Ohio Legislative Service Commission

Bill Analysis

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(As Passed by the Senate)

Sens. Jones (by request), Coley, Bacon, Balderson, Beagle, Eklund, Lehner, Niehaus, Peterson, Schaffer

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DEPARTMENT OF ADMINISTRATIVE SERVICES (DAS)

Review of cogeneration in life-cycle cost analysis

- Requires, for state projects with an estimated construction cost exceeding $50 million, a review of cogeneration as an energy source to be included in the life-cycle cost analysis provided to the Office of Energy Services.

- Defines "cogeneration" within the public works law as the simultaneous production of thermal energy and electricity for use primarily within a building or complex of buildings.

Conservation measures at state buildings

- Modifies the "energy conservation measure" definition under the energy conservation law for state buildings to include:

    - trigeneration systems;

    - systems that harvest solar, wind, water, biomass, bio-gas, or geothermal energy;

    - retro-commissioned or recommissioned energy-related systems; and

    - the consolidation, virtualization, and optimization of computer servers, data storage devices, or other information technology hardware and infrastructure.

- Modifies both the "energy conservation measure" and "water conservation measure" definitions under the energy and water conservation law for state buildings to include any energy or water conservation measure approved by, and implemented in consultation with, the Director of Administrative Services for property owned by state higher education institutions.

- Modifies the "water conservation measure" definition under the energy and water conservation laws for state buildings to include such a measure approved by the Director for property owned by the state.

- Allows the Director to contract with a water services company, architect, professional engineer, contractor, or other person experienced in the design of water conservation measures for a report that provides an analysis and recommendations pertaining to the implementation of water conservation measures at state buildings.

- Permits the Director to advertise by electronic means, in addition to the newspaper, the Director's intent to request proposals for implementing energy or water saving measures.

- Specifies that installment contracts for projects under the energy and water conservation law for state buildings are eligible for financing through the Ohio Air Quality Development Authority.

- Extends the payback period from 15 to 20 years for installment contracts for energy conservation measures that are cogeneration systems.

- Makes conforming changes between the energy and water conservation laws for state buildings and those for state higher education institutions.

- Requires the Department of Administrative Services and the Department of Transportation to analyze their motor vehicle fleets to determine whether it is beneficial to establish standards for vehicle replacement to increase the overall efficiency of the state motor vehicle fleet and requires the departments to submit a joint report to legislative leaders and the Governor not later than September 1, 2012.

Review of cogeneration in life-cycle cost analysis

(R.C. 123.011)

The bill requires that, for state construction projects with an estimated cost exceeding $50 million, the life-cycle cost analysis for the project must include a review of cogeneration as an energy source. Under the bill, "cogeneration" means the simultaneous production of thermal energy and electricity for use primarily within a building or complex of buildings. For construction projects at a state-funded facility, current law requires a life-cycle cost analysis computed or prepared by a qualified architect or engineer. Construction on the facility may only proceed upon the disclosure of the project's life-cycle costs to the Office of Energy Services within the

Department of Administrative Services. The results of the analysis must be the primary consideration in building design selection.

Conservation measures at state buildings

(R.C. 156.01, 156.02, 156.03, and 156.04; R.C. 3345.62 to 3345.66, 3706.01, and 3706.04 (not in the bill))

Energy conservation measures

The bill modifies the definition of "energy conservation measure" within the conservation law for state buildings to include the following:

- Installation or modification of trigeneration systems that produce heat and cooling, as well as electricity, for use primarily within a building or complex of buildings;
- Installation or modification of systems that harvest renewable energy from solar, wind, water, biomass, bio-gas, or geothermal sources, for use primarily within a building or complex of buildings;
- Retro-commissioning or recommissioning energy-related systems to verify that they are installed and calibrated to optimize energy and operational performance within a building or complex of buildings; and
- Consolidation, virtualization, and optimization of computer servers, data storage devices, or other information technology hardware and infrastructure.

As added by the bill, energy conservation measures also may be any other modification, installation, or remodeling that has been approved as an energy conservation measure by the Director of Administrative Services for one or more buildings owned by a state institution of higher education and implemented in consultation with the Director. Currently, other energy conservation measures within the public building law are limited to any other modification, installation, or remodeling approved by the Director as an energy conservation measure for one or more buildings owned by the state. Under current law, energy conservation measures for all state higher education institutions are addressed within the conservation law for higher education.

Current law specifies that an energy conservation measure means an installation or installation modification in, or a remodeling of, an existing building in order to reduce energy consumption and operating costs.

Water conservation measures

Under the bill, the Director may approve any other modification, installation, or remodeling as a water conservation measure for one or more buildings or the surrounding grounds of the state or a state institution of higher education that implements the water conservation measure in consultation with the Director. Under current law, other water conservation measures are only those approved by a Board of Trustees of a state higher education institution for measures at that institution.

Current law defines "water conservation measure" as an installation or modification of an installation in, or a remodeling of, an existing building or the surrounding grounds in order to reduce water consumption.

Contract for reports of energy and water conservation measures

The bill permits the Director to contract with an energy or water services company, architect, professional engineer, contractor, or other person experienced in the design of energy or water conservation measures for an energy or water conservation measures report. The report must contain an analysis and recommendations pertaining to the implementation of energy or water conservation measures that result in energy, water, or wastewater costs savings, operating cost savings, or avoided capital costs for the institution.

Current law permits the Director to contract with an energy services company, contractor, architect, professional engineer, or other person experienced in energy conservation measure design and implementation for a report regarding only energy conservation. Current law does not permit such person or entity to report on water conservation measures. The report, under current law, also requires "analysis and recommendations pertaining to the implementation of energy conservation measures that would significantly reduce energy consumption and operating costs in any buildings owned by the state."

The bill removes the provision permitting the Director to contract with a water services company, architect, professional engineer, contractor, or other person experienced in water conservation measure design and implementation for an energy or water conservation report only upon the request of a Board of Trustees or managing authority of a state higher education institution. Current higher education law permits, not changed by the bill, a Board of Trustees to request energy and water conservation reports.

Electronic advertising for requests for proposals

The bill permits the Director to advertise, by electronic means, the intent to request proposals for a contract to implement energy or water saving measures. Advertising electronically must be done according to rules adopted by the Director. Under current law, if the Director seeks to enter into a contract to implement energy or water savings measures, the Director is subject to the public improvements law (R.C. Chapter 153.) unless the Director receives an exemption from the law from the Controlling Board. Current law requires that before entering into a contract upon receiving an exemption, the Director must advertise the intent to request proposals for the contract in a newspaper of general circulation in the county where the contract is to be performed.

Extension of contract term for cogeneration

The bill extends the repayment term and, accordingly, the permitted contract term from 15 to 20 years for installment contracts for energy conservation measures that are cogeneration systems (see **COMMENT** 1).

Installment payment contract financing

The bill specifies that any installment payment contract entered into by the Director for the implementation of energy or water savings measures is eligible for financing through the Ohio Air Quality Development Authority (OAQDA). The OAQDA makes loans and grants to governmental agencies for the acquisition or construction of air quality projects by any such governmental agency, including projects that include any property, device, or equipment that promotes the reduction of emissions of air contaminants into the ambient air through improvements in the efficiency of energy utilization or energy conservation.

Conforming changes

Both the conservation law for state buildings and the conservation law for higher education include provisions for energy and water conservation measure definitions, conservation reports, and installment payment contracts. The bill removes from the conservation law for state buildings certain references to energy and water conservation measures for higher education (other than measures at a higher education institution that are approved by and implemented in consultation with the Director). The bill also makes other conforming changes so that the conservation law for state buildings more closely conforms to the conservation laws for higher education institutions.

Fleet vehicle replacement review

(Section 701.10)

The bill requires the Department of Administrative Services and the Department of Transportation to cooperatively analyze their respective motor vehicle fleets to determine whether it is beneficial to establish standards for vehicle replacement in order to increase the overall efficiency of the state motor vehicle fleet. Not later than September 1, 2012, the departments must produce a joint report with their findings and must deliver the report to the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the President of the Senate, the Minority Leader of the Senate, and the Governor.

DEPARTMENT OF DEVELOPMENT (DEV)

Alternative Fuel Transportation Program

- Renames the "Alternative Fuel Transportation Grant Program" the "Alternative Fuel Transportation Program," permits loans as well as grants to be made under the Program, and permits the rules adopted to govern the Program to include fees, charges, interest rates, and payment schedules.

Advanced Energy Program

- Requires the Director of Budget and Management, as soon as possible after the effective date of this portion of the bill, to transfer any unexpended and unencumbered amounts in the Advanced Energy Research and Development Taxable Fund and the Advanced Energy Research and Development Fund to the Advanced Energy Fund for purposes of the Advanced Energy Program.

- Specifies that the transferred funds are not required to be distributed to utilities in amounts proportionate to the territorial requirements for advanced energy project or economic development assistance under the Advanced Energy Program.

- Requires that any repayment of loans made from money in the Advanced Energy Research and Development Taxable Fund be credited to the Alternative Fuel Transportation Fund rather than the Facilities Establishment Fund, as is required under current law.

- Requires the Director of Budget and Management, as soon as possible after the effective date of this portion of the bill, to transfer to the Alternative Fuel

Transportation Fund any unexpended and unencumbered amounts received from the repayment of those loans that are *not* in the Facilities Establishment Fund.

- Permits the Director of Development to adopt rules prescribing fees, charges, interest rates, payment schedules, and local match requirements of any grants, contracts, loans, loan participation agreements, linked deposits, and energy production incentives awarded under the Advanced Energy Program.

Alternative Fuel Transportation Program

(R.C. 122.075, 125.836, and 3706.27)

The bill renames the "Alternative Fuel Transportation Grant Program," which is administered by the Director of Development, the "Alternative Fuel Transportation Program" and permits loans as well as grants to be made under the Program. In addition, the "Alternative Fuel Transportation Grant Fund" is renamed the "Alternative Fuel Transportation Fund." The bill also permits the rules adopted to govern the Program to include fees, charges, interest rates, and payment schedules.

In addition, the bill provides that an applicant for a grant or loan that sells motor vehicle fuel at retail must agree that if the applicant receives funding, the applicant will report to the Director the gallon or gallon equivalent amounts of alternative fuel the applicant sells at retail in this state for a period of three years after the project is completed, as opposed to three years after the grant is awarded, as provided in existing law.

Advanced Energy Program

Transfer of funds to the Advanced Energy Fund

(R.C. 4928.61 and 4928.62; Section 512.10(B))

The bill requires the Director of Budget and Management, as soon as possible after the effective date of this portion of the bill, to transfer any unexpended and unencumbered amounts in the Advanced Energy Research and Development Taxable Fund and the Advanced Energy Research and Development Fund to the Advanced Energy Fund for purposes of the Advanced Energy Program. The bill also specifies that the transferred funds are not subject to the current law requirement that Advanced Energy Fund money be distributed to electric distribution utilities, municipal electric utilities, and electric cooperatives in amounts proportionate to the territorial

requirements for advanced energy project or economic development assistance under the Advanced Energy Program.

Advanced Energy Program rules

(R.C. 4928.01(A)(25) and 4928.62)

The bill permits the Director of Development to adopt rules specifically prescribing fees, charges, interest rates, payment schedules, local match requirements of any grants, contracts, loans, loan participation agreements, linked deposits, and energy production incentives awarded under the existing Advanced Energy Program. Current law permits the Director to adopt rules prescribing general terms and conditions of such grants, contracts, loans, agreements, linked deposits, and incentives.

Background

Current law authorizes the Advanced Energy Research and Development Taxable Fund to provide loans for advanced energy projects and the Advanced Energy Research and Development Fund to provide grants for those projects. The loans and grants are funded by the proceeds of obligations issued by the Treasurer of State upon certification of the Ohio Air Quality Development Authority. The Advanced Energy Program is administered by the Director of Development, who may authorize the use of moneys in the Advanced Energy Fund for financial, technical, and related assistance for advanced energy projects in this state or for economic development assistance. An advanced energy project means any technology, product, activity, or management practice or strategy that facilitates the generation or use of electricity or energy 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.

Transfer of funds to the Alternative Fuel Transportation Fund

(R.C. 122.075(E) and 3706.27(B)(2); Section 512.10(A))

As mentioned above, money in the Advanced Energy Research and Development Taxable Fund is used to provide loans for advanced energy projects. When these loans are repaid, the money is credited to the Facilities Establishment Fund. Under the bill, the money is instead credited to the Alternative Fuel Transportation Fund (see "**Alternative Fuel Transportation Program,**" above). Additionally, as soon as possible after the effective date of this portion of the bill, the Director of Budget and Management must transfer to the Alternative Fuel Transportation Fund any unexpended and unencumbered amounts received from the repayment of those loans that are *not* in the Facilities Establishment Fund.

ENVIRONMENTAL PROTECTION AGENCY (EPA)

Evaluation of wastewater treatment technologies; study of power generation regulation

- Requires the Director of Environmental Protection, in coordination with the Department of Natural Resources, the U.S. EPA, and other entities as determined appropriate by the Director, to coordinate the evaluation of emerging wastewater treatment and recycling technologies that may reduce reliance on underground injection wells and assist in the advancement of industry in Ohio, including the exploration and production of oil and gas.

