



Bill Analysis

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BILL SUMMARY

Advanced energy

- Requires the Director of Development to establish the Ohio Advanced Energy Manufacturing Center to assist with the design of, development of, and investment in advanced energy projects, training programs, and manufacturing technologies.
- Creates the Ohio Advanced Energy Manufacturing Center Board to direct the Center's activities and to assist in developing advanced energy projects in the state.

Wind energy development

- Requires the Director of Natural Resources to make available for leasing the bed of Lake Erie for the purpose of wind energy development.
- Requires the Director to adopt rules for the purposes of such leases, and specifies certain requirements to be included in the rules.
- Requires rentals received under the terms of a lease to be paid into the existing Advanced Energy Fund.

Oil and gas development

- Repeals all existing authority for state agencies to enter into oil and natural gas leases.

- Creates the Oil and Gas Leasing Board, and declares that the Board has exclusive authority to lease any portion of developed land for the purpose of the exploration for, development of, and production of oil or natural gas.
- Defines "developed land" to mean land that is owned by a state agency or for which a state agency owns the mineral rights and that is covered by concrete, asphalt, gravel, turf, crops, or fields that have plants or trees not exceeding ten years of growth.
- Establishes a procedure whereby persons may submit lease nominations to the Board, and requires the Board to approve or deny a nomination based on specified factors.
- Establishes procedures applicable to the Board governing the advertising for bids for, and the entering into of, a lease for the extraction of oil and gas from developed state land.
- Requires the Board to adopt rules governing the oil and gas leasing program.
- Establishes the State Land Royalty Fund into which proceeds from leases are required to be credited, and requires that money in the Fund be appropriated by the General Assembly for capital and operating expenses of state agencies whose land is leased for oil and gas extraction.
- Establishes the Oil and Gas Leasing Board Administration Fund consisting of a percentage of the proceeds of oil and gas leases entered into under the bill, and requires the Fund to be used to pay the Board's administrative expenses and to pay certain expenses of Board members.
- Requires appeals of Board decisions to be made to the existing Oil and Gas Commission.

Geologic storage of carbon dioxide

- Declares that the Division of Mineral Resources Management in the Department of Natural Resources has exclusive authority to regulate the geologic storage of carbon dioxide in Ohio.
- Requires a person seeking to operate a carbon dioxide storage facility to obtain a permit to do so from the Chief of the Division of Mineral

Resources Management, establishes conditions that must be met prior to the issuance of a permit, and authorizes the Chief to include terms and conditions in a permit that the Chief considers necessary.

- Requires the Chief to adopt rules governing the carbon dioxide storage program, and requires the rules to include permit application procedures, requirements pertaining to the use of eminent domain by storage operators, financial assurance requirements for storage operators, penalties, a fee for carbon dioxide injection, requirements for the closure of facilities, and requirements for the long-term monitoring of facilities by the state.
- Authorizes a storage facility operator to utilize eminent domain to appropriate land that is necessary for a storage facility, and requires the Director of Transportation to establish a program allowing persons operating pipelines to use state highway lands that are necessary for the operation of storage facilities.
- Establishes the Carbon Dioxide Storage Facility Trust Fund to be administered by the Division of Mineral Resources Management, and requires the Fund to be used for the administration of the applicable provisions of the bill and to provide funding for the long-term monitoring of storage facilities.
- Authorizes the Director of Natural Resources to enter into cooperative agreements with the federal government and other states that the Division of Mineral Resources Management determines to be necessary for the purpose of regulating carbon dioxide storage projects.

Motor vehicle registration tax increase

- Increases the motor vehicle registration tax by \$5, and requires the increase to be used by municipal corporations, counties, and townships to improve and maintain traffic control signals at intersections and the equipment that controls them in order to improve traffic flow so as to minimize the wasting of fuel by motor vehicles at those intersections.

Net metering

- Eliminates references to "retail electric service providers" with regard to net metering.

- Eliminates the peak demand limitation on net metering contracts and tariffs for customer-generators.
- Prohibits reservation or capacity charges for certain electric generation services that are provided to customer-generators.

Energy efficiency standards

- Requires electric distribution utilities and the Director of Development to implement annual energy-efficiency measures that achieve specified annual electricity savings.
- Requires electric distribution utilities to implement cost-effective measures to annually decrease peak electricity demand or shift demand to off-peak periods.
- Establishes a limitation on the implementation of energy-efficiency and peak-demand measures in order to limit the amount of increase in the rates paid by retail electric service customers due to those measures, and requires the Public Utilities Commission (PUCO) to review the limitation and report to the General Assembly its findings as to whether the limitation unduly constrains procurement of those measures.
- Requires electric distribution utilities to design, develop, and file with the PUCO, no later than January 15 of each year, plans of measures targeted to achieve the energy-efficiency and peak-demand reduction requirements, and requires the energy-efficiency measures to be designed and developed in consultation with the Director.
- Provides for the PUCO to determine energy-efficiency provisions of a plan in the event that an electric distribution utility and the Director cannot come to agreement.
- Establishes provisions that each plan must contain, including a provision for a tariff mechanism to fund the energy-efficiency and peak-demand reduction measures and to ensure the recovery of just and reasonable costs.
- Requires each electric distribution utility to implement approximately 75% of energy-efficiency measures under an energy-efficiency and peak-demand reduction plan, and requires the Director to implement the rest.

- Establishes a procedure for PUCO approval of submitted plans, including public comment, notice, and hearing, and establishes a procedure for refile modified plans if the originally filed plan is disapproved.
- Imposes forfeitures on each electric distribution utility that fails to file an annual plan or fails to refile a modified plan after disapproval, and provides for the forfeiture amounts to be deposited into the Advanced Energy Fund to be used to pay for Ohio's advanced energy program.
- Imposes forfeitures on each electric distribution utility, that vary in amount depending on the number of customers served by the utility, that fails to meet the utility's portion of energy-efficiency requirements under an energy-efficiency and peak-demand reduction plan, and provides for the forfeiture amounts to be deposited into the Universal Service Fund to be used to pay for low-income assistance programs, a customer education program, and the administrative costs of those programs.
- Prohibits forfeitures imposed under the bill from being passed on to an electric distribution utility's retail electric service consumers.
- Requires the filing of a joint modified plan explaining the performance failure and proposing a remedial course to be followed to meet the energy-efficiency requirements in cases in which the Director fails to meet the Director's responsibilities under a plan, and requires the PUCO to approve the joint modified plan using the same procedures that are applicable to approving annual plans.
- Requires the Director to make annual reports to the PUCO regarding the actual costs incurred in implementing the energy-efficiency measures for which the Director is responsible.
- Provides for the annual review and adjustment of each tariff that is imposed to pay for energy-efficiency and peak-demand reduction measures in order to reconcile the amounts collected with the actual expenditures for those measures.
- Provides that tariff amounts collected by an electric distribution utility to cover the cost of energy-efficiency measures implemented by the Director must be paid to the PUCO for eventual payment to the Director to cover the Director's implementation costs.

Renewable energy requirements

- Requires a generation supplier that supplies electric generation service in the state to derive a specified percentage of its total retail electric sales from specified renewable energy sources.
- Establishes a calendar year schedule listing the minimum percentage of a generation supplier's total retail electric sales that must come from specified renewable energy sources, increasing by 2% each year from 2% in 2010 to 22% in 2020 and in each subsequent year.
- Requires a generation supplier to submit an annual report to the PUCO by April 15 describing the supplier's compliance with the minimum requirements for sales of electricity generated from renewable energy.
- Requires the PUCO to establish a system of renewable energy credits to be awarded to generation suppliers that exceed the minimum requirement for total retail electric sales from renewable energy, and requires the PUCO to develop a renewable energy credit registry that generally tracks the price and status of renewable energy credits.
- Permits the PUCO, for the purpose of paying facility design and construction costs of a fuel cell facility, to authorize the collection of a surcharge on the retail electric rates of customers receiving electricity from a generation supplier that constructs or is in the process of constructing a fuel cell facility with a generating capacity of 30 kilowatts or less of electricity or that purchases electricity from an entity that constructs or is in the process of constructing such a facility.
- Requires the PUCO to enforce the renewable energy requirements by assessing forfeitures against generation suppliers for noncompliance, requires moneys collected from forfeitures to be credited to the existing Advanced Energy Fund, and specifies that the forfeitures cannot be collected from consumers receiving electricity from generation suppliers that are subject to the forfeiture.

