



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 464

128th General Assembly  
(As Introduced)

Reps. Winburn and Phillips

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## BILL SUMMARY

- Creates two new classes of public utilities for taxation purposes--wind energy companies and solar energy companies using equipment with a capacity of more than 250 kilowatts.
- Exempts from taxation for 20 years tangible personal property comprising a wind or solar energy facility owned or leased by a wind or solar energy company if:
  - Construction commences before January 1, 2011, for wind energy projects, and before July 31, 2010, for solar energy projects.
  - At least 50% of project employees are Ohio residents for a wind energy project, and at least 80% for a solar energy project.
  - Prevailing wages are paid (for wind energy projects only).
  - Owner agrees to a goal of 5% for the awarding of project contracts to minority or disadvantaged businesses and to a 10% minority workforce goal.
  - The facility is placed into service before January 1, 2013.
  - Payments in lieu of taxes are paid to taxing units based on the facility's nameplate production capacity, and in the case of a wind energy company, the percentage of Ohio workers employed.
  - The facility operator offers to sell power or renewable energy credits to electric distribution utilities or electric service companies prior to selling power or credits to other persons.

- Requires the Director of Development to revoke certification upon any failure to comply with applicable regulations or laws.
- Establishes a personal property tax assessment rate of 24% for taxable wind and solar production equipment and 85% for all of their other taxable property.

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## **CONTENT AND OPERATION**

### **Wind or solar energy companies**

(R.C. 5727.01)

Current law subjects public utilities to property and excise taxation assessed under Chapter 5727. of the Revised Code. Public utilities include three types of electric companies: (1) an "ordinary" electric company, defined as a company engaged in the business of generating, transmitting, or distributing electricity within Ohio for use by others, (2) a rural electric company, defined as a nonprofit company that supplies electricity to members, the majority of which are located in rural areas, and (3) a combined company, which is an electric or rural electric company that also engages in heating or natural gas business.

The bill establishes two new types of electricity-related public utilities: wind energy companies and solar energy companies. A wind energy company is defined to be a person engaged in the business of generating, transmitting, or distributing electricity in Ohio for use by others through means of one or more wind turbines with an aggregate nameplate capacity in excess of 250 kilowatts.<sup>1</sup> A solar energy company is defined to be a person in the business of generating, transmitting, or distributing electricity in Ohio for use by others through means of equipment located at a solar energy facility and designed to capture the radiant light and heat from the sun with a nameplate capacity in excess of 250 kilowatts.

Current law subjects a company that engages in the "supplying of electricity" (i.e., generating, transmitting, or distributing electricity) to public utility taxation as an electric company or a rural electric company with respect to that activity, if supplying electricity is incidental to the company's primary business.

The bill states that a company is not considered to be "supplying electricity"--and therefore is not to be taxed as a public utility--if it owns or leases as a lessor or lessee

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<sup>1</sup> "Nameplate capacity" is defined as the original maximum rated output of a generator or other electric production equipment under specific conditions designated by the manufacturer, expressed in the number of kilowatts or megawatts.

wind or solar energy facilities with an aggregate nameplate capacity in Ohio of 250 kilowatts or less, even if the company engages in "net metering."<sup>2</sup>

## **Property tax exemption of wind or solar energy facilities**

(R.C. 5727.01, 5727.02, and 5727.75)

Current law subjects electric companies and rural electric companies to real and personal property taxation, commercial activity taxation, and, if the company distributes electricity to end users in Ohio, to the kilowatt-hour tax, which is an annual tax measured by the number of kilowatt-hours distributed.

### **Qualified energy projects**

(R.C. 5727.01(P) and (Q) and 5727.75(B) and (C))

The bill provides a 20-year tangible personal property tax exemption, beginning with tax year 2011, for a wind or solar energy project certified by the Director of Development as a qualified energy project. A wind or solar energy project is defined to be a project to provide electric power through the construction, installation, and use of a wind or solar energy facility. A "wind energy facility" is one or more interconnected wind turbines owned by the same person. A "solar energy facility" is one or more interconnected solar panels owned by the same person. In either case, the facility includes all interconnection equipment, devices, and related apparatus connected to the generators or panels; and all cables, equipment, devices, and related apparatus that connect the generators or panels to an electricity grid or to a building or facility that directly consumes the electricity produced, that facilitate the transmission of electrical energy from the generators or panels to the grid, building, or facility, and, where applicable, that transform voltage before ultimate delivery of electricity to the grid, building, or facility.

To obtain tax exemption for a wind or solar energy facility, a person must apply to the Director of Development for certification of the wind or solar energy project as a qualified energy project and submit any fee required by the Director on or before September 30, 2010. The Director must certify a project if the application and fee are timely submitted and the Director determines that the person, upon placing the wind or solar energy facility into service, would qualify as a wind or solar energy company (see "**Wind or solar energy companies,**" above). Upon certifying a project, the Director must notify the project owner or lessee pursuant to a sale or leaseback transaction

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<sup>2</sup> "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.

(hereinafter "owner or lessee"), the Tax Commissioner, and the county auditor of the county in which the project is located. Notice may be provided in a manner convenient to the Director.