- Authorizes the Director, as part of the evaluation, to initiate, participate in, oversee, or consult on pilot projects regarding wastewater treatment and recycling technologies.

- Requires the Director, in coordination with the Public Utilities Commission of Ohio, the U.S. EPA, and other entities as determined appropriate by the Director, to conduct a study that identifies current and future environmental regulatory requirements and how those requirements may impact current and future power generation and transmission in Ohio.

Evaluation of wastewater treatment technologies; study of power generation regulation

(Section 737.10)

The bill requires the Director of Environmental Protection, in coordination with the Department of Natural Resources, the U.S. EPA, and other entities as determined appropriate by the Director, to coordinate the evaluation of emerging wastewater treatment and recycling technologies that may reduce reliance on underground injection wells and may assist in the advancement of industry in Ohio, including the exploration and production of oil and gas. As part of the evaluation, the Director may initiate, participate in, oversee, or consult on pilot projects regarding wastewater treatment and recycling technologies.

In addition, the bill requires the Director, in coordination with the Public Utilities Commission of Ohio, the U.S. EPA, and other entities as determined appropriate by the Director, to conduct a study that identifies current and future environmental regulatory requirements and how those requirements may impact current and future power generation and transmission in Ohio.

DEPARTMENT OF JOB AND FAMILY SERVICES (JFS)

Annual Ohio workforce report

- Requires the Office of Workforce Development to comprehensively review the direct and indirect economic impact of businesses engaged in the production of horizontal wells in Ohio, prepare an annual Ohio Workforce Report based on its findings, submit the report to the members of the General Assembly, and post the report on the Office's web site.

Annual Ohio workforce report

(R.C. 6301.12)

The bill requires the Office of Workforce Development within the Department of Job and Family Services to comprehensively review the direct and indirect economic impact of businesses engaged in the production of horizontal wells in Ohio. Based on its findings, the Office must prepare an annual Ohio workforce report and submit it to the General Assembly and post it on the Office's Internet web site. The report must include at least the following with respect to the industry:

(1) The total number of jobs created or retained during the previous year, along with a separate breakdown of jobs created or retained for minorities based on race, ethnicity, and gender;

(2) The total number of Ohio-based contractors that employ skilled construction trades;

(3) The number of employees who are Ohio residents;

(4) The total economic impact;

(5) A review of the Department of Development's recommendations for the establishment of an overall workforce investment public education agenda with goals and benchmarks toward maximizing job creation opportunities in Ohio.

DEPARTMENT OF NATURAL RESOURCES (DNR)

State Land Royalty Fund

- Alters the purposes for which a state college or university may use money in the State Land Royalty Fund by providing that money in the Fund that is allocated to a state college or university may be used to pay for operating expenses associated with any property that is owned by the college or university and that is at least partially used for the exploration, development, and production of oil or gas if both of the following apply:

    - The state college or university is engaged in research at the property or in education or outreach regarding the property; and

    - The research, education, or outreach is associated with furthering the public understanding of how oil and gas exploration, development, or production potentially benefits the public and impacts the use of Ohio's natural resources.

Unitization order application fee

- Requires applicants for an order for the unit operation of a pool to include with the submission of the application a nonrefundable fee of $10,000, which is credited to the Oil and Gas Well Fund.

Application requirements for oil and gas drilling permit

- Revises the application requirements for an oil and gas drilling permit by requiring an applicant to include with the application the following additional pieces of information:

    - For an application for a permit for a horizontal well, a copy of an agreement between the applicant and the public official of each applicable local government who has legal authority to enter into an agreement concerning maintenance and safe use of the roads, streets, and highways in the political subdivision that will be used for access to and egress from a well site or an affidavit attesting that the applicant attempted to enter such an agreement in good faith;

    - An identification of each proposed source of ground water and surface water that will be used in the production operations of the well and of the applicable watershed and the estimated rate and volume of the water withdrawal for the production operations;

- The estimated volume of recycled water to be used if recycled water will be used in the production operations;
- For an application to drill a new well that is not a horizontal well within an urbanized area, the results of sampling of water wells within 300 feet of the proposed well prior to commencement of drilling, which distance may be revised by the Chief of the Division of Oil and Gas Resources Management; and
- For an application to drill a new horizontal well, the results of sampling of water wells within 1,500 feet of the proposed well prior to commencement of drilling, which distance may be revised by the Chief.

- Requires the Directors of Natural Resources and Transportation, not later than 18 months after the bill's effective date, to jointly prepare a report that analyzes the effectiveness of the agreements required by the bill between local governments and applicants for horizontal well permits regarding the use and maintenance of roads to and from horizontal well sites.
- Requires the Directors to prepare the report with input from statewide organizations representing county commissioners, county engineers, township trustees, municipal corporations, and the oil and gas industry.
- Requires the Directors to provide the report to each member of the General Assembly and to the Governor.
- Defines "horizontal well" for purposes of the Oil and Gas Law.

Permit terms and conditions for well in floodplain or area of drinking water supply

- Requires the Division of Oil and Gas Resources Management to conduct a review to identify site-specific terms and conditions that may be attached to a permit for a proposed well that will be located in a 100-year floodplain or within the five-year time of travel associated with a public drinking water supply.

Notification prior to well pad construction

- Requires a permittee to notify an inspector from the Division within a specified time period prior to the commencement of well pad construction.
- Defines "well pad" for purposes of the Oil and Gas Law.

Site review prior to well pad construction and permit issuance

- Requires the Division to conduct a site review prior to commencement of well pad construction and prior to issuance of a permit to drill a proposed horizontal well.

Insurance coverage for horizontal wells

- Requires an owner of a horizontal well to obtain liability insurance coverage of at least $5 million to pay damages for injury to persons or damage to property caused by the production operations of all the owner's wells in Ohio.

- Requires the insurance policy to include a reasonable level of coverage available for an environmental endorsement.

Rules governing horizontal wells

- Requires rules adopted by the Chief to include an identification of the subjects that the Chief must address when attaching terms and conditions to a permit with respect to a horizontal well and production facilities associated with such a well, and requires the subjects to include protection of the amount of water used and the source or sources of the water.

Horizontal well statement of production

- Applies requirements in current law governing statements of production to horizontal wells.

- Authorizes the Department of Taxation to disclose to the Department of Natural Resources oil and gas severance tax information to verify a taxpayer's compliance with the Severance Tax Law.

- Prohibits the Chief from disclosing oil and gas severance tax information received from the Department of Taxation until the owner of the well files the related statement of production with the Chief.

Well completion record: reporting of fluids in drilling and stimulation of well

- Requires a well completion record to include, if applicable, the trade name and total amount of all products, fluids, and substances, not including cement and its constituents and lost circulation materials, intentionally added to facilitate the drilling of any portion of the well until the surface casing is set and properly sealed.

- Requires a well completion record to include, if applicable, the trade name and total volume of all products, fluids, and substances used to stimulate a well.

- Requires an owner to identify in the well completion record each additive used for drilling or stimulation, provide a brief description of the purpose for which the additive is used, and, in the case of stimulation, provide the maximum concentration of the additive.

- Requires an owner to include in the well completion record for drilling or stimulation both of the following:

    - A list of all chemicals intentionally added to all products, fluids, or substances and include each chemical's corresponding Chemical Abstracts Service number and the maximum concentration of each chemical; and

    - The total volume of recycled fluid if recycled fluid was used and a designation of the well or the centralized facility that is the source of the recycled fluid.

- Requires the owner of a well to submit to the Chief the information designated on the well completion record concerning products, fluids, or substances used to stimulate the well using one of the following three methods: (1) on a form prescribed by the Chief, (2) through the chemical disclosure registry otherwise known as FracFocus, or (3) any other means approved by the Chief.

- Requires a well completion record to be on a form prescribed by the Chief rather than approved by the Chief as in current law.

Trade secrets

- Authorizes the owner of a well or a person that provides chemical information to the owner for purposes of the well completion record regarding well drilling or stimulation to designate, on a form prescribed by the Chief, a product, fluid, or substance or a chemical component in a product, fluid, or substance as a trade secret.

- Authorizes such an owner or person to pursue enforcement of any rights or remedies established under the Uniform Trade Secrets Act for misappropriation with respect to a product, fluid, or substance or a chemical component in a product, fluid, or substance that is so designated as a trade secret.

- Prohibits the Division from disclosing any product, fluid, or substance or chemical component in a product, fluid, or substance that is so designated as a trade secret.

Reporting of materials to rework, refracture, restimulate, or newly complete well

- Requires the owner of a well, after the well is initially completed and stimulated and until the well is plugged, to report on a form prescribed by the Chief all materials placed into the formation to rework, refracture, restimulate, or newly complete the well.

- Requires the owner to report such materials within 60 days after completing the reworking, refracturing, restimulation, or new completion and include the information that is required in the well completion record concerning disclosure of chemicals for the stimulation of a well and in a manner that is consistent with the bill.

Posting of chemical information on Division's web site

- Requires the Chief to make available through the Division's web site chemical information pertaining to drilling and stimulation of a well and chemical information pertaining to the reworking, refracturing, restimulation, or new completion of a well.

Chemical record retention

- Requires the owner of a well to maintain records of all chemicals placed in a well for a period of not less than two years after the date on which each such chemical was placed in the well, authorizes the Chief to inspect such records, including records concerning any chemical designated as a trade secret, at any time, and prohibits the Chief from disclosing the identity of any chemical that is designated as a trade secret.

Provision of exact chemical composition to medical professionals

- Requires a person claiming trade secret protection for a product, fluid, or substance used in the production operations of a well, upon request of a medical professional, to provide the exact chemical composition of each product, fluid, or substance and of each chemical component in a product, fluid, or substance that is designated a trade secret in order to assist in the diagnosis or treatment of an individual who was affected by an incident associated with the production operations of the well.

- Requires a medical professional who receives trade secret information to keep the information confidential and not to disclose the information for any purpose not related to diagnosis or treatment of an individual who was affected by an incident associated with the production operations of a well.

Oil and gas injection wells

- Authorizes the Chief to issue an order to the owner of an injection well that is in existence on the bill's effective date to make changes in the operation of the well in order to correct problems or address safety concerns.

- Requires the rules that the Chief must adopt concerning injection wells to include both of the following:

    - Electronic submission by the injection well owner to the Chief of information concerning each shipment of brine or other waste substances received by the owner for injection into the well; and

    - Provision and electronic reporting of information concerning brine and other waste substances from a registered brine transporter prior to the injection of the transported brine or other waste substances.

- Authorizes the Chief to adopt rules that do both of the following:

    - Establish the total depth of an injection well; and

    - Establish procedures and requirements in accordance with which the Chief may address threats to public health and safety.

Registration requirements for brine transporters

- Revises the information that must be included with an application submitted by a brine transporter for a registration certificate by requiring the application to include a list that identifies each vehicle, vessel, railcar, and container that will be used in the transportation of brine.

Authority to establish procedures for submitting brine transporter daily log information

- Allows the Chief, by rule, to establish procedures for the electronic submission to the Chief of the information that is required to be included in the daily log that each registered transporter must keep on each vehicle used to transport brine.

Nonapplicability of Administrative Procedure Act regarding drilling permits

- States that an order to issue, deny, or modify a permit to drill a new well, drill an existing well deeper, reopen a well, or convert a well is not subject to the Administrative Procedure Act.

Cooperative agreements

- Authorizes the Chief, in furtherance of the Division's sole and exclusive authority, to enter into cooperative agreements with other state agencies for advice and consultation, including visits at the surface location of a well on behalf of the Division.

- States that such cooperative agreements do not confer on other state agencies authority to administer and enforce the Oil and Gas Law and cannot be construed to dilute or diminish the Division's sole and exclusive authority established in that Law.

Fresh water impoundments

- Authorizes the Chief to specify requirements in rules governing the location and construction of fresh water impoundments that are part of an oil and gas production operation.

Enforcement authority

- Establishes procedures by which a person may request an extension, not exceeding 60 days, of the time to submit a report, test result, fee, or document to the Chief prior to the date on which it is due, and authorizes the Chief to grant an extension of up to an additional 60 days from the original due date.

- Requires the Chief to make reasonable attempts to notify an owner or other person who was not granted such an extension and who failed to timely submit a required report, test result, fee, or document.

- Authorizes the Chief to issue an order finding that an owner or other person committed a material and substantial violation if the owner or other person fails to submit a report, test result, fee, or document within 30 days after being so notified by the Chief.

Material and substantial violation

- Revises the definition of "material and substantial violation" for purposes of the Oil and Gas Law.

Penalties

- With regard to civil and criminal penalties assessed for violations of the Oil and Gas Law and rules adopted and orders issued under it, specifies that each day of violation constitutes a separate offense.

Oil and gas: miscellaneous

- Relocates to the statute governing injection wells the levying of oil and gas injection well disposal fees from the statute governing wells for the exploration for or extraction of minerals or energy other than oil or natural gas as in current law.

- Revises the definition of "condensate" for purposes of the Oil and Gas Law.

Renewal of surface or in-stream mining permit

- Requires the submission of a notice of intent to renew in order to initiate the surface or in-stream mining permit renewal process under the Industrial Minerals Mining Law rather than requiring the submission of a complete application to initiate the process.

- Requires the submission of a complete renewal application package subsequent to the submission of a notice of intent to renew, and requires the package to include the information required to be submitted in applications for renewal under current law.