Miscellaneous provisions

- Ensures that the use of clotheslines for drying clothes is an option that is available to persons in this state.

- Transfers control and management of 30,000 acres of right-of-way located along state and interstate freeways from the Department of Transportation to the Department of Natural Resources, and requires the latter Department to plant on those acres vegetation that contributes to the beautification of the freeways and vegetation that, when harvested, can be processed into the fuel cellulosic ethanol.

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CONTENT AND OPERATION

ADVANCED ENERGY

Ohio Advanced Energy Manufacturing Center

(R.C. 122.156 and 4928.01)

The bill requires the Director of Development to establish the Ohio Advanced Energy Manufacturing Center to provide for the exchange of information and expertise regarding advanced energy for the purpose of assisting with the design of advanced energy projects and encouraging investment in advanced energy manufacturing technologies that result in: (1) the manufacture of advanced energy products that are available commercially, and (2) sustainable manufacturing operations that create high-paying jobs in the state. The bill also requires the Center to assist with the development of advanced energy workforce training programs.

For those purposes, the bill incorporates the definition of "advanced energy project" in the Competitive Retail Electric Service Law, that is, any technology, product, activity, or management practice or strategy that facilitates the generation or use of electricity and that reduces or supports the reduction of energy consumption or supports the production of clean, renewable energy for industrial, distribution, commercial, institutional, governmental, research, not-for-profit, or residential energy users. That energy includes, but is not limited to, wind power, geothermal energy, solar thermal energy, and energy that is 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.

The bill authorizes the Center to do any of the following: (1) enter into contracts to offer research, technology, and manufacturing process development services in the field of advanced energy, (2) establish methods by which energy, manufacturing, and technology businesses may work with the state's educational institutions to foster advanced energy product development and translational research (see "Ohio Advanced Energy Manufacturing Center Board; Duties," below), (3) develop programs that foster cooperation with higher education



institutions in order to assist in the development of advanced energy projects, and (4) develop workforce development programs that provide training for job opportunities in the field of advanced energy. The bill requires the Ohio Advanced Energy Manufacturing Center Board (see below) to approve contracts entered into by the Center. The Center must develop the workforce development programs in cooperation with the Department of Job and Family Services.

Ohio Advanced Energy Manufacturing Center Board

Membership

(R.C. 122.157(A))

The bill creates the nine-member Ohio Advanced Energy Manufacturing Center Board consisting of six members appointed by the Governor with the advice and consent of the Senate, the Director of Development or the Director's designee, one member of the House of Representatives appointed by the Speaker of the House, and one member of the Senate appointed by the President of the Senate. The members appointed by the Governor must be selected for their knowledge of and experience in advanced energy research or translational research (see below), business, higher education, and federal research and development programs with an emphasis on the development of manufacturing processes and technologies and the use of existing resources for advanced energy research in the university and business communities. Not more than three of the Governor's appointees may be members of the same political party, and the appointed members' terms of office are for seven years beginning January 1 and ending on December 31. The bill includes standard procedures governing appointments and the filling of vacancies.

The bill requires Board members to take an oath of office as provided by the Ohio Constitution and to file financial disclosure statements as required by the Ohio Ethics Law. Board members serve without compensation, but receive reimbursement for their necessary and actual expenses incurred while performing the business of the Board. In addition, the Governor may remove any member appointed by the Governor pursuant to existing law that addresses the removal of Governor's appointees. Five members constitute a quorum.

Administration

(R.C. 122.57(C) and (D))

The bill requires the Board to promote advanced energy projects and the development and manufacture of advanced energy products. To accomplish that, the Board must adopt bylaws for the conduct of its business, establish an operating

budget for and administer funds appropriated to the Ohio Advanced Energy Manufacturing Center, and maintain a principal office within the state. The Board is also responsible for developing policies and guidelines for the operation of the Center and for approving contracts entered into by the Center. The bill requires the Board to employ and fix the compensation of an executive director to administer the Center's programs and activities and permits the executive director to employ and fix the compensation of employees as necessary to implement the bill's applicable provisions. The executive director must file financial disclosure statements as required by the Ohio Ethics Law.

Duties

(R.C. 122.57(D))

The Board is responsible for establishing cooperative partnerships with the Department of Development, the Department of Job and Family Services, and higher institutions in the state to facilitate the development of translational research and advanced energy projects. The bill defines "translational research" as designing or creating new or enhanced products, equipment, or processes by conducting scientific or technological inquiry and experimentation in advanced energy with the goal of developing practical tools, techniques, and manufacturing applications and technologies that result in marketable advanced energy products. The bill further defines "translational research" as including the coordination of research and product development with manufacturing development that results in accelerating the time by which competitive products are available commercially.

The Board is also responsible for the following: (1) establishing an industry-oriented system for identifying advanced energy projects that have the best potential for generating business opportunities and creating jobs in the state, and (2) establishing a research protocol to assist entities that are developing advanced energy projects with an efficient, profitable manufacturing design or process design that follows international standards.

The bill requires the Board to develop a plan for the Center to become self-sustaining within ten years after the effective date of the bill's applicable provisions. Beginning one year after that effective date, the Board must submit to the General Assembly an annual report of the Center's activities.

WIND ENERGY DEVELOPMENT

Leases of Lake Erie bed for wind energy development

(R.C. 1506.11, 1506.111, and 4928.61)

Current law establishes requirements governing leases for the development or improvement of part of the territory, defined to mean the waters and the lands presently underlying the waters of Lake Erie and the lands formerly underlying the waters of Lake Erie and now artificially filled, between the natural shoreline and the international boundary line with Canada. If the Director of Natural Resources finds that a lease may be entered into with a person for development or improvement of the territory, the Director must determine the amount of consideration to be paid and the period of time of the lease. Current law establishes additional requirements concerning such development or improvement in the territory. The bill states that the current requirements do not apply to leases entered into under the bill's provisions governing leases of the bed of Lake Erie for wind energy development.

Instead, the bill requires the Director to make available for leasing the bed of Lake Erie for purposes of wind energy development in accordance with rules adopted under the bill. The bill requires the Director, for purposes of such leases, to adopt rules in accordance with the Administrative Procedure Act that do all of the following:

(1) Establish a map showing the areas of the bed of Lake Erie that may be leased for wind energy development. The rules must ensure that the areas that may be leased are concentrated in the eastern portion of Lake Erie, avoid development of nearshore areas, and avoid areas of Lake Erie where migratory birds are concentrated.

(2) Establish application procedures for and requirements governing a lease of the bed of Lake Erie;

(3) Establish the consideration to be paid by a lessee, which must be a nominal rate;

(4) Require that a lessee pay any taxes or assessments levied or assessed on the property that is the subject of the lease;

(5) Require that a lease be executed in the manner provided in the Conveyances and Encumbrances Law concerning leases; and

(6) Establish any other requirements that the Director determines are necessary to implement or administer the bill's applicable provisions.

The bill requires that rentals received under the terms of such a lease be paid into the state treasury to the credit of the existing Advanced Energy Fund. Current law requires money in the Fund to be used to fund the Advanced Energy Program and pay the Program's administrative costs.

OIL AND GAS DEVELOPMENT

Introduction

(R.C. 123.01, 1505.07, and 1531.06; Section 3; R.C. 5119.40, 5120.12, and 5123.23, repealed)

Under current law, there is no centralized state governmental body that oversees the leasing of state lands for the development of oil and natural gas resources. Instead, several agencies have authority to lease state lands for that purpose. The Department of Administrative Services has authority to lease to any person any tract of land owned by the state and under the control of the Department, or any part of such a tract, for the purpose of drilling for or the pooling of oil or gas. In addition, the Director of Mental Health, the Director of Rehabilitation and Correction, and the Director of Mental Retardation and Developmental Disabilities have authority to enter into oil and gas leases on lands controlled by their respective agencies. Finally, the Director of Natural Resources has authority to enter into leases to remove minerals, which may include oil and gas, from and under the bed of Lake Erie, and the Division of Wildlife in the Department of Natural Resource has authority to enter into oil and gas leases on lands owned and controlled by the Division.

