy efficiency guidelines set by the U.S. Environmental Protection Agency and Department of Energy. (This provision does not affect the model act DAS must adopt for use by local governments to implement a system of preferences for Ohio and U.S. products (R.C. 125.11(E)).)

### **State institutions of higher education**

(R.C. 3345.69)

The bill 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 bill requires the chairperson of the Interuniversity Council of Ohio 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 by March 31, 2006.

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<sup>4</sup> This policy applies to a contract awarded pursuant to a reverse auction, a contract awarded pursuant to competitive sealed bidding, including a contract awarded to a minority business enterprise, and a contract for which the Controlling Board has waived competitive bidding, but excludes a contract for the purchase of liquor by the Division of Liquor Control.

The bill 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 expenditures by at least 20% by 2014, using calendar year 2004 as the benchmark year. The bill 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 bill requires a board of trustees to adopt rules to carry out the campus energy guidelines, including carrying out the guidelines under the board's existing authority to enter into energy conservation contracts (R.C. 3345.62 to 3345.66, not in the bill).<sup>5</sup>

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**HISTORY**

ACTION	DATE
Introduced	05-10-05
Reported, H. Public Utilities & Energy	12-15-05

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<sup>5</sup> *The rules must be adopted under R.C. 111.51.*