- Establishes new time periods for submitting a complete renewal application package and for correcting deficiencies in a renewal application package.

- Allows the Chief of the Division of Mineral Resources Management to authorize a permit holder instead to file updated information through a surface mining permit modification process for a renewal requiring minor or minimal updates.

In-stream mining permit requirements

- With respect to an application for an in-stream mining permit, specifies that a hydraulic evaluation must be submitted only if required by the Division of Mineral Resources Management.

- Authorizes the Chief to allow an applicant for an in-stream mining permit to deviate from the statutory requirements pertaining to hydraulic evaluations.

- Extends from two years to five years the period of validity of an in-stream mining permit.

- With respect to the annual report that is required regarding an in-stream mining operation, requires the applicable permittee to update the map included with the report only if there have been specified changes since the submission of the most recent approved map.

Exemption for conservancy districts

- Exempts from the Industrial Minerals Mining Law certain flood control activities conducted by or on behalf of a conservancy district that are exempt from permitting requirements under section 10 of the federal Rivers and Harbors Act.

State Land Royalty Fund

(R.C. 131.50)

The bill alters the purposes for which a state college or university may use money in the State Land Royalty Fund. Under the bill, a college or university may use money in the Fund to pay for operating expenses associated with any property that is owned by the college or university and that is at least partially used for the exploration, development, and production of oil or gas if both of the following apply:

(1) The state college or university is engaged in research at the property or in education or outreach regarding the property; and

(2) The research, education, or outreach is associated with furthering the public understanding of how oil and gas exploration, development, or production potentially benefits the public and impacts the use of Ohio's natural resources.

Under current law, a state college or university, along with all other state agencies, is required to use money in the Fund to acquire land and to pay capital costs, including equipment and renovations and repairs of facilities. The Fund is comprised of money derived from royalties resulting from oil and gas operations conducted on state land. A state agency is entitled to receive from the Fund the amount that the state agency contributed and a share of the investment earnings of the Fund in an amount that is equivalent to the proportionate share of contributions made by the state agency to the Fund.

Unitization order application fee

(R.C. 1509.28)

The bill requires an applicant for an order for the unit operation of a pool to include with the submission of the application a nonrefundable fee of $10,000. Proceeds from the fee must be credited to the Oil and Gas Well Fund.

The Oil and Gas Well Fund is generally used by the Division of Oil and Gas Resources Management for purposes of administering the Oil and Gas Law and for other stated purposes.

Application requirements for oil and gas drilling permit

(R.C. 1509.06, 1509.01, and 1509.02; Section 715.20)

Additional information required with application

The bill requires an application for an oil and gas drilling permit to include the following additional information:

(1) For an application for a permit for a horizontal well, a copy of an agreement concerning the maintenance and safe use of the roads, streets, and highways that will be used for access to and egress from the well site entered into on reasonable terms between the owner and the public official that has the legal authority to enter such maintenance and safe use agreements for each county, township, and municipal corporation, as applicable, in which any such road, street, or highway is located. Under the bill, a horizontal well is a well that is drilled for the production of oil or gas in which the wellbore reaches a horizontal or near horizontal position in the Point Pleasant, Utica, or Marcellus formation and the well is stimulated. In the alternative, in lieu of submitting the agreement, the bill allows the owner to include with the application an affidavit on a form prescribed by the Chief of the Division of Oil and Gas Resources Management attesting that the applicant attempted in good faith to enter into such an agreement with the public official of each such county, township, or municipal corporation, but that no agreement was executed. Current law does not require such an agreement or affidavit, but does require a permit application to include a description by name or number of the county, township, and municipal corporation roads, streets, and highways that the applicant anticipates will be used for access to and egress from the well site.

(2) An identification, to the best of the owner's knowledge, of each proposed source of ground water and surface water that will be used in the production operations of the well. The bill requires the identification of each proposed source of water to indicate if the water will be withdrawn from the Lake Erie watershed or the Ohio River watershed. In addition, the owner must provide, to the best of the owner's knowledge, the proposed estimated rate and volume of the water withdrawal for the production operations. If recycled water will be used in the production operations, the bill requires the owner to provide the estimated volume of recycled water to be used. The bill requires an owner or a permittee, as applicable, to submit to the Chief an update if any

of the information changes before the Chief issues a permit for the application or prior to commencement of production operations.

(3) Except as discussed in item (4), below, for an application for a permit to drill a new well within an urbanized area, the results of sampling of water wells within 300 feet of the proposed well prior to commencement of drilling. Under current law, an urbanized area is an area where a well or production facilities of a well are located within a municipal corporation or within a township that has an unincorporated population of more than 5,000 in the most recent federal decennial census prior to the issuance of the permit for the well or production facilities. In addition, the owner must include a list that identifies the location of each water well where the owner of the property on which the water well is located denied the applicant access to sample the water well. The bill requires the sampling to be conducted in accordance with the guidelines established in "Best Management Practices For Pre-drilling Water Sampling" in effect at the time that the application is submitted. The Division must furnish those guidelines upon request and must make them available on the Division's web site. The Chief may revise the distance of 300 feet for purposes of pre-drilling water sampling if the Chief determines that conditions at the proposed well site warrant such a revision.

(4) For an application for a permit to drill a new horizontal well, the results of sampling of water wells within 1,500 feet of the proposed horizontal well prior to commencement of drilling. In addition, the owner must include a list that identifies the location of each water well where the owner of the property on which the water well is located denied the owner access to sample the water well. The sampling must be conducted in accordance with the guidelines established in "Best Management Practices For Pre-drilling Water Sampling" in effect at the time that the application is submitted. The Division must furnish those guidelines upon request and must make them available on the Division's web site. The Chief may revise the distance of 1,500 feet for purposes of pre-drilling water sampling if the Chief determines that conditions at the proposed well site warrant such a revision.

Under continuing law, an application for a permit to drill a new well, drill an existing well deeper, reopen a well, convert a well to any use other than its original purpose, or plug back a well to a different source of supply must contain specified information, including: (1) the name and address of the owner (the applicant), (2) the geological formation to be used and the proposed total depth of the well, (3) the type of drilling equipment to be used, (4) a plan for restoration of the land disturbed by drilling operations, and (5) other relevant information that the Chief prescribes by rule.

Not later than 18 months after the bill's effective date, the Directors of Natural Resources and Transportation jointly must prepare a report with input from statewide organizations representing county commissioner, county engineers, township trustees,

municipal corporations, and the oil and gas industry. The report must analyze the effectiveness of road maintenance and safe use agreements discussed above. The Directors must provide the report to each member of the General Assembly and to the Governor.

Permit terms and conditions for well in floodplain or area of drinking water supply

(R.C. 1509.06)

The bill requires the Division, prior to the issuance of a permit to drill a proposed well, to conduct a review to identify and evaluate any site-specific terms and conditions that may be attached to the permit if the proposed well will be located in a 100-year floodplain or within the five-year time of travel associated with a public drinking water supply.

Notification prior to well pad construction

(R.C. 1509.06 and 1509.01)

The bill requires a permittee or a permittee's authorized representative to notify an inspector from the Division at least 24 hours, or another time period agreed to by the Chief's authorized representative, prior to the commencement of well pad construction. Under the bill, a well pad is the area that is cleared or prepared for the drilling of one or more horizontal wells. Current law requires such notice to be provided at least 24 hours prior to the commencement of drilling, reopening, converting, well stimulation, or plugback operations.

Site review prior to well pad construction and permit issuance

(R.C. 1509.06)

The bill requires the Division to conduct a site review prior to the commencement of well pad construction and prior to the issuance of a permit to drill a proposed horizontal well. Current law requires a site review prior to the issuance of a permit to drill a proposed well that is to be located in an urbanized area. The purpose of the site review is to identify and evaluate any site-specific terms and conditions that may be attached to the permit. The terms and conditions that are attached to the permit must include the establishment of fencing, screening, and landscaping requirements for the surface facilities of the proposed well, including a tank battery of the well.

Insurance coverage for horizontal wells

(R.C. 1509.07)

The bill revises requirements in current law governing insurance coverage for oil and gas well owners by requiring the owner of a horizontal well to obtain liability insurance coverage from an insurer authorized to write liability insurance in Ohio or from an insurer approved to write liability insurance in Ohio in an amount of not less than $5 million bodily injury coverage and property damage coverage to pay damages for injury to persons or damage to property caused by the production operations of all the owner's wells in Ohio. The insurance policy must include a reasonable level of coverage available for an environmental endorsement. Additionally, an owner must maintain the coverage until all the owner's wells are plugged and abandoned or are transferred to an owner who has obtained the insurance coverage required by the bill and who is not under a notice of material and substantial violation or under a suspension order.

Under the bill, existing law continues to apply to other well owners. Currently, an owner of any well, except an exempt Mississippian well or an exempt domestic well, must obtain liability insurance coverage from a company authorized to do business in Ohio in an amount of not less than $1 million bodily injury coverage and property damage coverage to pay damages for injury to persons or damage to property caused by the drilling, operation, or plugging of all the owner's wells in Ohio. However, if any well is located within an urbanized area, the owner must obtain liability insurance coverage in an amount of not less than $3 million for such coverage. An owner must maintain the coverage as discussed above.

Rules governing horizontal wells

(R.C. 1509.03)

The bill requires rules adopted by the Chief under the Oil and Gas Law to include an identification of the subjects that the Chief must address when attaching terms and conditions to a permit with respect to a horizontal well and production facilities associated with a horizontal well. The bill then applies to such a permit the subjects established in continuing law that the Chief must address when attaching terms and conditions to a permit for a well and production facilities of a well that are located in an urbanized area. Those subjects include all of the following: (1) safety concerning the drilling or operation of a well, (2) protection of the public and private water supply, (3) fencing and screening of surface facilities of a well, (4) containment and disposal of drilling and production wastes, (5) construction of access roads for purposes of the drilling and operation of a well, and (6) noise mitigation for purposes of

the drilling of a well and the operation of a well, not including safety and maintenance operations. In addition, the bill requires item (2), above, to include protection of the amount of water used and the source or sources of the water.

Horizontal well statement of production

(R.C. 1509.11 and 5703.21)

The bill applies the statement of production requirements in current law to horizontal wells. Under those requirements, the owner of any well producing or capable of producing oil or gas must file with the Chief a statement of production of oil, gas, and brine on or before March 31 for the preceding calendar year in a form that the Chief prescribes. An owner that has more than 100 horizontal wells must submit the statement of production electronically in a format that is approved by the Chief. The Chief must include on the form, at a minimum, a request for the submittal of the information that a person who is regulated under the Oil and Gas Law is required to submit under the federal Emergency Planning and Community Right-To-Know Act and regulations adopted under it and that the Division does not obtain through other reporting mechanisms.

The bill authorizes the Department of Taxation to disclose otherwise confidential oil and gas severance tax information to the Department of Natural Resources in order to verify a taxpayer's compliance with the Severance Tax Law. However, the bill prohibits the Chief from disclosing any oil and gas severance tax information until the owner of the well files the related statement of production with the Chief in accordance with the procedures discussed above.

Well completion record: reporting of fluids in drilling and stimulation of well

(R.C. 1509.10)

Drilling fluids

The bill requires a well completion record to include, if applicable, the trade name and the total amount of all products, fluids, and substances, and the supplier of each product, fluid, or substance, not including cement and its constituents and lost circulation materials, intentionally added to facilitate the drilling of any portion of the well until the surface casing is set and properly sealed. The owner must identify each additive used and provide a brief description of the purpose for which the additive is used. In addition, the owner must include a list of all chemicals intentionally added to all products, fluids, or substances and include each chemical's corresponding Chemical Abstracts Service number and the maximum concentration of each chemical. Finally, if

recycled fluid was used, the owner must designate on the well completion record the well or the centralized facility that is the source of the recycled fluid.

The bill requires the owner of the well to obtain the chemical information from the company that drilled the well, provided service at the well, or supplied the chemicals. If the company that drilled the well, provided service at the well, or supplied the chemicals provides incomplete or inaccurate chemical information, the owner must make reasonable efforts to obtain the required information from the company or supplier. For purposes of correcting inaccuracies and incompleteness, an owner is considered in substantial compliance if the owner has made reasonable efforts to obtain the required information from the supplier.

Current law requires any person drilling in the state, within 60 days after the completion of drilling operations to the proposed total depth or after a determination that a well is a dry or lost hole, to file with the Division all wireline electric logs and an accurate well completion record. The well completion record must designate information such as the following: (1) the purpose for which the well was drilled, (2) the character, depth, and thickness of geological units encountered, (3) the dates that drilling was commenced and completed, (4) the lengths and sizes of casing and tubing used and recovered and data related to cementing, (5) the number of casing perforations and intervals of perforations, and (6) if applicable, the type and volume of fluid used to stimulate the well.

Stimulation fluids

The bill requires a well completion record to include, if applicable, the trade name and the total volume of all products, fluids, and substances, and the supplier of each product, fluid, or substance used to stimulate the well. The owner must identify each additive used and provide a brief description of the purpose for which the additive is used, and include the maximum concentration of the additive used. In addition, the owner must include a list of all chemicals intentionally added to all products, fluids, or substances and include each chemical's corresponding Chemical Abstracts Service number and the maximum concentration of each chemical. Finally, if recycled fluid was used, the owner must designate on the well completion record the total volume of recycled fluid and the well or the centralized facility that is the source of the recycled fluid.