The bill repeals all of the above authority that currently exists for state agencies to enter into oil and natural gas leases. Instead, the bill creates the Oil and Gas Leasing Board to oversee the leasing of state property for the purpose of developing oil and natural gas resources on state lands. However, it provides that a lease of any lands that are owned or controlled by a state agency for the purpose of exploring for, developing, and producing oil or natural gas that was entered into prior to the effective date of the bill's applicable provisions remains in effect until the term of the lease expires as provided for in the lease.

Oil and Gas Leasing Board

Creation

(R.C. 1509.50)

The bill creates the Oil and Gas Leasing Board consisting of the Chief of the Division of Mineral Resources Management in the Department of Natural Resources, who must act as the Board's chairperson, the Chief of the Division of

Geological Survey in that Department, who must act as the Board's vice-chairperson, and the following three members appointed by the Governor:

- (1) One member who is a registered professional engineer in Ohio;
- (2) One member who is an independent oil and gas producer in Ohio; and
- (3) One member representing the public.

The bill provides for staggered five-year terms for the Governor's appointees and includes standard procedures governing their appointment, the filling of vacancies, and removal of appointees. Serving as an appointed member of the Board does not constitute holding a public office or position of employment under the laws of Ohio and does not constitute grounds for removal of public officers or employees from their offices or positions of employment.

Members of the Board serve without compensation for attending Board meetings. The Chief of the Division of Mineral Resources Management and the Chief of the Division of Geological Survey are required to serve without additional compensation beyond the compensation that they otherwise receive from the state. However, members of the Board must be reimbursed for their actual and necessary expenses incurred in the performance of their duties as members of the Board from moneys appropriated to the Oil and Gas Leasing Board Administration Fund created by the bill (see "*Oil and Gas Leasing Board Administration Fund*," below).

Three members of the Board constitute a quorum, and no action of the Board is valid unless it has the concurrence of at least three members. The Board must keep a record of its proceedings. The Division of Mineral Resources Management must provide technical and staff assistance to the Board upon request.

Authority

(R.C. 1509.51(B))

Under the bill, the Oil and Gas Leasing Board has exclusive authority to lease any portion of developed land for the purpose of the exploration for, development of, and production of oil or natural gas. The bill defines "developed land" to mean land that is owned by a state agency¹ or for which a state agency

¹ The bill defines "state agency" to mean every organized body, office, or agency established by the laws of the state for the exercise of any function of state government (R.C. 1509.51 by reference to R.C. 1.60, not in the bill).

owns the mineral rights and that is covered by concrete, asphalt, gravel, turf, crops, or fields that have plants or trees not exceeding ten years of growth. Leases entered into by the Board must be awarded pursuant to a nomination and competitive bid process established by the bill. The bill declares that the extraction of oil and gas pursuant to a lease entered into under the bill must not unreasonably interfere with the primary use of the developed land.

Lease nominations

(R.C. 1509.51(C))

A person who is an owner, in compliance with Ohio's Oil and Gas Law, and seeks to lease developed land for the purpose of exploring for, developing, and producing oil or natural gas may submit a lease nomination identifying the tract of land. "Owner" is defined in current law to mean the person who has the right to drill on a tract or drilling unit, to drill into and produce from a pool, and to appropriate the oil or gas produced therefrom either for the person or for others, except that a person ceases to be an owner with respect to a well when the well has been plugged in accordance with applicable rules adopted and orders issued under the Oil and Gas Law.²

The nomination must be in the form that is required by rules adopted by the Board under the bill (see "**Rules**," below). Not later than 30 days after the receipt of a nomination, the Board must conduct a meeting for the purpose of considering whether to enter into a lease concerning the tract of land that is identified in the nomination. The Board must make a determination approving or denying the nomination not later than 60 days after the meeting. In making its determination, the Board must consider all of the following:

(1) The economic benefits that would accrue from a lease of the nominated tract of land, including the income potential from the proposed oil or natural gas operation;

(2) Whether the proposed exploration, development, and production of oil or natural gas is incompatible with current uses of the tract of land that is the subject of the nomination;

(3) Any objections to the nomination that are submitted to the Board by the state agency that owns the developed land on which the proposed exploration for, development of, and production of oil or natural gas would take place; and

² R.C. 1509.01, not in the bill.

(4) Any other factors that the Board may establish in rules adopted under the bill.

The Board must send written notice of its decision concerning the nomination to the person who submitted the nomination and to the state agency that owns the developed land not later than 30 days after making its determination.

Lease procedures

(R.C. 1509.51(D), (E), and (F))

For each tract of land for which the Board approved a nomination during the previous calendar quarter, the Board must prepare and publish a notice identifying the tract of land. The notice must be published in a newspaper of general circulation in Franklin County and a newspaper of general circulation in the county or counties in which the tract of land is located. The notice must include the following additional information:

(1) An advertisement for sealed bids for a lease concerning the tract of land;

(2) The procedure to be followed in order to submit a lease bid for the tract of land and the deadline for submitting a bid;

(3) A statement that the standard oil and gas lease form developed by the Board in rules adopted under the bill will be used regarding the lease, and a statement concerning how an interested person may obtain a copy of the form;

(4) A statement, if applicable, that special terms and conditions are required by the Board for the tract of land because of special circumstances related to that tract of land, and a statement concerning how an interested person may obtain a copy of the special terms and conditions; and

(5) Any other information that is determined to be pertinent by the Board.

The notice must be published once a week for four consecutive weeks prior to the deadline established by the Board for the submission of bids.

To encourage the submission of bids for leases and the responsible and reasonable development of the state's natural resources, the Board must maintain the confidentiality of, and must not disclose or release, information contained in a lease bid that is submitted under the bill.

Lease bids must be unsealed and opened at a time designated by the Board, but not later than 15 days after the deadline established by the Board for the

submission of bids. Not later than 30 days after unsealing and opening the bids, the Board must enter into a lease for each tract of land that is identified in the notice published under the bill. The lease must be entered into with the person who submits the highest and best bid related to the applicable tract of land taking into account the financial responsibility of the prospective lessee and the ability of the prospective lessee to perform its obligations under the lease.

Rules

(R.C. 1509.52)

Under the bill, the Oil and Gas Leasing Board must adopt rules in accordance with the Administrative Procedure Act that establish all of the following:

(1) The form to be used, procedures to be followed, and information to be provided in submitting nominations to the Board under the bill;

(2) Factors to be considered by the Board, in addition to the factors specifically established in the bill, when determining whether to approve or disapprove a nomination;

(3) A standard lease form to be used by the Board to lease any portion of developed land for the purpose of exploring for, developing, and producing oil or natural gas. The rules must ensure that the form is consistent with industry practice in Ohio and contains a landowner royalty of one-eighth payable to the Oil and Gas Leasing Board.

(4) The factors to be considered by the Board when determining whether any special lease terms or conditions will be required for a particular tract of land because of special circumstances related to that tract of land, provided that such terms and conditions must be consistent with the requirements established in rules adopted under the Oil and Gas Law pertaining to urbanized areas;

(5) The percentage of a landowner royalty that must be credited to the Oil and Gas Leasing Board Administration Fund created by the bill (see "**Use of proceeds from leases; Oil and Gas Leasing Board Administration Fund,**" below); and

(6) Any other procedures and requirements that are necessary to implement the applicable provisions of the bill.

Use of proceeds from leases

(R.C. 131.50, 1509.53, and 1509.54)

State Land Royalty Fund. The bill requires that except as otherwise provided in the bill (see "*Oil and Gas Leasing Board Administration Fund,*" below), all money that is received by the Oil and Gas Leasing Board pursuant to a lease entered into under the bill must be paid by the Board into the state treasury to the credit of the State Land Royalty Fund created by the bill. Money from a lease must be credited to the Fund on behalf of the state agency that owns the developed land on which the production of oil or natural gas that is the subject of the lease occurs. Any investment earnings of the Fund must be credited to the Fund.

Money in the Fund must be used to pay the capital and operating costs of those state agencies on whose behalf money was credited to the Fund. A state agency is entitled to a share of the Fund that is equivalent to the amounts that are credited to the Fund on its behalf under the bill and a share of the investment earnings of the Fund in an amount that is equivalent to the proportionate share of the amounts that are credited to the Fund on behalf of the agency. The General Assembly must appropriate money from the Fund for capital and operating costs of state agencies in accordance with the bill.