The tangible personal property of a wind energy project certified as a qualified energy project is exempt from taxation for tax years 2011 and 2012 if, by December 31, 2010, the project owner or lessee received a certificate from the Power Siting Board authorizing commencement of construction, or received any approval or satisfied any condition required by a public agency or political subdivision for the construction, and project construction has begun.

The tangible personal property of a solar energy project certified as a qualified energy project is tax-exempt for tax year 2011. It is exempt for tax year 2012 if the project owner or lessee receives any approval or satisfies any condition required by a public agency or political subdivision for the construction before January 1, 2011, and project construction begins before August 1, 2011.

If the tangible personal property of a wind or solar qualified energy project was exempt for tax years 2011 and 2012, the tangible personal property of the project is tax-exempt for tax year 2013 and the ensuing 17 tax years if the tangible personal property was placed into service before January 1, 2013, and the owner or lessee satisfies other statutory criteria (see "**Statutory criteria**" below). Tangible personal property not placed into service by then becomes subject to taxation.

### **Statutory criteria**

(R.C. 5727.75(D))

To retain property tax exemption after 2012, the owner or lessee of a qualified energy project must do each of the following:

- (1) Comply with all "applicable" regulations (unspecified in the bill).
- (2) Establish a procurement goal of 5% for contracting with minority-owned businesses or economically disadvantaged ("EDGE") businesses in the award of contracts for the construction, installation, or maintenance of the facility, and establish a minority workforce goal of 10%. If either goal is not attained, the owner or lessee must show good faith efforts to attain the goal.
- (3) File with the Director of Development a certificate of completion not later than 60 days after completion of the wind or solar energy facility's construction and, if applicable, file a certificate of partial completion by March 1, 2013. A certificate of partial completion must state the nameplate capacity of the facility as of January 1, 2013.

(4) File with the Director of Development a report of jobs created at the qualified energy project, the total number of full-time employees employed at the project, and the total number of full-time employees employed at the project who are domiciled in Ohio.

(5) Repair all roads affected by construction as reasonably required to restore them to their preconstruction condition.

(6) Provide or facilitate training for fire and emergency responders for response to emergency situations related to the qualified energy project and, at the person's expense, equip the fire and emergency responders with proper equipment as reasonably required to enable them to respond to such emergency situations.

(7) Offer to sell power or renewable energy credits from the qualified energy project to electric distribution utilities or electric service companies that are subject to current law's renewable energy resource requirements and that have issued requests for proposal for such power or renewable energy credits. If no electric distribution utility or electric service company has issued a request for proposal on or before December 31, 2010, or accepts an offer for power or renewable energy credits within 45 days after the offer is submitted, power or renewable energy credits from the qualified energy project may be sold to other persons. Contracts for the sale of power or renewable energy credits before the effective date of the bill are not subject to this requirement.

(8) Make annual service payments to local taxing units in lieu of property taxes otherwise due (see "**Service payments**" below).

(9) Maintain specified ratios of Ohio-resident full-time employees to all full-time employees at the project. (A full-time employee is defined as a person employed for at least 2,080 hours per year, including leave hours granted by contract, law, or custom.) For solar energy projects, the ratio must be at least 80%. For wind energy projects, the ratio must be at least 50%. For the purpose of determining whether the employment ratio is satisfied by a wind energy project, if the project requires certification from the Power Siting Board, the total number of full-time employees employed at the project equals the number actually employed or the number projected to be employed in the certificate application, whichever is greater. (O.A.C. 4906-17-08(C)(2)(b) requires the certificate applicant to estimate wind facility construction and operation employment, including the number of individuals from the "region" that will be employed.)

(10) In the case of a wind energy project, require in any contract for the construction or installation of the wind energy facility that prevailing wages be paid, as determined under current prevailing wage law.

(11) In the case of a wind or solar energy project with a nameplate capacity in excess of two megawatts, establish a relationship with a member of the University System of Ohio, or with a person offering an apprenticeship program registered with the Employment and Training Administration within the United States Department of Labor or with the Ohio Apprenticeship Council, to educate and train individuals for careers in the wind or solar energy industry. The relationship may include endowments, cooperative programs, internships, apprenticeships, research and development projects, and curriculum development.

### **Certificate revocation**

(R.C. 5727.75(B)(3) and (C))

If the Director of Development determines that an owner or lessee of a qualified energy project has failed to meet any of the foregoing conditions that apply to the project, the Director is required to revoke the project's certification. Revocation terminates the tax exemption beginning with the tax year following the year in which revocation occurs, and the project is not eligible for further exemption. Revocation does not affect the tax-exempt status of a project for the year in which revocation occurs or prior years. Upon revocation, the Director must notify the project owner or lessee, the Tax Commissioner, and the county auditor of the county in which the project is located. Notice may be provided in a manner convenient to the Director.