The bill requires the owner of the well to obtain the chemical information from the company that stimulated the well or supplied the chemicals. If the company that stimulated the well or supplied the chemicals provides incomplete or inaccurate chemical information, the owner must make reasonable efforts to obtain the required information from the company or supplier. For purposes of correcting inaccuracies and

incompleteness, an owner is considered in substantial compliance if the owner has made reasonable efforts to obtain the required information from the supplier.

In addition, the bill revises current law requirements concerning the reporting of the type and volume of fluid used to stimulate the well by excluding cement and its constituents.

Methods of reporting stimulation fluids

The bill requires an owner to submit to the Chief the stimulation fluid information discussed above using one of the following methods:

(1) On a form prescribed by the Chief;

(2) Through the chemical disclosure registry that is maintained by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission, otherwise known as FracFocus; and

(3) Any other means approved by the Chief.

Material safety data sheets

The bill requires the owner to provide to the Chief a copy of the material safety data sheet for each material that is required to be designated in the well completion record with respect to the drilling and stimulation of a well and with respect to reworking, refracturing, restimulating, or newly completing a well if the Division does not have a material safety data sheet for that material. Current law requires the Chief to obtain such sheets for each material that is listed for the stimulation of a well.

Form

The bill requires that the well completion record to be on a form prescribed by the Chief. Current law requires the well completion record to be on a form approved by the Chief.

Trade secrets

(R.C. 1509.10)

The bill authorizes the owner of a well who is required to submit a well completion report or to report of materials to rework, refracture, restimulate, or newly complete the well or a person that provides information to the owner for those purposes to designate and withhold from disclosure, on a form prescribed by the Chief, a product, fluid, or substance or a chemical component in a product, fluid, or substance as a trade secret. The owner or person may pursue enforcement of any rights or

remedies established under the Uniform Trade Secrets Act for misappropriation with respect to a product, fluid, or substance or a chemical component in a product, fluid, or substance that is so designated as a trade secret. The bill prohibits the Division from disclosing any product, fluid, or substance or chemical component in a product, fluid, or substance that is so designated as a trade secret.

Reporting of materials to rework, refracture, restimulate, or newly complete well

(R.C. 1509.10)

The bill requires the owner of a well, after the well is initially completed and stimulated and until the well is plugged, to report on a form prescribed by the Chief all materials placed into the formation to rework, refracture, restimulate, or newly complete the well. The owner must submit the information within 60 days after completing the reworking, refracturing, restimulation, or new completion. In addition, the owner must include the information that is required in the well completion record concerning disclosure of chemicals for the stimulation of a well and in a manner that is consistent with the bill.

Reporting requirements: miscellaneous

(R.C. 1509.10)

The bill states that for purposes of reporting under the bill's provisions, an owner is not required to report chemicals that occur incidentally or in trace amounts.

Posting of chemical information on Division's web site

(R.C. 1509.10)

Under the bill, the Chief must post on the Division's web site each material safety data sheet obtained for the drilling and stimulation of a well. Current law requires the Chief to post such sheets pertaining to stimulation of the well. In addition, the bill requires the Chief to make available through the Division's web site the chemical information pertaining to the drilling and stimulation of a well and the chemical information pertaining to the reworking, refracturing, restimulation, or newly completion.

Chemical record retention

(R.C. 1509.10)

The bill requires the owner of a well to maintain records of all chemicals placed in a well for a period of not less than two years after the date on which each such chemical was placed in the well. The Chief may inspect the records at any time concerning any such chemical, including records concerning any chemical that is designated as a trade secret. However, the Chief cannot disclose the identity of any chemical that is designated as a trade secret.

Provision of exact chemical composition to medical professionals

(R.C. 1509.10)

The bill requires a person claiming trade secret protection for a product, fluid, or substance or a chemical component in a product, fluid, or substance, upon the request of a medical professional in order to assist in the diagnosis or treatment of an individual who was affected by an incident associated with the production operations of a well, to provide the exact chemical composition of each product, fluid, or substance and of the chemical component in a product, fluid, or substance that is requested. A medical professional who receives such trade secret information must keep the information confidential and cannot disclose the information for any purpose that is not related to the diagnosis or treatment of an individual who was affected by an incident associated with the production operations of a well.

Rules and orders governing oil and gas injection wells

(R.C. 1509.22)

The bill requires the Chief to adopt rules in accordance with the Administrative Procedure Act concerning both of the following: (1) the electronic submission by the owner of an injection well to the Chief of information concerning each shipment of brine or other waste substances received by the owner for injection into the well, and (2) the provision and electronic reporting of information concerning brine and other waste substance from a registered brine transporter prior to the injection of the transported brine or other waste substances. In addition, the bill authorizes the Chief to adopt rules in accordance with the Administrative Procedure Act that do both of the following: (1) establish the total depth of a well for which an oil and gas injection well permit has been applied for or issued, and (2) establish requirements and procedures to protect public health and safety.

Current law requires the Chief to adopt rules regarding the injection into wells of brine and other waste substances associated with oil or gas drilling, exploration, or production. The rules must include provisions regarding all of the following: (1) applications for oil and gas injection well permits, (2) entry to conduct inspections and to examine and copy records to ascertain compliance with statutes, rules, orders, and terms and conditions of permits concerning oil and gas injection wells, (3) the provision and maintenance of information through monitoring, recordkeeping, and reporting, and (4) any other provisions in furtherance of the goals of the statute concerning oil and gas injection wells and the federal Safe Drinking Water Act. In addition, continuing law permits the Chief to adopt rules authorizing tests to evaluate if fluids and carbon dioxide may be injected in a reservoir and to determine the maximum allowable injection pressure.

The bill authorizes the Chief to issue an order to the owner of an injection well that is in existence on the bill's effective date to make changes in the operation of the injection well in order to correct problems or address safety concerns.

Registration requirements for brine transporters

(R.C. 1509.222; R.C. 1509.225 (not in the bill))

The bill revises the information that must be included with an application submitted by a brine transporter for a registration certificate by requiring the application to include a list that identifies each vehicle, vessel, railcar, or container that will be used in the transportation of brine. Continuing law establishes the minimum information that must be included in the application for a registration certificate, which includes all of the following: (1) a plan for disposal that provides for compliance with the Oil and Gas Law and rules adopted under it, (2) a $15,000 surety bond to provide compensation for damage and injury resulting from transporters' violations of that Law, rules adopted under it, and terms and conditions of the registration certificate, and (3) a certificate certifying that the applicant has a liability insurance policy of not less than $300,000 bodily injury coverage and $300,000 property damage coverage for injury to persons or property caused by the collecting, handling, transportation, or disposal of brine.

Authority to establish procedures for submitting brine transporter daily log information

(R.C. 1509.223)

The bill allows the Chief, by rule, to establish procedures for the electronic submission to the Chief of the information that is required to be included in the daily log that must be maintained by a registered transporter. Continuing law requires the

daily log to contain, at a minimum, all of the following: (1) the name of the owner or owners of the well or wells producing the brine to be transported, (2) the date and time the brine is loaded, (3) the name of the driver, (4) the amount of brine loaded at each collection point, (5) the disposal location, and (6) the date and time the brine is disposed of and the amount of brine disposed of at each location. Each registered transporter must keep a daily log on each vehicle used to transport brine. In addition, the transporter must have the log available on request of the Chief, an authorized representative of the Chief, or a peace officer.

Nonapplicability of Administrative Procedure Act regarding drilling permits

(R.C. 1509.03)

The bill states that an order of the Chief to issue, deny, or modify a permit to drill a new well, drill an existing well deeper, reopen a well, or convert a well is not subject to the Administrative Procedure Act. Current law instead states that orders issuing, denying, or modifying a permit or notices required to be made by the Chief pursuant to the Oil and Gas Law must be made in compliance with the Administrative Procedure Act. In addition, every order issuing, denying, or modifying a permit under that Law and described as such is considered an adjudication order for purposes of that Act.

Cooperative agreements

(R.C. 1509.02)

The bill authorizes the Chief, in furtherance of the Division's sole and exclusive authority, to enter into cooperative agreements with other state agencies for advice and consultation, including visitations at the surface location of a well on behalf of the Division. Such cooperative agreements do not confer on other state agencies any authority to administer or enforce the Oil and Gas Law and rules adopted under it. In addition, the cooperative agreements cannot be construed to dilute or diminish the Division's sole and exclusive authority as established in the Oil and Gas Law.

Fresh water impoundments

(R.C. 1509.23)

The bill adds requirements governing the location and construction of fresh water impoundments that are part of an oil and gas production operation to the list of topics for which the Chief may specify, in rules, practices to be followed for protection of public health or safety or to prevent damage to natural resources of the Division.

Enforcement authority

(R.C. 1509.04)

The bill allows a person who is required to submit a report, test result, fee, or document under the Oil and Gas Law and rules adopted under it to submit to the Chief a request for an extension, not exceeding 60 days, of the time to submit the report, test result, fee, or document prior to the date on which it is due. The bill authorizes the Chief to grant an extension of up to an additional 60 days from the original due date.

In addition, the bill states that if a person who is required to submit a report, test result, fee, or document under the Oil and Gas Law or rules adopted under it fails to submit the report, test result, fee, or document before or on the date on which it is due and the Chief has not granted an extension as discussed above, the Chief must make reasonable attempts to notify the person of the failure to submit the report, test result, fee, or document. If a person who receives such a notification fails to submit the report, test result, fee, or document on or before 30 days after the date on which the Chief so notified the person, the Chief may issue an order that the person committed a material and substantial violation.

Material and substantial violation

(R.C. 1509.01)

The bill revises the definition of "material and substantial violation" for purposes of the Oil and Gas Law by including failure to submit a report, test result, fee, or document that is required in that Law or rules adopted under it. Continuing law defines "material and substantial violation" to mean any of the following:

(1) Failure to obtain a permit to drill, reopen, convert, plugback, or plug a well under that Law;

(2) Failure to obtain or maintain insurance coverage that is required under that Law;

(3) Failure to obtain or maintain a surety bond that is required under that Law;

(4) Failure to plug an abandoned well or idle and orphaned well unless the well has been granted temporary inactive well status or the Chief has approved another option concerning the well;

(5) Failure to restore a disturbed land surface;

(6) Failure to reimburse the Oil and Gas Well Fund pursuant to a final order of the Chief; or

(7) Failure to comply with a final nonappealable order issued by the Chief.

In addition, the bill requires items (2) and (3), above, to include failure to update or submit proof of insurance coverage or of a surety bond.

Penalties

(R.C. 1509.33 and 1509.99)

The bill specifies that each day of violation of the Oil and Gas Law and rules adopted and orders issued under it constitutes a separate offense with regard to civil and criminal penalties assessed.

Oil and gas: miscellaneous

(R.C. 1509.22, 1505.09, 1509.02, 1509.221, and 1509.01; Section 715.10)

The bill relocates the levying of injection well disposal fees from the statute governing wells for the exploration for or extraction of minerals or energy other than oil or natural gas as in current law to the statute governing injection wells.

The revises the definition of "condensate" to mean liquid hydrocarbons separated at or near the well pad or along the gas production or gathering system prior to gas processing rather than liquid hydrocarbons that were originally in the gaseous phase in the reservoir as in current law.

Renewal of surface or in-stream mining permit

(R.C. 1514.021)

New procedures

The bill alters the procedures for renewing a surface or in-stream mining permit as discussed below.

Notice of intent to renew

Under the bill, a permit holder who wishes to continue surface or in-stream mining operations after the expiration date of the existing permit or renewal permit must file with the Chief of the Division of Mineral Resources Management a notice of intent to renew. The notice of intent to renew must be on a form the Chief prescribes

and provides and must be accompanied by the existing permit renewal fee, which is $1,000 for surface mining and $500 for in-stream mining.

Renewal application package

Upon receipt of a notice of intent to renew form and the permit renewal fee, the Chief must notify the permit holder to submit a renewal application package. The permit holder must submit a complete renewal package to the Chief at least 30 days prior to the expiration of the existing surface or in-stream mining permit or renewal permit. The renewal application package must include all of the following items that are required for permit renewal applications under current law:

(1) A map that is a composite of the information required to be contained in the most recent annual report map and of all surface or in-stream mining and reclamation activities conducted under the existing permit or renewal permit;

(2) The annual report required under current law;

(3) In the case of an applicant proposing a significant change to the plan of mining and reclamation, as "significant" is defined by rule, a copy of the advertisement that the applicant is required to have published in accordance with current law; and

(4) Additional maps, plans, and revised or updated information that the Chief determines to be necessary for permit renewal.

For a renewal permit requiring minor or minimal updates to the existing permit, renewal permit, or accompanying information, the Chief may authorize a permit holder to file updated information through a surface mining permit modification process using a surface mining permit modification form. However, the Chief may require such a permit holder to submit a complete renewal application package.

Reasons for denial

The bill applies the reasons for denial of a renewal application under current law to denial of a renewal application package under the bill. Thus, a renewal application package may be denied for any of the following:

--The permit holder's operation is not in substantial or material compliance with the Industrial Minerals Mining Law, or rules adopted and orders issued under it, and the plan of mining and reclamation under the existing permit or renewal permit.