Oil and Gas Leasing Board Administration Fund. The bill also creates in the state treasury the Oil and Gas Leasing Board Administration Fund consisting of a percentage of a landowner royalty that is required to be credited to the Fund in rules adopted under the bill (see above). Money in the Fund must be used by the Oil and Gas Leasing Board to pay its administrative expenses and to pay the actual and necessary expenses incurred by Board members in the performance of their duties.

Appeals

(R.C. 1509.55)

A person who is directly affected by a decision of the Oil and Gas Leasing Board to approve or disapprove a nomination under the bill may appeal that decision to the Oil and Gas Commission created in current law to hear appeals of decisions made by the Division of Mineral Resources Management. Such appeals must be taken in the same manner and to the same extent that orders of the Chief of the Division of Mineral Resources Management are appealed under current law.

GEOLOGIC STORAGE OF CARBON DIOXIDE

Geologic storage of carbon dioxide

(R.C. 1572.01 and 1572.02)

The bill establishes a regulatory framework that allows for the geologic storage of carbon dioxide.³ The bill declares that the Division of Mineral Resources Management in the Department of Natural Resources has exclusive authority to regulate the geologic storage of carbon dioxide in Ohio and must administer the geologic carbon dioxide storage program established under the bill. The bill defines "geologic storage" to mean the permanent or short-term underground storage of carbon dioxide in an underground reservoir (see "Storage facility permits," below).

Storage facility permits

(R.C. 1572.01 and 1572.02)

Under the bill, a person seeking to operate a storage facility in Ohio must apply for a permit to do so from the Chief of the Division of Mineral Resources Management in accordance with the bill. The bill defines "storage facility" to mean the underground reservoir, underground equipment, and surface buildings and equipment utilized in the subsurface storage of carbon dioxide, excluding any pipelines used to transport the carbon dioxide from one or more capture facilities to the storage facility. "Storage facility" may include an enhanced oil recovery or natural gas operation. "Underground reservoir" is defined to mean a subsurface sedimentary stratum, formation, aquifer, or cavity or void, naturally or artificially created, including, but not limited to, oil and natural gas reservoirs, saline formations, and coal seams suitable or capable of being made suitable for the injection and storage of carbon dioxide. "Underground reservoir" includes any necessary and reasonable areal buffer and subsurface monitoring zones designated by the Division for the purpose of ensuring the safe and efficient operation of a storage facility and for the purpose of protecting against pollution and the invasion, escape, or migration of carbon dioxide.

The Chief must issue a permit under the bill only if all of the following apply:

³ The bill defines "carbon dioxide" to mean anthropogenically sourced carbon dioxide of sufficient purity and quality as to not compromise the safety and efficiency of an underground reservoir to effectively contain the carbon dioxide (R.C. 1572.01(A)).

(1) The storage facility is suitable and feasible for the injection and storage of carbon dioxide;

(2) A good faith effort has been made by the permit applicant to obtain the consent of a majority of the owners of property interests that will be affected by the storage facility, and the applicant has obtained remaining property interests by eminent domain (see "*Eminent domain*," below);

(3) The use of the storage facility for the geologic storage of carbon dioxide will not contaminate resources containing fresh water, oil, natural gas, coal, or other commercial mineral deposits; and

(4) The storage will not unduly endanger human health and the environment.

In issuing a permit, the Chief may include terms and conditions in the permit that the Chief determines to be necessary.

With respect to each parcel of property that is affected by the issuance of a permit under the bill, the Chief must cause a copy of the permit to be filed and recorded in the office of the county recorder of the county in which the parcel is located. In addition, prior to injecting any carbon dioxide into a storage facility pursuant to a permit issued under the bill, the storage operator⁴ must cause to be filed and recorded in the office of the applicable county recorder and with the Division of Mineral Resources Management a statement that the storage operator has acquired by purchase, lease, eminent domain, or otherwise all of the necessary property rights with respect to the storage facility that is the subject of the permit. The filing must include the date on which carbon dioxide will commence being injected into the storage facility.

Rules

(R.C. 1572.03)

The bill requires the Chief to adopt rules in accordance with the Administrative Procedure Act that do all of the following:

(1) Establish application procedures for permits issued under the bill and procedures for the issuance or denial of an application for a permit;

⁴ Under the bill, "storage operator" is defined to mean an individual, corporation, partnership, limited liability company, or other entity authorized by the Division of Mineral Resources Management to operate a storage facility in this state (R.C. 1572.01(D)).

(2) Establish requirements applicable to storage operators for obtaining the approval of the Chief prior to appropriating property interests under the bill (see "**Eminent domain**," below);

(3) Establish financial assurance requirements for the proper maintenance, well plugging, and abandonment of a storage facility by a storage operator and to protect the storage facility against pollution and the invasion, escape, or migration of carbon dioxide. The financial assurance requirements may include a requirement that a storage operator purchase a surety bond or other financial surety.

(4) Establish penalties and procedures for the enforcement of the applicable provisions of the bill and rules adopted under them, including civil penalties that may be imposed on persons violating those provisions or rules adopted or terms and conditions of a permit issued under them;

(5) Establish the amount of a fee to be charged by the Division and paid by a storage operator for each ton of carbon dioxide that is injected into a storage facility by the storage operator. The rules must require that the proceeds from the fee be deposited in the state treasury to the credit of the Carbon Dioxide Storage Facility Trust Fund created by the bill (see "**Carbon Dioxide Storage Facility Trust Fund**," below).

(6) Establish closure requirements applicable to storage facilities upon the completion of carbon dioxide injection operations at a storage facility. The rules must require the Division to issue a certificate of completion of injection operations upon the termination of carbon dioxide injection at a storage facility and its successful closure. The rules must require that not later than ten years, or another time frame specified by rule, after the issuance of a certificate, upon a showing by the storage operator that the storage facility is reasonably expected to retain its mechanical integrity and remain emplaced, the ownership of the storage facility must transfer to the state. The rules also must provide that upon the transfer of ownership, the storage operator, and any generator of carbon dioxide that was injected into the storage facility by the storage operator, must be released from liability with respect to the storage facility and that any long-term monitoring or remediation of any leakage at the storage facility becomes the responsibility of the state.

(7) Establish a long-term monitoring program for the purposes of monitoring storage facilities, remediation of mechanical problems associated with storage facilities and surface infrastructure, repairing mechanical leaks at storage facilities, and plugging and abandoning wells that are associated with storage facilities;

(8) Establish procedures for allowing the conversion of enhanced recovery of oil or natural gas operations into a storage facility; and

(9) Establish any other requirements or procedures that are determined necessary by the Chief in order to implement the applicable provisions of the bill.

Eminent domain

(R.C. 1572.04)

The bill authorizes a storage operator, subject to rules adopted under the bill, to appropriate, in accordance with current law governing the exercise of eminent domain, surface and subsurface rights and interests in land, including easements and rights-of-way, that are necessary for both of the following:

(1) The operation of a storage facility; and

(2) The transporting of carbon dioxide among facilities constituting a storage facility.

Notwithstanding the eminent domain authority established in the bill, no property rights in a storage facility may be acquired pursuant to the bill's eminent domain authority.

Use of state highway lands

(R.C. 5501.452)

Under the bill, the Director of Transportation is required to implement a program allowing, by lease or permit, the use of lands owned by the state and acquired or used for the state highway system or for highways or in connection with highways or as incidental to the acquisition of land for highways by persons operating pipelines that are necessary for the operation of carbon dioxide storage facilities regulated under the bill. The program must be operated in accordance with guidelines developed by the Department of Transportation and in effect on January 1, 1996. The bill provides, however, that nothing in that provision requires the Director to maintain a lease or permit at a specific location or prohibits the Director from modifying the terms of a specific lease or permit.

Carbon Dioxide Storage Facility Trust Fund

(R.C. 1572.06)

The bill creates in the state treasury the Carbon Dioxide Storage Facility Trust Fund to be administered by the Division of Mineral Resources Management.

The Fund is required to consist of the proceeds of the fee established in rules adopted under the bill. Money in the Fund must be used by the Division for the administration of the applicable provisions of the bill and to provide funding for the long-term monitoring of storage facilities as provided in rules adopted under the bill.