### **Payments in lieu of property taxes**

The owner or lessee of a qualified energy project that is exempted from property taxation is required to make "service" payments in lieu of taxes. The amount of the payments is based on the project facility's nameplate kilowatt capacity as of January 1, 2013. In the case of a wind energy project, the amount of the payments also depends on the percentage of project employees who are domiciled in Ohio. Payments are to be made to the county treasurer on or before the final dates for payment of taxes on public utility personal property for each tax year for which project property is exempt (i.e., December 31 and June 20, or as extended).

For a solar energy project, the payment for tax year 2011 equals \$7 per kilowatt of nameplate capacity as of January 1, 2013. (Presumably, payments for 2011 and 2012 are based on a projection of January 1, 2013, nameplate capacity.)

For a wind energy project, the payment for tax year 2011 equals one of the following amounts, scaled according to Ohio-resident employment ratios:

(1) \$6 per kilowatt of nameplate capacity as of January 1, 2013, if the Ohio-domiciled full-time employee to total full-time employee ratio is at least 75%;

(2) \$7 per kilowatt of nameplate capacity as of January 1, 2013, if the ratio is less than 75% but at least 60%;

(3) \$8 per kilowatt of nameplate capacity as of January 1, 2013, if the ratio is less than 60% but at least 50%.

For tax years 2012 and each subsequent tax year, the amount of the payments increases by two percentage points per year.

### **Rule adoption**

(R.C. 5727.75(F))

The bill requires the Director of Development, in consultation with the Tax Commissioner, to adopt rules to implement and enforce the exemption requirements. The rulemaking procedure is to be governed by the law known as the Administrative Procedure Act (R.C. Chapter 119.).

### **Taxation of wind or solar energy company property**

(R.C. 5727.01, 5727.06, 5727.11, 5727.111, and 5727.15)

Taxation of public utility personal property involves defining what constitutes taxable property, establishing its "true" value, deriving from true value its taxable value (i.e., applying an assessment percentage as specified by law), and allocating the taxable value among taxing jurisdictions.

### **Taxable property**

(R.C. 5727.06(A)(3)(c))

Current law defines the taxable personal property of an electric company for a tax year as the property that, on December 31 of the preceding year, was both located in Ohio and was owned by the electric company or leased to it through a sale and leaseback transaction.

The bill defines the taxable personal property of a wind or solar energy company in the same manner but states that, if the property qualifies as part of a qualified energy project, it is not taxable. Under the bill, tangible personal property of a qualified energy project becomes taxable if it is not placed into service before January 1, 2013, or if the Director revokes the project's certification, or once the 20-year exemption period expires.

## **Valuation**

(R.C. 5727.11(D))

Generally, under current law the true value of electric company tangible personal property equals the cost as capitalized on the company's books and records less composite annual allowances as prescribed by the Tax Commissioner.<sup>3</sup> If the electric company leases the property under a sale and leaseback transaction, the true value of the property is the property's cost as capitalized on the company's books and records immediately under the sale leaseback transaction.

Under the bill, the same valuation methods apply to tangible personal property of a wind or solar energy company and also to wind or solar energy conversion equipment of an electric company. The bill defines "wind energy conversion equipment" as tangible personal property connected to a wind turbine tower and through which electricity is transferred from the turbine generator to controls, transformers, or power electronics and to the transmission interconnection point. It includes collection lines, ancillary tangible personal property, substations, and any lines and associated tangible personal property located between substations and the transmission interconnection point. "Solar energy conversion equipment" is defined as tangible personal property that is connected to and behind solar radiation collector areas and that is designed to convert the radiant energy of the sun into electricity or heat. It includes inverters, batteries, switch gears, wiring, collection lines, substations, ancillary tangible personal property necessary for radiant energy conversion or storage, and any lines and associated tangible personal property located between substations and the transmission interconnection point that operate on direct current or generate direct current.

## **Assessment rates**

(R.C. 5727.111)

Under current law, an electric company's taxable transmission and distribution property is assessed at 85% of true value, and all other taxable property is assessed at 24% of true value. A rural electric company's taxable transmission and distribution property is assessed at 50% of true value, and all other taxable property is assessed at 25% of true value.

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<sup>3</sup> The true value of electric company production equipment placed into service before October 6, 1999, equals 50% of the property's cost as capitalized on the electric company's books and records. Production equipment is, generally, production plant equipment used to generate electricity. (R.C. 5727.01(J).)

The bill requires assessment of taxable wind and solar energy conversion equipment of a rural electric company at 85% of true value. The bill requires assessment of taxable production equipment of a wind or solar energy company at 24% of true value, and all other taxable property at 85% of true value.

### **Apportionment of taxable value among taxing districts**

(R.C. 5727.15)

Current law apportions the taxable value of electric company production equipment to the taxing district where the property is physically located. All other taxable property of an electric company is apportioned according to the percentage of the total value of such property (in Ohio) that is located in the taxing district. In the case of the taxable property of a rural electric company, all of it is apportioned on a percentage basis according to where it is located.

The bill apportions the taxable wind and solar energy conversion equipment of an electric company in the same manner as the electric company's nonproduction equipment--i.e., according to the percentage of Ohio-based values located in each taxing district. The bill apportions the taxable property of a wind or solar energy company and a rural electric company in the same manner as an electric company's wind and solar property is apportioned.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	03-15-10

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