--The permit holder has not provided evidence that a performance bond applicable to lands affected under the existing permit or renewal permit will remain effective until released.

--The permit holder, any partner if the permit holder is a partnership, any officer or director if the permit holder is a corporation, or any other person who has a right to control or in fact controls the management of the permit holder or the selection of officers, directors, or managers of the permit holder has failed substantially or materially to comply or continues to fail to comply with the Industrial Minerals Mining Law.

Procedures for issuing or denying renewal

Under the bill, the Chief must do one of the following after receiving a complete renewal application package and permit renewal fees:

--Approve the application for renewal and issue an order granting a renewal permit;

--Issue an order denying a renewal permit; or

--Notify the applicant that there are deficiencies in the renewal application package and that an extension of the time limit for issuing an order approving or disapproving the renewal permit has been granted.

In making a decision regarding a renewal application package, the Chief must review the package for compliance with the Industrial Minerals Mining Law and rules adopted under it. The Chief must notify a permit holder and, if applicable, the permit holder's consultant, surveyor, or engineer of deficiencies or errors in a renewal application package and must include in the notification a discussion of the deficiencies or errors.

A permit holder has up to 180 days after the expiration of the permit holder's permit or renewal permit to submit a revised renewal application package. A permit holder may request, in writing, an extension of the 180-day period for revisions to the renewal application package. The Chief may approve a 60-day extension. The Chief must notify the permit holder of the Chief's decision to either grant or deny the extension.

Upon the submission of a revised renewal application package that is determined to be complete by the Chief, the Chief must proceed to approve or deny the application. If the revised renewal application package is not submitted within 180 days after the permit expiration date or, if an extension has been granted, within 240 days after the permit expiration date, the Chief must issue an order denying the renewal permit.

Other requirements

If an applicant for a renewal permit has complied with the requirements to submit a notice of intent to renew, the applicant may continue surface or in-stream mining operations under an existing permit or renewal permit after its expiration date until the 60-day time period for filing a complete renewal application package has expired or until the Chief issues an order denying the renewal permit. A permit holder who fails to submit a timely notice of intent to renew form, required permit renewal fees, and a renewal application package must cease surface or in-stream mining operations on the expiration date of the existing permit or renewal permit. If such a permit holder then submits a notice of intent to renew form and the permit renewal fees on or before the thirtieth day after the expiration date of the expired permit or renewal permit and provides the information required by the Chief (see above) within 60 days after the permit expiration date, the permit holder need not submit the final map and report required under current law until the later of 30 days after the Chief issues an order denying the application for renewal or 30 days after the Chief's order is affirmed upon appeal.

Existing procedures

Current law does not require the submission of a notice of intent to renew or a renewal application package. Rather, a permit holder who wishes to continue surface or in-stream mining operations must submit a renewal application along with the applicable fee and all applicable information required by the Chief (see above). Upon receipt of the information, the Chief must approve the application for renewal and issue an order granting a renewal permit unless the Chief finds that the applicant does not meet the criteria for renewal (see above). Within 60 days after receiving the information and permit renewal fees, the Chief must approve the application for renewal and issue an order granting a renewal permit, issue an order denying the application, or notify the applicant that the time limit for issuing such an order has been extended. The extension of time cannot exceed 60 days. Generally, the procedures discussed above under "**Other requirements**" also apply to applications for renewal under current law.

In-stream mining permit requirements

(R.C. 1514.02, 1514.021, 1514.03, and 1514.05)

Period of validity

The bill extends the period of validity of an in-stream mining permit or renewal permit from two to five years.

Hydraulic evaluation

With regard to an application for an in-stream mining permit, the bill requires an applicant to submit a hydraulic evaluation of the applicable watercourse prepared by a registered professional engineer only if required by the Division of Mineral Resources Management after review of the applicant's proposed in-stream mining plans. The bill also authorizes the Chief of the Division of Mineral Resources Management to allow an applicant to deviate from the required elements of the hydraulic evaluation if the Chief determines that such a deviation is appropriate.

Current law does not require the Division to make a determination of the necessity of a hydraulic evaluation. Rather, such an evaluation is always required. The required elements of a hydraulic evaluation under current law include:

(1) Soundings that depict the cross-sectional views of the channel bottom of the watercourse and water elevations for the watercourse;

(2) A profile of the channel bottom;

(3) An analysis of design flows and water surface profiles for the watercourse prior to in-stream mining and the proposed final mining condition; and

(4) An analysis of the expected changes in the roughness coefficient, resistance to water flow velocity, and hydraulic gradient in the channel bottom due to the proposed mining.

Current law also specifies that a hydraulic evaluation may include any additional information that the Chief requires in order to evaluate the potential impact of in-stream mining on the watercourse and to determine if any additional performance standards are required to protect the environment and property outside the limits of the operation as established in the permit.

Map, soundings, and water elevation

The bill requires the submission of a map of an in-stream mining operation with the annual report required to be submitted by an in-stream mining permittee only if the in-stream mining for the year addressed by the report occurred beyond the area identified in the most recent approved map. Further, the bill requires soundings to be included with the annual report only if the soundings depict a cross-sectional view of the channel bottom that is different from the most recent approved map. Finally, the bill requires water elevations to be included with the annual report only if water elevations are different from those indicated on the most recent approved map. Under

current law, the submission of a map, soundings, and water elevations are always required with an annual report.

Exemption for conservancy districts

(R.C. 1514.01)

The bill exempts from the Industrial Minerals Mining Law certain flood control activities conducted by or on behalf of a conservancy district that are exempt from permitting requirements under section 10 of the federal Rivers and Harbors Act.

PUBLIC UTILITIES COMMISSION (PUC)

Power Siting Board certification

- Changes the Power Siting Board (PSB) certification requirements regarding gas transmission and distribution lines to require certification for a gas pipeline that is greater than 500 feet in length, and its associated facilities, that is more than nine inches in outside diameter and designed for transporting gas at a maximum allowable operating pressure in excess of 125 pounds per square inch.

- Excludes from PSB certification requirements gathering lines, gas gathering pipelines, and processing plant gas stub pipelines; any gas processing plant; natural gas liquids finished product pipelines; pipelines from gas processing plants to an interstate or intrastate gas pipeline or to a natural gas liquids fractionation plant; any natural gas liquids fractionation plant; an oil, gas, or other production operation regulated by the state including pipelines upstream of any gathering lines; and certain compressor stations.

- Requires the PSB to adopt rules for an accelerated review of an application for a construction certificate for any of the following:

    - An electric transmission line that is not more than two miles in length is primarily needed to meet the needs of a specific customer, or necessary to maintain reliable electric service as a result of the environmentally related retirement or shutdown of a generating facility;

    - An electric generating facility that uses waste heat or natural gas and is primarily within the current boundary of an existing industrial or electric generating facility; and

- A gas pipeline that is not more than five miles in length or is primarily needed to meet the requirements of a specific customer.

- Requires the PSB to adopt rules for the automatic certification of those entities subject to the accelerated review when an application is not suspended by the PSB, an administrative law judge, or the chairperson or executive director of the PSB.

- Requires an application for a PSB certificate to be filed not more than five years prior to the planned date of commencement of construction instead of requiring filing not less than one year nor more than five years prior to that date.

- Permits the PSB to "approve, disapprove, or modify and approve" an application for a PSB certificate instead of "approve or disapprove" and permits an applicant to withdraw an application if the PSB grants a certificate on terms, conditions, or modifications other than those proposed in the application.

- Requires the PSB to grant, deny, or modify an economically significant wind farm's application and certification under rules that use the same process applicable to certification of major utility facilities.

Public Utilities Commission (PUCO) general authority

- Exempts from regulation as a public utility an entity engaged in the business of the transport associated with gathering lines, raw natural gas liquids, or finished product natural gas liquids.

- Exempts from regulation as a public utility certain natural gas gatherers and producers engaged in the business of supplying natural gas for lighting, power, or heating purposes to Ohio consumers, and that deliver or sell Ohio-produced raw natural gas liquids.

PUCO authority over intrastate pipeline safety

- Exempts from Ohio's pipeline safety law (specifically requirements on "operators") an entity engaged in the business of the transport associated with gathering lines, raw natural gas liquids, or finished product natural gas liquids.

- Adds to the current law duties of the Public Utilities Commission (PUCO) regarding intrastate pipeline safety the requirement that the PUCO perform all regulatory and enforcement duties required under Ohio's pipeline safety law.

- Permits the PUCO, for the purpose of protecting the public safety regarding intrastate pipelines, to enter into a cooperative agreement or memorandum of understanding with another state agency for consultation services and the exchange

of advice and technical expertise to assist the PUCO in exercising its regulatory authority over public utilities.

- Prohibits the agreement or memorandum from:
    - Conferring on the state agency any regulatory authority over the activities under Ohio's pipeline safety law;
    - Diminishing the sole and exclusive authority of the PUCO to supervise and regulate public utilities.
- Requires each operator under Ohio's pipeline safety law and each pipeline company, on July 1 and November 1 of each year, to file a disclosure with the PUCO that specifies the country in which each tubular steel product used by the operator or company in the exploration, gathering, or transportation of gas or hazardous liquids was manufactured.

Pipeline safety standards for operators of gas gathering pipelines and processing plant gas stub pipelines

- Subjects operators of either of the following types of pipelines that was completely constructed on or after the effective date of this provision of the bill, and that transports gas produced by a horizontal well to various pipeline safety standards:
    - A gas gathering pipeline;
    - A processing plant gas stub pipeline.
- Requires operators of those gas gathering pipelines and processing plant gas stub pipelines to comply with the applicable pipe design requirements under the minimum federal safety standards for the transportation of natural and other gas by pipeline.
- Requires those operators to engage in various other activities in accordance with federal standards regarding the pipelines, including:
    - Designing, constructing, inspecting, and testing;
    - Controlling corrosion;
    - Carrying out a damage prevention and public education program;
    - Establishing the maximum allowable operating pressure;
    - Installing and maintaining pipeline markers; and

- Performing and maintaining records of leakage surveys (R.C. 4905.911).

- Declares that gas gathering pipelines and processing plant gas stub pipelines are not subject to the Natural Gas Pipeline Safety Act, the resultant United States Department of Transportation rules, or the PUCO's current safety and other regulations over gathering lines.

Definitions

- Defines a gas gathering pipeline as a gathering line not regulated by the Natural Gas Pipeline Safety Act and resultant federal rules and specifies it includes a pipeline used to collect and transport wet natural gas or transmission quality gas to the inlet of a gas processing plant, the inlet of a distribution system, or to a transmission line.

- Defines a processing plant gas stub pipeline as a gas pipeline that transports transmission quality gas from the tailgate of a gas processing plant to the inlet of an interstate or intrastate transmission line and that is considered an extension of the gas processing plant and is not for public use.

- Defines operator, for purposes of the gas gathering pipeline and processing plant gas stub pipeline safety standards, as any person that owns, operates, manages, controls, or leases either type of pipeline.

- Defines horizontal well as a well that is drilled for the production of oil or gas in which the wellbore reaches a horizontal or near horizontal position in the Point Pleasant, Utica, or Marcellus formation and the well is stimulated.

Filing of pipeline information with PUCO prior to and after pipeline construction

- Requires any person who plans to construct a gas gathering pipeline or a processing plant gas stub pipeline subject to the bill's safety standards to file a form with the PUCO Division of Pipeline Safety, not later than 21 days after the commencement of construction, that specifies certain information including, for example, the pipeline's route and maximum allowable operating pressure.

- Requires the operator of those pipelines to file with the Division an explanation of the constructed pipeline's route and operating information not later than 60 days after the completion of construction.

Aggregate forfeiture for pipe-line safety violation or noncompliance

- Increases, from $500,000 to $1 million, the maximum aggregate forfeiture that the PUCO may assess upon certain pipe-line operators for violations of or noncompliance with the pipeline safety law.

Advanced energy resource definition changes

- Includes as an advanced energy resource any new or repowered generating facility, which allows electricity generated by any of those facilities to be used by an electric distribution utility (EDU) or electric services company (ESC) to meet the advanced energy resource requirements and allows universities and other entities to receive assistance under the Advanced Energy Program to research or conduct educational outreach, as applicable, regarding those facilities.

Waste energy recovery and combined heat and power systems

- Permits certain waste energy recovery systems at state institutions of higher education to qualify either as energy efficiency, for the requirement that EDUs achieve 22% efficiency savings by 2025, or as a renewable energy resource, for the renewable energy resource requirements on EDUs and ESCs.

- Permits certain other waste energy recovery systems that were placed into service or retrofitted on or after the effective date of this provision of the bill to qualify for either the energy efficiency requirements or the renewable energy resource requirements.

- Prohibits a waste energy recovery system that is, or has been, included in an energy efficiency program from counting toward the advanced energy resource requirement.

- Prohibits a waste energy recovery system that is, or was, on or after January 1, 2012, included in an energy efficiency program from counting toward the renewable energy resource requirements.

- Permits a combined heat and power system, designed to achieve at least 60% thermal efficiency, with at least 20% of the total useful energy in the form of thermal energy, and placed into service or retrofitted on or after the effective date of this provision of the bill, to qualify for the energy efficiency requirements.

- Prohibits an EDU from applying more than its total annual percentage of industrial load to the annual energy efficiency savings requirements, for purposes of a waste energy recovery or combined heat and power system.