Cooperative agreements with state and federal governments

(R.C. 1572.05)

The bill authorizes the Director of Natural Resources to enter into cooperative agreements with the federal government and other states that the Division of Mineral Resources Management determines to be necessary for the purpose of regulating carbon dioxide storage projects.

Inapplicability to oil and gas recovery operations

(R.C. 1572.07)

The bill declares that nothing in the applicable provisions of the bill or in rules adopted under them applies to the use of carbon dioxide as part of or in conjunction with any enhanced recovery of oil or natural gas where the sole purpose of the project is the recovery of oil or natural gas.

Exemption of carbon dioxide from existing gas storage program

(R.C. 1571.01)

Current law establishes a regulatory program for the underground storage of certain gases. The bill exempts from that program the underground injection of carbon dioxide that is regulated under the bill.

MOTOR VEHICLE REGISTRATION TAX INCREASE

New motor vehicle registration tax

(R.C. 4503.10)

Beginning with each motor vehicle registration renewal with an expiration date on or after October 1, 2008, and for each initial registration application received on and after that date, the bill requires the Registrar of Motor Vehicles and each deputy registrar to collect an additional registration tax of \$5 for each registration and registration renewal application received. The \$5 must be deposited into the state treasury to the credit of the State Intersection Traffic Flow Improvement Fund, which the bill creates.

State Intersection Traffic Flow Improvement Fund; grant program

(R.C. 164.30)

No money may be expended from the State Intersection Traffic Flow Improvement Fund created by the bill (see above) other than in the form of grants made by the Ohio Public Works Commission to municipal corporations, counties, and townships. The political subdivisions are required to use the grants to pay the costs associated with improving and maintaining traffic control signals on a particular street or highway and the equipment that controls those traffic control signals. The timing of the traffic control signals must be coordinated so that the signals not only control the flow of motor vehicle and pedestrian traffic, but do so in a manner that balances the goal of safe and efficient traffic flow with the goal of minimizing the wasting of fuel by motor vehicles waiting for the traffic control signal to change to allow the vehicles to proceed through the intersection.

In order to receive a grant under the bill, a municipal corporation, county, or township is required to provide satisfactory evidence to the Department of Transportation showing that the traffic control signals at the intersections at issue comply with the Ohio Manual of Uniform Traffic Control Devices and that the political subdivision is consulting and cooperating with all other political subdivisions that control and maintain traffic control signals on that same street or highway to achieve the stated goals. All decisions of the Commission are final, but a political subdivision whose grant application is rejected may reapply for that grant.

The Commission, in accordance with the Administrative Procedure Act, is required to adopt rules governing the grant program. All investment earnings of the Fund must be credited to the Fund.

NET METERING

Changes to net metering

(R.C. 4728.01, 4728.67, and 4928.68)

Current law

Current law provides for net metering for customer-generators. "Net metering" means measuring the difference in an applicable billing period between the electricity supplied by an electric service provider and the electricity generated by a customer-generator that is fed back to the electric service provider. "Net metering system" is a facility for the production of electric energy that does all of the following:

(1) Uses as its fuel either solar, wind, biomass, landfill gas, or hydropower, or uses a microturbine or a fuel cell;

(2) Is located on a customer-generator's premises;

(3) Operates in parallel with the electric utility's transmission and distribution facilities; and

(4) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.

Under current law, a retail electric service provider in Ohio must develop a standard contract or tariff providing for net energy metering. The provider must make the contract or tariff available to customer-generators, on request and on a first-come, first-served basis, any time that the total rated generating capacity used by customer-generators is less than 1% of the provider's aggregate customer peak demand in Ohio. The contract or tariff must be identical in rate structure, all retail rate components, and any monthly charges to the contract or tariff to which the same customer would be assigned if that customer were not a customer-generator.

The bill

The bill makes three changes to the law governing net metering. First, the bill removes references to "retail electric service providers," "electric service providers," and "electric utilities" as they relate to net metering and replaces the references with the term "electric light company."⁵ The new term is defined under the bill to mean an entity engaged in the business of supplying electricity for light, heat, or power purposes to consumers within Ohio, including supplying electric transmission service for electricity delivered to consumers in the state, but excluding a regional transmission organization approved by the Federal Energy Regulatory Commission.⁶ As a result, "electric light company" applies to a large number of electricity supplying entities, which may include entities such as municipal electric companies and electric cooperatives.

⁵ Current law does not define "retail electric service provider" or "electric service provider." Current law does define "electric utility" as including some, but not all, of the entities covered under the bill's new definition of "electric light company." An electric utility, however, excludes the following: (1) electric services companies, (2) municipal electric utilities, (3) electric cooperatives, (4) billing and collection agents, (5) governmental aggregators, and (6) self-generators as to electricity that they produce and consume or sell for resale.

⁶ Regional transmission organizations coordinate the movement of electricity on a regional basis throughout North America via the electric transmission grid.

Second, the bill eliminates the requirement that a provider make the net metering contract or tariff available to customer-generators any time that the total rated generating capacity used by customer-generators is less than 1% of the provider's aggregate customer peak demand in Ohio. The bill provides that, similar to current law, an electric light company must develop a standard contract or tariff providing for net energy metering that is identical in rate structure, all retail rate components, and any monthly charges to the contract or tariff to which the same customer would be assigned if that customer were not a customer-generator.

Finally, the bill requires that rates charged by an electric light company for net electricity supplied to customer-generators not include reservation or capacity charges for generation services if wholesale generation services are available to the electric light company from regional transmission organization markets. Electricity from wholesale generation services that is provided through a regional transmission organization must be sold to a customer-generator at the electric light company's cost.

ENERGY EFFICIENCY STANDARDS

Energy-efficiency and peak-demand reduction

The bill establishes requirements that electric distribution utilities must meet to increase energy-efficiency and reduce peak load demand or shift such demand to off-peak periods. The bill establishes yearly benchmarks and provides for a limitation on the retail price effects of the measures on customers as described below.

Energy-efficiency and peak-demand reduction measures

(R.C. 4928.70 to 4928.702)

The bill requires that electric distribution utilities⁷ and the Director of Development implement energy-efficiency measures that achieve the following relative to a baseline period of the 12 months ending May 31, 2008:

(1) A savings of 0.2% of electricity delivered to retail electric service customers for the 12-month period commencing June 1, 2008;

⁷ "Electric distribution utility" means an electric utility that supplies at least retail electric distribution service, but does not include any electric distribution utility that, on December 31, 2006, provided retail electric service to 100,000 or fewer retail electric service customers in Ohio. (R.C. 4928.70(B).)

(2) A savings of an additional 0.2% of electricity delivered to retail electric service customers for each of the next four 12-month periods commencing on June 1, until a savings of 1% is achieved for the 12-month period commencing on June 1, 2012;

(3) A savings of an additional 0.4% of electricity delivered to retail electric service customers for each of the next two 12-month periods commencing on June 1, until a savings of 1.8% is achieved for the 12-month period commencing on June 1, 2014;

(4) A savings of 2% of electricity delivered to retail electric service customers for the 12-month period commencing on June 1, 2015, and for each 12-month period commencing thereafter on June 1.

Electric distribution utilities are also required by the bill to implement cost-effective measures⁸ to decrease peak electricity demand or shift demand from peak to off-peak periods with regard to electricity delivered to all retail electric service customers other than self-generators and persons with special financial arrangements as permitted under current law.⁹ For each of the next ten 12-month periods beginning with the initial period on June 1, 2008, the measures must reduce peak demand by 0.1% over the immediately preceding 12-month period's peak demand.

Limitation on implementation based on cost

(R.C. 4928.703)

Under the bill, for each of the four 12-month periods starting with the initial period commencing on June 1, 2008, an electric distribution utility and the Director must limit the implementation of the energy-efficiency and peak-demand reduction measures by an amount that is necessary to limit the estimated average increase in the amounts paid by retail electric service customers for electric service due to the cost of those measures to 0.5% of the amount paid per kilowatt hour by those customers during the 12-month period ending May 31, 2007. The limitation percentage is to increase incrementally by 0.5% for each 12-month period thereafter until the limitation percentage for the 12-month period commencing on June 1, 2011, is 2% of the amount paid per kilowatt hour for electric service by

⁸ A measure is "cost-effective" if the benefit-cost ratio, which is the ratio of the net present value of the total benefits, including avoided costs, of the measure to the net present value of the total costs as calculated over the lifetime of the measure, is greater than one (R.C. 4728.70(A)).