- Adds to existing state policy the encouragement of innovation and market access for waste energy recovery systems.

Renewable energy credits for energy from methane gas

- Permits biologically derived methane gas and methane gas emitted from an abandoned coal mine to create or qualify as a renewable energy credit without being converted directly to electricity if the gas meets the following requirements:
    - The gas is gathered or produced in Ohio;
    - The facility that gathers or produces the gas was placed in service on or after January 1, 1998, and is, under PUCO rules, a PUCO-certified renewable energy resource generating facility.
- Specifies that PUCO rules for renewable energy credits must require the quantity of energy derived from the methane gas that is equal to 3,412,142 British thermal units to equal one credit.

Smart grid programs

- Adds, within the state's policy for competitive retail electric service, the provision that the state encourage innovation and market access for cost-effective smart grid programs.
- Defines "smart grid" within the competitive retail electric service law to mean capital improvements to an EDU's distribution infrastructure that improve reliability, efficiency, resiliency, or reduce energy demand or use, including but not limited to, advanced metering and automation of system functions.
- Adds cost-beneficial smart grid investment programs to those programs that a utility may include to meet energy efficiency and peak demand reduction requirements.

Alternative energy resources compliance report

- Requires the PUCO's annual EDU and ESC alternative energy resource compliance report to the General Assembly to include a description of the average annual cost of renewable energy credits purchased by EDUs and ESCs.
- Requires the PUCO to begin including the credit purchase information in each report submitted after the effective date of this provision of the bill.

Distribution and transmission infrastructure review and upgrades

- Requires the PUCO to review the distribution and transmission infrastructure in this state.

Green pricing program review

- Permits the PUCO to periodically review any green pricing program offered in Ohio as part of competitive retail electric service and make recommendations for improving or expanding the program.

PUCO study of opportunities for customer choice

- Requires the PUCO to study whether certain aspects of electric service provide increased opportunities for customer choice, prepare a report of its findings, and make the report available on its web site.

Compressed natural gas

- Permits the PUCO, in cooperation with the Department of Transportation (ODOT), to work with other states to develop a multi-state study on the development of compressed natural gas (CNG) infrastructures for transportation.

- Requires ODOT and PUCO to cooperatively analyze the cost effectiveness of purchasing vehicles that operate on CNG and the conversion of certain state motor vehicles to operate on CNG and to submit a joint report regarding CNG vehicle purchases or a conversion to legislative leaders and the Governor not later than January 30, 2013.

Long-term forecast report

- Requires a description of the "resource planning projections," rather than the "resource plan," within the long-term forecast reports that each major utility facility must furnish to the PUCO.

Power Siting Board certification

(R.C. 303.213, 4906.01, 4906.03, 4906.05, 4906.06, 4906.07, 4906.10, and 4906.20; R.C. 4906.04 (not in the bill))

The bill changes Power Siting Board (PSB) certification requirements. Current law requires major utility facilities to apply for and obtain a certificate from the PSB

prior to commencement of construction of the facility. Certificates are not granted by the PSB unless it finds and determines from the facility's application the basis of the need for the facility, the nature of the probable environmental impact, and other standards.

Current law requires a major utility facility, including a gas or natural gas transmission line and associated facilities designed for, or capable of, transporting gas or natural gas at pressures in excess of 125 pounds per square inch, to be certified by the PSB prior to construction. The bill alters the current law requirement by requiring PSB certification only for a "gas" (see definition below) pipeline (and not a "gas or natural gas transmission line") that is greater than 500 feet in length, and its associated facilities, that is more than nine inches in outside diameter and is designed for transporting gas at a maximum allowable operating pressure in excess of 125 pounds per square inch.

Under current law, certain facilities are excluded from the definition of major utility facility, and, therefore, are exempt from the requirement that those facilities be PSB-certified prior to construction. Those facilities include gas or natural gas distributing lines and gas or natural gas gathering lines and associated facilities, as defined by the PSB. The bill, instead, excludes the following from the definition of major utility facility and the certification requirements:

- Gathering lines, gas gathering pipelines and processing plant gas stub pipelines (see definitions below);
- Any gas processing plant (see "**Other new pipeline safety definitions**" for definition);
- Natural gas liquids finished product pipelines (see "**Definitions under the PSB law**" for definition);
- Pipelines from a gas processing plant (see "**Other new pipeline safety definitions**" for definition) to a natural gas liquids fractionation plant (see "**Definitions under the PSB law**" for definition), including a raw natural gas liquids pipeline, or to an interstate or intrastate gas pipeline;
- Any natural gas liquids fractionation plant;
- A production operation defined and regulated under the Oil and Gas Law in Revised Code Chapter 1509., including all pipelines upstream of any gathering lines;
- Any compressor stations used by the following:

- A gas gathering pipeline, a processing plant gas stub pipeline, or a gas processing plant;
- A natural gas liquids finished product pipeline, a natural gas liquids fractionation plan, or any pipeline upstream of a natural gas liquids fractionation plant;
- A production operation as defined in the Oil and Gas Law, which includes an oil and gas production operation (see **COMMENT** 2).

Accelerated review of application

The bill requires the PSB to adopt rules to provide for an accelerated review of an application for a construction certificate for any of the following as listed in the table below:

An electric transmission line that is one of the following:	An electric generating facility that uses one of the following:	A gas pipeline that is one of the following:
• Not more than two miles in length • Primarily needed to meet the requirements of a specific customer • Necessary to maintain reliable electric service as a result of the retirement or shutdown of an electric generating facility located in Ohio, which retirement or shutdown is due to environmental laws, rules, or requirements	• Waste heat and is primarily within the current boundary of an existing industrial facility or electric generating facility • Natural gas and is primarily within the current boundary of an existing industrial facility or electric generating facility	• Not more than five miles in length • Primarily needed to meet the needs of a specific customer

Automatic certification

The bill requires the PSB to adopt rules that provide for the automatic certification to any of the entities described above when an application by any such entity is not suspended, for good cause shown within 90 days of submission of the application, by any of the following:

- The PSB;
- An administrative law judge;
- The chairperson of the PSB;

- The executive director of the PSB.

If an application is suspended, the PSB must approve, disapprove, or modify and approve the application not later than 90 days after the date of the suspension.

Timeline for filing application

The bill changes the current law requirement that a major utility facility application must be filed not less than one year nor more than five years prior to the planned date of commencement of construction to specify that an application must be filed not more than five years prior to that date.

Authority over applications

The bill expands PSB authority over certificate applications by permitting the PSB to "approve, disapprove, or modify and approve" applications instead of just "approve or disapprove" them as provided in current law.

The bill permits an applicant for a PSB certificate to withdraw an application if the PSB grants a certificate on terms, conditions, or modifications other than those proposed in the application. Under current law, the PSB must grant or deny an application as it is filed or grant the application with terms, conditions, or modifications of the facility's construction, operation, or maintenance as the PSB considers appropriate.

Economically significant wind farm certification process

The bill requires the PSB to grant, deny, or modify an economically significant wind farm's certification under rules that use the same process applicable to certification of a major utility facility under current law. The bill also removes a provision of existing law that requires the PSB to approve, or modify and approve, an application for economically significant wind farm certification if the PSB determines the wind farm's construction, operation, and maintenance will comply with the certification rules for such wind farms.

Current law defines an economically significant wind farm as wind turbines and associated facilities with a single interconnection to the electrical grid that are designed for, or capable of, operation at an aggregate capacity of five or more megawatts but less than 50 megawatts. Current law requires the PSB to adopt rules for an economically significant wind farm that are the same as a major utility facility's application process requirements regarding application information and filing requirements, hearing schedule and investigation, parties to the proceeding, issuance of PSB opinion stating reasons for its action, and PSB procedures.

Definitions under the PSB law

The bill defines the following terms for purposes of the PSB law:

Term	Definition
Gas	Natural gas, flammable gas, or gas that is toxic or corrosive.
Natural gas liquids finished product pipeline	A pipeline that carries finished product natural gas liquids to the inlet of an interstate or intrastate finished product natural gas liquid transmission pipeline, rail loading facility, or other petrochemical or refinery facility.
Natural gas liquids fractionation plant	A facility that takes a feed of raw natural gas liquids and produces finished product natural gas liquids.
Raw natural gas	Hydrocarbons that are produced in a gaseous state from gas wells and that generally include methane, ethane, propane, butanes, pentanes, hexanes, heptanes, octanes, nonanes, and decanes, plus other naturally occurring impurities like water, carbon dioxide, hydrogen sulfide, nitrogen, oxygen, and helium.
Raw natural gas liquids	Naturally occurring hydrocarbons contained in raw natural gas that are extracted in a gas processing plant and liquefied and generally include mixtures of ethane, propane, butanes, and natural gasoline.
Finished product natural gas liquids	An individual finished product produced by a natural gas liquids fractionation plant as a liquid that meets the specifications for commercial products as defined by the Gas Processors Association. Those products include ethane, propane, iso-butane, normal butane, and natural gasoline.

Public Utilities Commission (PUCO) general authority

(R.C. 4905.03)

Gatherers and producers of raw natural gas liquids

The bill exempts from regulation as a public utility certain natural gas gatherers and producers engaged in the business of supplying natural gas for lighting, power, or heating purposes to Ohio consumers, and that deliver or sell Ohio-produced raw

natural gas liquids. More specifically, the bill states that these entities are not to be considered "natural gas companies" for purposes of public-utility regulation. Such entities that deliver or sell Ohio-produced *natural gas* are already exempt from public-utility regulation under current law. In detail, an exemption is granted to the following:

- a gatherer of Ohio-produced raw natural gas liquids when the gatherer is delivering or selling the raw natural gas liquids (1) under an exemption issued by the Public Utilities Commission (PUCO) after January 1, 1996, or (2) to a grantor incident to a right-of-way or easement to the gatherer;

- a producer of Ohio-produced raw natural gas liquids when the producer is delivering or selling the raw natural gas liquids (1) under any PUCO-issued exemption, (2) to the lessor under an oil and gas lease of the land on which the producer's drill is located, or (3) to a grantor incident to a right-of-way or easement to the producer.

Entities engaged with gathering lines and various natural gas liquids

The bill exempts from regulation as a public-utility an entity engaged in the business of the transport associated with gathering lines, raw natural gas liquids, or finished product natural gas liquids. More specifically, the bill states that these entities are not to be considered "pipe-line companies" for purposes of public-utility regulation.

Public-utility regulation under continuing law

Under continuing law, regulation as a public utility involves numerous requirements across a broad spectrum of activities, such as ratemaking, reporting, accounting, service, stocks, billing, mergers, and contracts.[1]

PUCO authority over intrastate pipeline safety

(R.C. 4905.03, 4905.90, 4905.91, and 4905.912)

Exempting certain pipeline companies from pipeline safety law

The bill exempts, for purposes of the pipeline safety law, pipeline companies that are engaged in the business of the transport associated with gathering lines, raw natural gas liquids, or finished product natural gas liquids. The bill achieves this by exempting those pipeline companies from the definition of "pipeline company" for purposes of the regulation of public utilities. That definition is cross-referenced in the definition of

[1] Title XLIX of the Revised Code.

"operator" under the pipeline safety law. By making this change, the bill makes clear those companies are not "operators" under the pipeline safety law. (See **COMMENT** 3.)

Performance of regulatory and enforcement duties

The bill adds to the current law duties of the PUCO regarding intrastate pipeline safety the requirement that the PUCO must perform all regulatory and enforcement duties required under the pipeline safety law.

Entrance into cooperative agreement or memorandum of understanding with another state agency

For the purpose of protecting the public safety regarding intrastate pipelines, the bill permits the PUCO to enter into a cooperative agreement or a memorandum of understanding with another state agency for consultation services and the exchange of advice and technical expertise to assist the PUCO in exercising its regulatory authority over public utilities. However, the bill only allows this if the agreement or memorandum does not do either of the following:

- Confer on the state agency any regulatory authority over the activities under the pipeline safety law;
- Diminish the sole and exclusive authority of the PUCO to supervise and regulate public utilities.

Disclosure of tubular steel products manufacturer

The bill requires each operator and pipeline company to file a disclosure with the PUCO that specifies the country in which each tubular steel product used by the operator or company in the exploration, gathering, or transportation of gas or hazardous liquids was manufactured. The disclosure must be filed on July 1 and November 1 of each year. This disclosure requirement applies to (1) operators (which are gas and natural gas companies; pipeline companies, certain customer-owned and municipal utilities when engaged in the business of transporting gas by pipeline; and other persons that own, operate, manage, control, or lease intrastate pipeline transportation facilities, gas gathering lines not exempted under the Natural Gas Pipeline Surety Act, or master-meter systems, all located in Ohio), and (2) pipeline companies that are engaged in the business of transporting gas by pipeline. (See **COMMENT** 4.)

Pipeline safety standards for operators of gas gathering pipelines and processing plant gas stub pipelines

(R.C. 1509.01, 4905.90, 4905.91, and 4905.911)

The bill subjects an operator of certain pipelines that are not regulated by the Natural Gas Pipeline Safety Act and the rules adopted by the United States Department of Transportation pursuant to the Act to pipeline safety standards. A person who owns, operates, manages, controls, or leases ("operator") either of the following types of pipelines that was completely constructed after the effective date of this provision of the bill (if enacted), and that transport gas produced by a horizontal well, is subject to the pipeline safety standards:

- A gas gathering pipeline;
- A processing plant gas stub pipeline.

The bill also exempts those pipelines from the PUCO's current law safety regulation over gathering lines (see **COMMENT** 5).

Definitions of gathering line, gas gathering pipeline, processing plant gas stub pipeline, and horizontal well

Current law specifies that *gathering line* has the same meaning as in the Natural Gas Pipeline Safety Act and rules adopted by the Department of Transportation pursuant to that Act. Accordingly, federal law defines the term as a pipeline that transports gas from a current production facility to a transmission line or main.[2]

The bill defines a *gas gathering pipeline* as a gathering line that is not regulated by the Natural Gas Pipeline Safety Act and resultant federal rules. It includes a pipeline used to collect and transport wet natural gas or transmission quality gas to the inlet of a gas processing plant, the inlet of a distribution system, or to a transmission line.

The bill defines a *processing plant gas stub pipeline* as a gas pipeline that transports transmission quality gas from the tailgate of a gas processing plant to the inlet of an interstate or intrastate transmission line and that is considered an extension of the gas processing plant and is not for public use. The bill adds that a processing plant gas stub pipeline is not regulated by the Natural Gas Pipeline Safety Act or resultant federal rules.

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[2] 49 CFR 192.3.

Horizontal well is defined by the bill as a well that is drilled for the production of oil or gas in which the wellbore reaches a horizontal or near horizontal position in the Point Pleasant, Utica, or Marcellus formation and the well is stimulated.

What are the pipeline safety standards?

Under the bill, the PUCO must require an operator of a gas gathering pipeline or processing plant gas stub pipeline defined and described above to comply with the applicable pipe design requirements under the minimum federal safety standards for the transportation of natural and other gas by pipeline. Operators must also do all of the following regarding the pipeline:

- Design, install, construct, initially inspect, and initially test the pipeline in accordance with the minimum federal safety standards if the pipeline is new, replaced, relocated, or otherwise changed;
- Control corrosion according to requirements of the minimum federal safety standards if the pipeline is metallic;
- Establish and carry out a damage prevention program and a public education program under the minimum federal safety standards;
- Establish the maximum allowable operating pressure of the pipeline under the minimum federal safety standards;
- Install and maintain pipeline markers according to the requirements for transmission lines under the minimum federal safety standards;
- Perform leakage surveys according to requirements in the minimum federal safety standards;
- Retain a record of each required leakage survey for five years or until the next leakage survey is completed, whichever time period is longer.

Filing of pipeline information with PUCO prior to pipeline construction

The bill requires anyone who plans to construct after the effective date of this provision of the bill (if enacted) a gas gathering pipeline or a processing plant gas stub pipeline subject to the bill's pipeline safety standards to file with the PUCO Division of Pipeline Safety a form approved by the Division that includes all of the following information:

- The route of the proposed pipeline;

- The maximum allowable operating pressure of the pipeline;
- The outside diameter of the pipeline;
- The wall thickness of the pipeline;
- The material that the pipeline will be made of;
- The yield strength of the pipeline.

The form must be filed with the Division not later than 21 days prior to the commencement of construction of the pipeline.

Filing of pipeline information with PUCO after completion of pipeline construction

The bill requires the operator of a pipeline for which information was filed with the Division prior to construction of the pipeline to file information with the Division regarding the pipeline's route and operating information not later than 60 days after the completion of construction of the pipeline.

Other new pipeline safety definitions

The bill also defines the following terms:

Term	Definition
Gas processing plant	A plant that processes wet natural gas into merchantable products, including transmission quality gas or natural gas liquids and also may include a plant that treats raw natural gas to remove impurities such as carbon dioxide, helium, nitrogen, or water.
Transmission quality gas	Gas consisting predominantly of methane that meets all downstream specifications for transportation in an intrastate or interstate transmission pipeline and that is suitable for use by public consumers.
Wet natural gas	Natural gas with a mixture of natural gas liquids that normally include ethane, propane, butane, and other condensates that are liquid if the temperature is reduced below the hydrocarbon dew point temperature of the natural gas and which may be processed to remove any or all of the natural gas liquids.

Aggregate forfeiture for pipeline safety violation or noncompliance

(R.C. 4905.90 and 4905.95)

The bill increases to $1 million the maximum aggregate amount of forfeitures that the PUCO may assess on an operator for each violation of or noncompliance with the state natural gas pipeline safety standards law or the Pipeline Safety Code established by PUCO rule.[3] Current law, unchanged by the bill, permits the PUCO to issue an order assessing upon operators forfeitures of up to $100,000 for each day of violation or noncompliance. An "operator" is a gas company or natural gas company, a pipeline company engaged in the business of transporting gas by pipeline (but not when engaged in the business of transport associated with gathering lines, raw natural gas liquids, or finished product natural gas liquids), customer-owned and municipal utilities engaged in supplying or transporting gas by pipeline, or any person that owns, operates, manages, controls, or leases in Ohio intrastate pipeline transportation facilities, gas gathering lines (not exempted under the Natural Gas Pipeline Safety Act), or a master-meter system.

The maximum aggregate of forfeitures, to be increased by the bill, currently is $500,000 for any related series of violations or noncompliances. The maximum civil penalty allowed for related violations of current federal pipeline safety standards was recently increased from $1 million to $2 million.[4]

New or repowered generating facilities

(R.C. 4928.01 and 4928.64; R.C. 4928.621 (not in the bill))

Definition

The bill expands the definition of advanced energy resource, for purposes of the advanced energy resource requirement and the Advanced Energy Program assistance eligibility requirement, to include any new or repowered generating facility located in Ohio, including a simple or combined-cycle natural gas facility or a facility that uses biomass, coal, nuclear energy, or any other fuel as its input.

Advanced energy resource requirement

Consequently, electricity generated by any new or repowered generating facility may be used by an electric distribution utility or an electric services company to meet the requirement that those utilities and companies provide 25% of their electricity

[3] O.A.C. Chapter 4901:1-16.

[4] 49 U.S.C. 60122(a).

supply from alternative energy resources by 2025, of which half may be generated by advanced energy resources.

Receipt of Advanced Energy Program assistance

Additionally, the bill's change to the definition permits any university or group of universities, that conduct research on, or any entity that encourages research or education outreach regarding, any new or repowered generating facility, to apply for and receive assistance from the Advanced Energy Program to establish:

- A program of research directed at innovating or refining those facilities; or
- A program for educational outreach regarding those facilities.

Waste energy recovery and combined heat and power systems

Definitions

Waste energy recovery systems

(R.C. 4928.01(A)(36))

The bill defines a waste energy recovery system, for purposes of the energy efficiency and renewable energy requirements, and state electric service policy, as either:

- A facility that generates electricity through the conversion of energy from either of the following:
    - Exhaust heat from engines or manufacturing, industrial, commercial, or institutional sites, except for exhaust heat from a facility whose primary purpose is the generation of electricity;
    - Reduction of pressure in gas pipelines before gas is distributed through the pipeline, if the conversion of energy to electricity is achieved without using additional fossil fuels.

or

- A facility at a state institution of higher education that recovers waste heat from electricity-producing engines or combustion turbines and that simultaneously uses the recovered heat to produce steam.

Combined heat and power systems

(R.C. 4928.01(A)(38))

The bill defines a combined heat and power system, for purposes of the energy efficiency requirements, as the coproduction of electricity and useful thermal energy from the same fuel source designed to achieve thermal-efficiency levels of at least 60%, with at least 20% of the system's total useful energy in the form of thermal energy.

Renewable energy requirements

(R.C. 4928.01 and 4928.64)

The bill allows a waste energy recovery system at a state institution of higher education that was placed into service or retrofitted in 1998 or later to be used to meet the following renewable energy requirements:

- EDUs and ESCs must provide at least 12.5% of their electricity supply from eligible renewable energy resources by 2025;

- EDUs and ESCs must meet annual renewable energy benchmarks before 2025 – 1.5% by 2013, 2% by 2014, 2.5% by 2015, and increasing by 1% for each subsequent year until 2025.

The bill allows other waste energy recovery systems that were placed into service or retrofitted *on or after the effective date of this provision of the bill* to be used to meet the same renewable energy requirements.

Other eligible renewable energy resources under continuing law include solar, wind, biomass, hydropower, and certain fuel cells.

Energy efficiency requirements

(R.C. 4928.66)

The bill allows a waste energy recovery system at a state institution of higher education, regardless of when the system was placed into service or retrofitted, to be used to meet the energy efficiency requirement of 22% energy savings by 2025, and certain annual benchmarks before 2025 to meet the requirement. This requirement applies to EDUs.

The bill permits other waste energy recovery systems that were placed into service or retrofitted on or after the effective date of this provision of the bill, as well as combined heat and power systems that were placed into service or retrofitted on or after that date, to be used to meet the same energy efficiency requirements.

The bill requires that, for a waste energy recovery or combined heat and power system, the energy efficiency savings must be estimated by the PUCO. Also, the bill prohibits, for purposes of a waste energy recovery or combined heat and power system, an EDU from applying more than its total annual percentage of industrial-customer load, relative to the total load, to the annual energy efficiency savings requirements. The meaning of this provision is not certain (see **COMMENT** 6).

Prohibition against double counting for waste energy recovery systems

(R.C. 4928.01(A)(34) and (35) and 4928.64)

The bill prohibits a waste energy recovery system that is, or was, on or after January 1, 2012, used to meet the energy efficiency requirements from being used also to meet the renewable energy requirements. Consequently, a waste energy recovery system used to meet the renewable energy requirements may not be used simultaneously to meet the energy efficiency requirements. But the system, if no longer being used to meet the renewable energy requirements, could be used later to meet the energy efficiency requirements.

The bill also prohibits a waste energy recovery system that is or has been used to meet the energy efficiency requirements from being used also to meet the advanced energy requirement. EDUs and ESCs must provide 25% of their electricity supply from alternative energy resources, which is a term that encompasses both renewable and advanced energy resources. Advanced energy resources include clean coal, distributed generation, advanced nuclear, and others. EDUs and ESCs may satisfy up to half of this requirement with advanced energy resources. Some or the entire requirement may be satisfied with renewable energy resources. Consequently, a waste energy recovery system used to meet the advanced energy requirement may not be used simultaneously to meet the energy efficiency requirements. But the system, if no longer being used to meet the advanced energy requirement, could be used later to meet the energy efficiency requirements.

As explained in the preceding paragraph, advanced and renewable energy resources make up the alternative energy resources used to meet the alternative energy requirements. As a result, although a waste energy recovery system might qualify as either type of resource under the bill, it could not be counted as both at the same time.

Note on recently enacted Sub. S.B. 289

(R.C. 4928.01 and 4928.66)

The provisions of this bill regarding waste energy recovery and combined heat and power systems are in part similar to provisions in Sub. S.B. 289, which takes effect

on July 16, 2012. Sub. S.B. 289 permits certain cogeneration, where energy input is from a waste or byproduct gas from an air contaminant source, to be used to meet the renewable energy requirements. Unlike this bill, Sub. S.B. 289 does not permit cogeneration to be used to meet the energy efficiency requirements. Cogeneration, as defined by Sub. S.B. 289, and a waste energy recovery system and a combined heat and power system, as those terms are defined by this bill, are probably not mutually exclusive. Therefore, a system that qualifies as cogeneration *and* a waste energy recovery or combined heat and power system probably could be used to meet either the energy efficiency requirements or the renewable energy requirements. Or, the system could be used to meet the renewable energy requirements (as cogeneration or as a waste energy recovery system) and, when the system is no longer being used to meet those requirements, it could be used to meet the energy efficiency requirements (as a waste energy recovery or combined heat and power system). But a system that qualifies only as cogeneration could be used to meet only the renewable energy requirements.

Therefore, this bill and Sub. S.B. 289 would not conflict, and it is likely that the double counting prohibited by this bill for waste energy recovery systems would remain prohibited. To further explain, a waste energy recovery system could be used to meet the energy efficiency requirements, but Sub. S.B. 315 would prohibit it from being used, simultaneously or after no longer being used to meet the energy efficiency requirements, even as cogeneration, to meet the renewable energy requirements.

The following chart illustrates the permitted classifications of the three types of systems discussed in the preceding paragraphs:

Advanced energy	Renewable energy	Energy efficiency
Waste energy recovery (if never used as energy efficiency) **OR**	Waste energy recovery (if not used in 2012 or later as energy efficiency) **OR**	Waste energy recovery
Cogeneration (Sub. S.B. 289) **OR**	Cogeneration (Sub. S.B. 289)	X
X	X	Combined heat and power

State policy

(R.C. 4928.02)

The bill adds to existing state policy the encouragement of market access for waste energy recovery systems.

Renewable energy credits for energy from methane gas

(R.C. 4928.65 and 4928.64)

Background

Current law requires an EDU and ESC to provide a portion of their electricity supply from renewable energy resources. EDUs and ESCs can use renewable energy credits (RECs) to comply with the renewable energy resource requirements. RECs generally equal one megawatt hour of electricity derived from renewable energy resources.