⁹ See R.C. 4905.31, not in the bill.

customers during the 12-month period ending May 31, 2007. Beginning with the 12-month period commencing on June 1, 2012, and for every 12-month period thereafter, the limitation percentage is 2.15% of the amount paid per kilowatt-hour for retail electric service by retail electric service customers during the 12-month period ending May 31, 2007.

The bill requires that not later than June 30, 2011, the Public Utilities Commission of Ohio (PUCO) must review the limitation and report to the General Assembly its findings as to whether it unduly constrains the procurement of energy-efficiency and peak-demand reduction measures.

Implementation of energy-efficiency and peak-demand reduction requirements

(R.C. 4928.707)

The bill requires each electric distribution utility to implement all peak-demand reduction measures and approximately 75% of the energy-efficiency measures included in the plan approved by the PUCO (see "**Designing a plan for energy-efficiency and peak-demand reduction**," below). The Director must implement approximately 25% of all energy-efficiency measures included in approved plans. The Director may outsource implementation of measures assigned to the Director under each approved plan. A minimum of 10% of the entire portfolio of measures under each approved plan must be procured from units of local government, school districts, and community college districts.

Energy-efficiency and peak-demand reduction plans

In order to meet the bill's requirements for energy-efficiency and peak-demand reduction, each electric distribution utility must file a plan for PUCO approval. Each plan is required to be designed, structured, and approved as described below.

Designing a plan for energy-efficiency and peak-demand reduction

(R.C. 4928.704)

The bill provides that not later than January 15, 2008, each electric distribution utility must file with the PUCO a plan to meet the required energy-efficiency and peak-demand reduction standards for the three 12-month periods beginning June 1, 2008. Not later than the 15th of January of every third year thereafter, each electric distribution utility must file an energy-efficiency and peak-demand reduction plan for the next succeeding three 12-month periods. Each plan must set forth proposals to meet the energy-efficiency and peak-demand

reduction standards, taking into account the service territory served by the electric distribution utility (see "*Plan requirements*," below).

Under the bill, electric distribution utilities are responsible for overseeing the design and development of energy-efficiency and peak-demand reduction plans. With respect to energy-efficiency measures, each utility must consult with the Director regarding their design and development. Each utility and the Director must also agree on a reasonable portfolio of energy-efficiency measures, determine the percentage of the required savings that will be assigned to each of those measures, and determine which measures the utility or the Director will be responsible for implementing.

If an electric distribution utility and the Director are unable to agree on the energy-efficiency provisions required to be included in a plan, the utility and Director must each file their own versions of the energy-efficiency provisions of the plan by the required date to the PUCO. The PUCO must then determine the appropriate standards for the energy-efficiency provisions of the plan.

Plan requirements

(R.C. 4928.705)

The bill requires energy-efficiency and peak-demand reduction plans to do all of the following:

(1) Demonstrate that the proposed measures will achieve the energy-efficiency and peak-demand reduction requirements of the bill;

(2) Present specific proposals for the implementation of building and appliance standards;

(3) Include a description of the energy-efficiency measures the Director is responsible for implementing;

(4) Present estimates of the total amount to be paid for retail electric service expressed on a per kilowatt-hour basis associated with the proposed portfolio of measures designed to meet the energy-efficiency and peak-demand reduction requirements of the bill;

(5) Provide for coordination with the Director in order to present a portfolio of energy-efficiency measures targeted for participants in, and persons eligible for, low-income customer assistance programs;

(6) Demonstrate that the proposed energy-efficiency and peak-demand reduction measures, not including those measures described above in item (5), are

cost-effective and represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs;

(7) Include a cost-recovery tariff mechanism to fund the proposed energy-efficiency and peak-demand reduction measures described in the plan and to ensure the recovery of just and reasonable costs; and

(8) Provide for an annual independent evaluation of the cost-effectiveness of the portfolio of proposed energy-efficiency and peak-demand reduction measures as well as a full review of the three-year results of the broader net program impacts, and, to the extent practical, provide for prospective adjustment of the measures on the basis of the evaluations. The cost of the evaluation may not exceed 3% of the portfolio's savings in any given year.

Plans to be submitted for public comment and PUCO approval

(R.C. 4928.706)

The bill requires the PUCO to seek public comment on each energy-efficiency and peak-demand reduction plan that is filed. After notice and a hearing, the PUCO must issue an order approving or disapproving the plan not later than 60 days after the date on which the plan was filed. If the PUCO disapproves a plan, it must provide written findings that specify the reason the plan was not approved and what changes should be made in the plan in order to obtain PUCO approval. Not later than 30 days after the issuance of the written disapproval findings, the electric distribution utility must refile a modified plan. Any refiled plan is subject to the same review procedure, time limitations, and notice and hearing requirements imposed for originally filed plans. If the PUCO fails to approve or disapprove a plan within the 60-day time limit, the plan must be considered approved.

Failure to file an energy-efficiency and peak-demand reduction plan

(R.C. 4928.61 and 4928.7012)

If an electric distribution utility fails to file a plan on the appropriate date required under the bill, the utility must forfeit \$100,000 per day until the plan is filed. If an electric distribution utility does not refile a plan that has been disapproved in the required time period, the utility must forfeit \$100,000 per day until the plan is refiled.

An electric distribution utility is not subject to a forfeiture for failure to make a timely filing if that failure is the result of lack of agreement with the Director regarding the energy-efficiency provisions of a plan.

Forfeitures imposed under the bill must be enforced in the same manner that the PUCO typically enforces forfeitures,¹⁰ except that forfeiture amounts collected are to be deposited into the Advanced Energy Fund.¹¹

Failure to meet energy-efficiency or peak-demand reduction requirements

The bill specifies the consequences if the Director or an electric distribution utility fails to implement an approved energy-efficiency and peak-demand reduction plan. Should such failure continue without remediation, the PUCO can assume control over the program.

Failure by Director of Development

(R.C. 4928.7013)

Under the bill, if the Director is unable to meet the Director's annual energy-efficiency performance standards required by an approved plan for any one year of the plan, the electric distribution utility that is subject to the plan and the Director must jointly file a modified plan with the PUCO. The modified plan must include an explanation of the performance failure and the remedial course proposed. The modified plan must comply with the bill's energy-efficiency and peak-demand reduction requirements and energy-efficiency plan design and development requirements. The PUCO must approve the modified plan in the same manner as an annual plan.

Failure by utility

(R.C. 4928.51, 4928.7014, and 4928.7017)

The bill provides that if an electric distribution utility fails, by the end of the second year, or if an electric distribution utility fails, by the end of the third year, to meet the energy-efficiency savings requirements imposed on it under an approved energy-efficiency and peak-demand reduction plan, the utility is subject to a forfeiture described below.

With respect to failure to meet the energy-efficiency requirements by the end of the second year of an approved plan, a large electric distribution utility¹²

¹⁰ See R.C. 4905.57, 4905.59, and 4905.61, not in the bill.

¹¹ Money in the Fund may be used only for the Advanced Energy Program, which includes advanced energy projects in Ohio and economic development assistance. (R.C. 4928.62, not in the bill.)

must forfeit no more than \$665,000, and a medium electric distribution utility¹³ must forfeit no more than \$335,000. If two or more large electric distribution utilities fail to meet the energy-efficiency requirements by the end of the second year, the total forfeiture amount imposed on the large electric distribution utilities for their failure must not exceed \$665,000. If two or more medium electric distribution utilities fail to meet the energy-efficiency requirements by the end of the second year, the total forfeiture amount imposed on the medium electric distribution utilities for their failure must not exceed \$335,000.

With respect to failure to meet the energy-efficiency requirements by the end of the third year of an approved plan, a large electric distribution utility must forfeit no more than \$665,000, and a medium electric distribution utility must forfeit no more than \$335,000. If two or more large electric distribution utilities fail to meet the energy-efficiency requirements by the end of the third year, the total forfeiture amount imposed on the large electric distribution utilities for their failure must not exceed \$665,000. If two or more medium electric distribution utilities fail to meet the energy-efficiency requirements by the end of the third year, the total forfeiture amount imposed on the medium electric distribution utilities for their failure must not exceed \$335,000.

Forfeitures imposed under the bill must be enforced in the same manner that the PUCO typically enforces forfeitures,¹⁴ except that forfeiture amounts collected are to be deposited into the Universal Service Fund.¹⁵

The bill provides that no electric distribution utility may be deemed to have failed to meet the energy-efficiency requirements imposed on it by an approved

¹² "Large electric distribution utility" means an electric distribution utility that, on December 31, 2006, served more than two million retail electric service customers in Ohio. The bill further provides that one or more electric distribution utilities that are affiliated by virtue of a common parent company are to be considered one electric distribution utility for purposes of this provision of the bill. (R.C. 4928.7014(A).)

¹³ "Medium electric distribution utility" means an electric distribution utility that, on December 31, 2006, served more than 100,000, but no more than two million retail electric service customers in Ohio. As described for "large electric distribution utilities," affiliated electric distribution utilities are to be considered one such utility (R.C. 4928.7014(A)).

¹⁴ See R.C. 4905.57, 4905.59, and 4905.61, not in the bill.

¹⁵ Money in the Fund must be used only for funding low-income customer assistance programs, a consumer education program, and the administrative costs of those programs.

energy-efficiency and peak-demand reduction plan to the extent that any such failure is due to a failure of the Director or the PUCO.

PUCO to assume responsibility for implementing energy-efficiency measures upon failures

(R.C. 4928.7016)

Under the bill, if any electric distribution utility or the Director fails, by the end of the third year, to meet the energy-efficiency requirements imposed on it by an approved energy-efficiency and peak-demand reduction plan, the PUCO may assume the responsibility for implementing energy-efficiency measures to meet the requirements. The PUCO must institute a competitive procurement program to obtain and implement the energy-efficiency measures over which it has assumed control. The program must require the PUCO to obtain at least three bids or quotes from different vendors, and the program is to be governed by a rebuttable presumption that the lowest responsive and responsible bid or quote must be selected.

Prohibition against recovering forfeitures from customers

(R.C. 4928.7015)

Any forfeiture amounts imposed on an electric distribution utility under the bill may not be collected in any manner from the utility's retail electric service customers.

Department of Development report to PUCO

(R.C. 4928.7011)

The bill requires the Director to report annually to the PUCO regarding the costs that are actually incurred in the implementation of the energy-efficiency measures for which the Director is responsible under approved plans.

Approval of tariffs

(R.C. 4928.708 to 4928.7010)

The bill requires the PUCO to annually review a tariff that is approved as part of an energy-efficiency and peak-demand reduction plan in order to reconcile the amounts collected with the actual costs and to determine the required adjustment to the annual tariff to match annual expenditures. The tariff may be modified by the adjustment only after notice and a hearing.

The bill provides that not more than 3% of revenues that are raised by a tariff imposed by an approved plan may be used to fund demonstration of breakthrough equipment and devices.¹⁶

Tariff amounts collected by an electric distribution utility to cover the cost of energy-efficiency measures implemented by the Director are to be paid by the utility to the PUCO for deposit into the Energy-Efficiency Fund created in the state treasury by the bill. The amounts in the Fund must be used only for the purpose of implementing the energy-efficiency measures that the Director must implement under approved plans. All investment earnings of the Fund must be retained by the Fund.

RENEWABLE ENERGY REQUIREMENTS

Introduction

The bill requires generation suppliers to derive a certain percentage of their electricity supply from specified renewable energy sources according to a calendar year schedule. The bill also defines "renewable energy" and other related terms and outlines how generation suppliers must comply with the renewable energy requirements. Finally, the bill establishes the duties that the PUCO must undertake regarding renewable energy, including the establishment of a renewable energy credit system, encouraging fuel cell generation development, and enforcement of the renewable energy requirements in the bill.

"Renewable energy" and related definitions

(R.C. 4933.51)

For the purposes of the renewable energy requirements that are discussed below, the bill defines several terms. "Generation supplier" is a public utility electric light company that supplies retail electric generation service in the state. Under existing law, a public utility electric light company is any person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, that is engaged in the business of supplying electricity for light, heat, or power purposes to consumers within this state, including supplying electric transmission service for electricity delivered to consumers in this state, but excluding a regional transmission organization approved by the Federal Energy Regulatory Commission. Public utility electric light companies, and thus generation suppliers under the bill, do not include electric light companies that operate their utilities not-for-profit, public utilities other than telephone companies owned and operated exclusively by and solely for

¹⁶ The bill does not define "breakthrough equipment and devices."

the utilities' customers, or public utilities owned or operated by any municipal corporation.¹⁷

"Renewable energy" means any of the following: (1) solar energy, (2) wind energy, (3) geothermal energy, (4) biomass energy, (5) certain hydropower as described in the definition of "renewable energy system" (discussed below), or (6) energy from a fuel cell. The bill expressly excludes the following from the definition of renewable energy: nuclear energy, pump storage, and energy derived from fossil fuels, including natural gas, oil, propane, and coal, including coal-mined methane.

The bill defines "biomass" to mean any of the following: (1) cellulosic organic material from a plant that is grown for the purpose of being used in the production of electricity, (2) nonhazardous, plant-based waste material that is segregated from other solid waste materials and derived from agricultural crops, crop byproducts or residues, forestry maintenance residues, or landscape or right-of-way tree trimmings or clean wood waste, (3) gasified animal waste, (4) gasified food waste, (5) landfill methane, (6) methane from food or farm waste, (7) plant oils including used restaurant grease, (8) municipal solid waste, (9) post-consumer waste paper, (10) painted, treated, or pressurized wood, (11) construction debris, (12) wood contaminated with plastic or metals, or (13) tires.

"Fuel cell" means an electromechanical device that converts chemical energy in a hydrogen-rich fuel directly into electricity, heat, and water without combustion. "Hydrogen-rich fuel" includes hydrogen produced from fossil fuels, including natural gas, oil, propane, and coal, including coal-mined methane.

"Renewable energy system," as defined in the bill, includes any of the following: (1) a facility or energy system that uses renewable energy to generate electricity, (2) a biomass cofiring facility that cofires nonrenewable energy sources with biomass, (3) a landfill methane facility, (4) a fuel cell technology system, (5) a hydroelectric generating facility located at a dam within Ohio or on Ohio's border that has a total stated production capacity of 30 megawatts or less of electricity, or (6) a series of units, each with a stated production capacity of 40 megawatts or less of electricity, at a hydroelectric generating facility located at a dam or lock and dam in Ohio or on Ohio's border.

"New renewable energy system" includes any of the following: (1) a renewable energy system that is placed in operation on or after January 1, 1997, (2) a facility in existence prior to January 1, 1997, that has been reconfigured so that at least 80% of the fair market value of the electricity that it generates or

¹⁷ R.C. 4905.02 and 4905.03, not in the bill.

distributes is from renewable energy, (3) a separable, improved part of a facility in existence prior to January 1, 1997, that generates or distributes electricity derived from renewable energy separately from the original facility, or (4) a facility in existence prior to January 1, 1997, that has converted 100% of its fuel source to renewable energy.

The bill defines "qualified energy" as either renewable energy from a new renewable energy system or energy represented by a renewable energy credit awarded to or purchased by a generation supplier.

"Renewable energy credit" means a tradable, verifiable instrument representing one megawatt hour of electricity produced from renewable energy from a new renewable energy system.

Schedule for renewable energy requirement

(R.C. 4933.52)

The bill requires a generation supplier to derive the following minimum aggregate amount of its total retail electric sales from any combination of qualified energy sources according to the following calendar year schedule:

Calendar year	Minimum Percentage of Total Retail Electric Sales
2010	2%
2011	4%
2012	6%
2013	8%
2014	10%
2015	12%
2016	14%
2017	16%
2018	18%
2019	20%
2020 and each subsequent year	22%

Total retail electric sales for a calendar year are the average of the generation supplier's retail electric sales in Ohio for the immediately preceding three calendar years.

Generation supplier annual compliance report

(R.C. 4933.53)

The bill requires every generation supplier, not later than April 15 annually, to submit a report to the PUCO describing the supplier's compliance with the renewable energy requirements for the previous calendar year. The report must include: (1) a list, itemized by renewable energy system, of the monthly megawatt hours purchased from renewable energy systems and the megawatt capacity of each such system, (2) the percentage of sales in megawatt hours from renewable energy from a new renewable energy system, (3) the rate of compliance with the renewable energy requirements, (4) implementation plans for compliance with the renewable energy requirements in future years, (5) a statement that no renewable energy credits awarded to or purchased by the generation supplier have been or will be used to meet other states' renewable energy or similar requirements, (6) a 20-year projection of energy loads and annual energy demands for electricity, anticipated generating capacity, and seasonal peak demands, and (7) any other information required by the PUCO through rules, which may require the report to be filed as part of the annual report that every public utility is required to file with the PUCO under current law.¹⁸

Renewable energy credits

Renewable energy credit system

(R.C. 4933.54 (A) and (B))

The bill requires the PUCO to adopt rules establishing a system of renewable energy credits to be awarded to generation suppliers of electricity. The rules must specify the following regarding the system: (1) the number of credits to be awarded for exceeding the minimum renewable energy retail electric sales requirements, (2) the allowable uses of a credit, (3) the reporting of a credit, (4) a system for tracking used and unused credits, and (5) the requirements and procedures for the sale or purchase of a credit. The PUCO must conform its rules to be consistent with national standards to the extent possible.

Award and sale of renewable energy credits

(R.C. 4933.54(A))

The bill requires the PUCO to review annually the retail sales of electricity in Ohio for each supplier. If the supplier has retail sales that exceed the minimum

¹⁸ R.C. 4905.14, not in the bill.

percentage of renewable energy retail electric sales required for that calendar year period, the PUCO must award renewable energy credits to the generation supplier in a proportion to be determined by the PUCO. To be eligible for the renewable energy credit calculation, the sales must take place in the same year in which the electricity is generated. The electricity must also be produced in Ohio from renewable energy from a new renewable energy system. Subject to rules adopted by the PUCO, a generation supplier may negotiate the sale or purchase of one or more renewable energy credits at any price.

Application of renewable energy credits to meet renewable energy requirements

(R.C. 4933.54(C))

To meet the bill's renewable energy requirements, a generation supplier may apply a renewable energy credit awarded to the supplier by the PUCO, or a credit purchased from another party, in one calendar year to either or both of the two subsequent calendar years if all of the following apply: (1) the supplier met the renewable energy requirements for all previous calendar years, (2) the credit has not already been applied to meet the renewable energy requirements, and (3) the credit has not been claimed or represented as part of satisfying requirements in other states that are similar to the renewable energy requirements in the bill.

Renewable energy credit registry

(R.C. 4933.55)

The bill requires the PUCO to develop a renewable energy credit registry that must include pertinent information regarding the current status of all available renewable energy credits, transactions among generation suppliers, the number of renewable energy credits awarded, the number of renewable energy credits sold and the price paid for the sale of credits to a non-Ohio-based entity, the number of renewable energy credits sold and the price paid for the sale of credits to an Ohio-based entity, and the average price paid for the sale of all credits. The PUCO must make the registry available to generation suppliers and the public.

Cost recovery for fuel cell energy

(R.C. 4933.56)

To encourage generation of electricity from fuel cells, the bill permits the PUCO to authorize, after notice and the opportunity for a hearing, the collection of a just and reasonable surcharge on the retail electric rates of customers receiving electricity from a generation supplier if the supplier does either of the following with respect to a fuel cell facility that has a generating capacity of 30 kilowatts or

less of electricity: (1) constructs or is in the process of constructing such a fuel cell facility, or (2) purchases electricity from an entity that constructs or is in the process of constructing such a fuel cell facility. The surcharge must be used to pay the costs of designing and constructing the fuel cell facility and cannot exceed the amount that the PUCO determines is necessary to pay only those costs. The costs include architectural and engineering fees, land acquisition or remediation costs, and other third-party costs related to a facility's design or construction. The surcharge must terminate on a date specified by a PUCO order issued after a hearing that determines that all costs have been paid.

Forfeiture for noncompliance

(R.C. 4928.61, 4933.57, and 4933.58)

Under the bill, if it appears that reasonable grounds for complaint are stated, upon initiative of the PUCO or a complaint of any person, the PUCO must determine whether a generation supplier has failed to comply with the bill's renewable energy requirements. The PUCO must fix a time for a hearing and notify complainants and the generation supplier. The notice must be served not less than 15 days before the hearing and must state the matters listed in the complaint. The parties are entitled to be heard and represented by counsel and to have process to enforce the attendance of witnesses. The PUCO may also adjourn the hearing from time to time. If it finds that a generation supplier has failed to comply with the bill's renewable energy requirements, the PUCO may assess a forfeiture against the supplier. For each percentage below the minimum renewable energy retail electric sales requirement during the period of noncompliance, the forfeiture must equal 200% of the average price of a renewable energy credit. A forfeiture assessed under the bill is to be collected using the process in existing law for the recovery of forfeitures from a public utility or railroad by the PUCO.¹⁹ The bill requires money collected from forfeitures to be credited to the existing Advanced Energy Fund.

If the PUCO, after notice and an opportunity to be heard, finds that a generation supplier has engaged or is engaging in a persistent pattern of noncompliance with the bill's renewable energy requirements, the PUCO may suspend or rescind the generation supplier's certification required under the

¹⁹ R.C. 4905.57, 4905.59, and 4905.60, not in the bill.

Competitive Retail Electric Service Law in order to provide competitive retail electric service.²⁰

Forfeitures imposed for noncompliance with the renewable energy requirements may not be collected in any way from customers receiving electricity from the generation supplier that is subject to the forfeiture.

MISCELLANEOUS PROVISIONS

Presence of clotheslines and their attachment devices

(R.C. 1551.21, 5301.073, and 5311.192)

The bill prohibits any municipal corporation, county, or township from enacting any ordinance or adopting any resolution, including any zoning law or regulation, that prohibits the placement on any property of a clothesline, hook, or other device or object for attaching a clothesline or any pole for supporting a clothesline (clothesline). An ordinance, resolution, law, or regulation that is in effect on the bill's effective date that prohibits the placement on any property of a clothesline is against public policy and void.

The bill also prohibits any covenant, condition, or restriction set forth in a deed, and any rule, regulation, bylaw, or other governing document or agreement of a homeowners, neighborhood, civic, or other association, from prohibiting or being construed to prohibit the placement on any property of a clothesline. A covenant, condition, restriction, rule, regulation, bylaw, governing document, or agreement or a construction of any of those items that violates that provision is against public policy and void and unenforceable in any court of this state to the extent that it violates that provision.

The bill further prohibits any declaration, bylaw, rule, regulation, or agreement of a condominium property or construction of any of those items by the board of managers of its unit owners association from prohibiting or being construed to prohibit the placement of a clothesline within the common areas and facilities of a unit owner. A declaration, bylaw, rule, regulation, or agreement or the construction of any of those items that violates that provision is against public policy and void and unenforceable in any court of this state to the extent that it violates that provision.

²⁰ R.C. 4928.08, not in the bill. Competitive retail electric services are electric generation, aggregation, marketing, and brokering services. (R.C. 4928.01(B); R.C. 4928.03, not in the bill.)

Transfer of control and management of 30,000 acres of right-of-way along highways to Department of Natural Resources

(Section 4)

The bill provides that not later than six months after the effective date of the applicable provision, the Department of Transportation (ODOT) is required to transfer to the Department of Natural Resources (DNR) the control and management of not less than 30,000 acres of right-of-way located along state and interstate freeways. When that occurs, DNR is responsible for the control and management of that acreage. DNR must replace the grass and other vegetation currently growing on that acreage with both of the following:

- (1) Vegetation, suitable for the climate of Ohio, that when harvested can be processed into the fuel cellulosic ethanol; and
- (2) Vegetation, suitable for the climate of this state, that contributes to the beautification of the street or highway.

In selecting the acreage to be transferred under that provision, ODOT is required to give due consideration to any valid safety concerns that are present at a particular location. ODOT cannot transfer any acreage if it determines that after the transfer the safety of the traveling public would be adversely affected to any degree.

HISTORY

ACTION	DATE
Introduced	10-18-07

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