Methane gas does not have to be converted directly to electricity to qualify as an REC

The bill permits biologically derived methane gas and methane gas emitted from an abandoned coal mine to create or qualify for RECs without being converted directly to electricity as long as all of the following requirements are met:

- The gas is gathered and produced in Ohio;
- The facility that gathers or produces the gas was placed in service on or after January 1, 1998, and is a PUCO-certified renewable energy resource generating facility.

The bill also requires PUCO rules to specify that the quantity of energy derived from the methane gas that is equal to 3,412,142 British Thermal Units equal one REC.

Smart grid programs

(R.C. 4928.01, 4928.02, and 4928.66)

The bill modifies the state's competitive retail electric service policy by adding the provision that the state encourage innovation and market access for cost-effective smart grid programs. The policy under current law is to encourage innovation and market access for cost-effective supply- and demand-side retail electric service, including but not limited to, demand-side management, time-differentiated pricing, and implementation of advanced metering infrastructure.

Under the bill, "smart grid" means capital improvements to an EDU's distribution infrastructure that improve reliability, efficiency, resiliency, or reduce energy demand or use, including but not limited to, advanced metering and automation of system functions. According to the U.S. Department of Energy (U.S. DOE) web site, Smartgrid.gov, advanced metering is a system of smart meters, two-way

communications networks, and data management systems implemented to enable metering and other information exchange between utilities and their customers. A smart meter is one that records a customer's electricity usage and can transmit that information electronically to the utility without sending a meter reader. Smart meters may also notify the utility of a power outage, provide pricing or other information to the customer, or allow the utility to remotely switch electricity service on or off, depending on the features set.[5]

Energy efficiency and peak demand programs

The bill adds smart grid investment programs that are demonstrated to be cost-beneficial to those programs that may be implemented to meet the requirements for energy efficiency and peak demand reduction under the competitive retail electric service law. Current law requires EDUs to implement energy efficiency programs according to specific benchmarks so that cumulative, annual energy savings total more than 22% by 2025. In addition, EDUs must achieve specific peak demand reduction targets beginning with a 1% reduction in peak demand in 2009 and an additional .75% reduction in peak demand each year through 2018. To meet these requirements, EDUs are permitted, under current law, to implement programs including demand-response programs, customer-sited programs, and transmission and distribution infrastructure improvements that reduce line losses.

Alternative energy resources compliance report

(R.C. 4928.64; R.C. 4928.65 (not in the bill))

Current law requires the PUCO to annually submit to the General Assembly a report describing the compliance of EDUs and ESCs with the requirement that they provide a portion of their electricity supply from alternative energy resources, of which a certain portion must come from renewable energy resources. EDUs and ESCs may use RECs to comply with the renewable energy and solar energy resource requirements. The bill adds that each report submitted after the effective date of this provision must include the average annual cost of RECs purchased by EDUs and ESCs for the year covered in the report.

[5] Smart Grid Glossary posted on the U.S. DOE's Smart Grid web site, visited May 10, 2012, and available at: http://www.smartgrid.gov/glossary/6/lettera.

Distribution and transmission infrastructure review and upgrades

(R.C. 4928.111)

The bill requires the PUCO to consult with electric distribution utilities to review the distribution infrastructure in this state and to consult with regional transmission organizations and entities that own or control transmission facilities to review the transmission infrastructure in this state.

Green pricing program review

(R.C. 4928.70)

The bill permits the PUCO to periodically review any green pricing program offered in Ohio as part of competitive retail electric service. At the conclusion of a review, the bill permits the PUCO to make recommendations to improve or expand the program subject of the review. The bill requires the PUCO to adopt rules necessary to carry out purposes of the review.

Neither the bill nor current law defines "green pricing." However, the U.S. DOE's Green Power Network defines "green pricing" as ". . . an optional utility service that allows customers an opportunity to support a greater level of utility company investment in renewable energy technologies. Participating customers pay a premium on their electric bills to cover the incremental cost of the additional renewable energy."[6]

PUCO study of opportunities for customer choice

(R.C. 4928.71)

The bill requires the PUCO to study whether increased energy efficiency, demand response, generation, and transmission provide increased opportunities for customer choice. The PUCO must include in the study an evaluation of emerging technologies.

The study must commence not later than 18 months after the effective date of this provision. At the conclusion of the study, the PUCO must prepare a report of its findings and make the report available on its web site.

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[6] U.S. DOE's Green Power Network web site, visited March 5, 2012, and available at: http://apps3.eere.energy.gov/greenpower/markets/index.shtml.

Compressed natural gas

Multi-state study on compressed natural gas infrastructure

(R.C. 4928.72)

The bill permits the PUCO, in cooperation with the Department of Transportation (ODOT), to work with other states to develop a multi-state study on the development of compressed natural gas (CNG) infrastructures for transportation.

Analysis of operating state vehicles on compressed natural gas

(Section 755.10)

The bill requires ODOT and PUCO to cooperatively analyze the cost effectiveness of purchasing vehicles that operate on CNG and the conversion of certain state motor vehicles to operate on CNG. The bill requires ODOT and PUCO to produce a joint report with their findings and deliver it to the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the President of the Senate, the Minority Leader of the Senate, and the Governor not later than January 30, 2013.

Long-term forecast report

(R.C. 4935.04)

The bill changes a requirement for the long-term forecast report that each person owning or operating a major utility facility or each person furnishing gas, natural gas, or electricity directly to more than 15,000 Ohio customers is required to submit to the PUCO. Under the bill, the report must contain a year-by-year ten-year forecast of energy demand, peak load, reserves, and a general description of the "resource planning projections." This differs from current law which requires that the ten-year forecast within the report include a general description of the "resource plan." All other requirements of the long-term forecast report remain unchanged.

Under current law, the definition of "major utility facility" includes an electric transmission line and associated facilities of a design capacity of 125 kilovolts or more and a gas or natural gas transmission line and associated facilities designed for, or capable of, transporting gas or natural gas at pressures in excess of 125 pounds per square inch.

SCHOOL FACILITIES COMMISSION (SFC)

- Reduces, from the preceding five years to the preceding three years, the period of actual energy consumption data for the baseline analysis included in a school district-requested report pertaining to installations or remodeling that would reduce energy consumption in district-owned buildings.

School district energy consumption report

(R.C. 133.06)

The bill reduces, from the preceding five years to the preceding three years, the period of actual energy consumption data included in a report requested by a school district that analyzes installations, modifications of installations, or remodeling that would significantly reduce energy consumption in buildings owned by the district. Under current law, the board of education of a school district may contract with an architect, professional engineer, or other person experienced in the design and implementation of energy conservation measures to perform this analysis and make recommendations. After receiving the report, if the board finds that the total cost of energy conservation measures likely would not exceed the amount of money the district would save over the next 15 years, the board may submit a request to the School Facilities Commission to incur indebtedness to finance the installations or remodeling of district buildings in order to significantly reduce energy consumption.

DEPARTMENT OF TAXATION (TAX)

Kilowatt hour tax credit for contributions to energy education organizations

- Authorizes a dollar-for-dollar kilowatt hour tax credit for contributions a self-assessing purchaser makes to a nonprofit energy education organization between January 1, 2013, and December 31, 2025.

- Defines an energy education organization as a nonprofit organization that has members that are commercial and industrial consumers of electricity, that has a governance system that allows members to exercise control over the organization's energy-related activities, and that has displayed a commitment to energy education.

- Requires the Tax Commissioner to certify whether a self-assessing purchaser is eligible to claim the credit each year.

- Imposes a $3 million limit on the total amount of credits that may be awarded to all self-assessing purchasers in a single year.

Kilowatt hour tax credit for contributions to energy education organizations

(R.C. 5727.821)

The bill allows certain large consumers of electricity to claim a kilowatt hour tax credit for contributions made to a nonprofit energy education organization between January 1, 2013, and December 31, 2025.

Kilowatt hour tax: background

The kilowatt hour tax is a tax on the distribution of electricity to end users in the state. Generally, the tax is paid by electric distribution companies. However, commercial and industrial end users that consume more than 45 million kilowatts of electricity per year may register with the Tax Commissioner to self-assess the tax. Such taxpayers, known as "self-assessing purchasers," pay lower tax rates on the kilowatt hours of electricity they consume than the rates that apply to other end users.

Credit for contributions to energy education organizations

The bill authorizes a credit against the kilowatt hour tax for self-assessing purchasers that pay dues or assessments, or make similar types of contributions, to an "energy education organization." The amount of the credit equals the amount paid or contributed to the organization. Under the bill, an "energy education organization" is a nonprofit corporation that is authorized to do business in Ohio, that has members that are commercial and industrial consumers of electricity with facilities in Ohio, that has a governance system that allows members to control the budgeting and scope of the organization's energy-related activities, and that has displayed a continuous commitment to energy education activities.

Qualifying for the credit

To qualify for the credit, when a self-assessing purchaser files its annual kilowatt hour tax registration with the Tax Commissioner, it must also request to be certified to claim the credit in the upcoming year. The request must state the organizations to which the self-assessing purchaser wishes to make contributions. The Tax Commissioner reviews the request and certifies the self-assessing purchaser as eligible to claim the credit if the self-assessing purchaser shows that it will make contributions to an organization that qualifies as an energy education organization.

A self-assessing purchaser may claim the credit on any monthly return filed during a registration year for which the self-assessing purchaser receives such certification. In each month, the self-assessing purchaser may claim the amount contributed to energy education organizations in the previous month. If, in any month, that amount exceeds the self-assessing purchaser's tax liability, the excess amount may be carried forward to succeeding months.

Credit limit

The bill imposes a $3 million limit on the total amount of credits that may be awarded to self-assessing purchasers in any single year. If, in any month, the amount of credits claimed by self-assessing purchasers would cause the total amount of awarded credits to exceed $3 million, the amount of credits awarded in that month must be pro-rated based upon the amounts claimed by each self-assessing purchaser in that month.

EFFECTIVE DATES

(Section 812.20)

The effective date of most of the amendments and enactments of law in this bill are subject to the referendum and therefore become effective on the 91st day after the bill, if enacted, is filed with the Secretary of State, in the absence of a referendum. The following provisions of the bill are declared not to be subject to the referendum, and they take effect immediately if they become law:

- R.C. 133.06, regarding school district energy consumption reports;
- Section 701.10, regarding the Department of Administrative Services and Department of Transportation fleet vehicle replacement review;
- Sections 601.10 and 601.11, regarding the operating appropriation for the Office of the Consumers' Counsel.

Under the Ohio Constitution, Article II, Section 1d, the following laws are not subject to the referendum and take immediate effect: (1) laws providing for tax levies, (2) appropriations for current expenses of the state government and state institutions, and (3) emergency laws. Only the appropriation regarding the Office of the Consumers' Counsel appears to meet any of those exceptions.

COMMENT

1. Although the bill extends the payback period from 15 to 20 years for installment contracts for energy conservation measures that are cogeneration systems under the energy and water conservation law for state buildings, it does not make that change for the identical contracts under the energy and water conservation law for state higher education institutions (R.C. 156.03 and 156.04; R.C. 3345.64 and 3345.65 (not in the bill)).

2. The bill excludes from the definition of "major utility facility" for purposes of the Power Siting Law compressor stations that are used by certain facilities that are separately excluded from the definition. But, in a few circumstances, a compressor station is not excluded from the definition even if the facility served by the station is excluded. Those facilities are as follows:

- Gathering lines;
- Pipelines from a gas processing plant to an interstate or intrastate gas pipeline;
- Pipelines upstream of any gathering lines included in an oil and gas production operation.

As a result, it appears that compressor stations used for those facilities may be subject to the law, while those facilities themselves, are not. (R.C. 4906.01(B)(2).)

3. Despite the exemption, entities engaged in the business of the transport associated with gathering lines, raw natural gas liquids, or finished product natural gas liquids may be operators regulated by the pipeline safety requirements for gas gathering pipelines and processing plant gas stub pipelines because: (1) gas gathering pipelines are gathering lines under the bill, and (2) gas gathering pipelines include pipelines that collect and transport wet natural gas, which is natural gas with a mixture of natural gas liquids that may include raw natural gas liquids (R.C. 4905.03, 4905.90, 4905.911, and 4906.01).

4. The bill refers to general PUCO law for the definition of operators subject to the tubular steel product disclosure requirement. Under that law, as modified by the bill, the definition of operator includes a pipeline company when engaged in the business of transporting gas by pipeline, but not when engaged in the business of the transport associated with gathering lines, raw natural gas liquids, or finished product natural gas liquids. However, the bill defines pipeline company, for purposes of the disclosure requirement, as a company engaged in the business of transporting gas by

pipeline. Because the definition of "gas" in the bill does not clearly include or exclude raw natural gas liquids or finished natural gas liquids, it is unclear if pipeline companies engaged in transport associated with raw natural gas liquids or finished product natural gas liquids are subject to the disclosure requirement (R.C. 4905.03, 4905.90, and 4905.12).

5. Current law specifies that certain PUCO procedural rules apply to operators of gathering lines. The bill adds that the rules apply to operators of gathering lines that are not gathering pipelines or processing plant gas stub pipelines. The term "gathering pipelines" is not defined so it is unclear what this means. However, the term "gas gathering pipelines" is defined (R.C. 4905.90 and 4905.91).

6. The bill prohibits, "for purposes of a waste energy recovery or combined heat and power system," an EDU from applying more than its total annual percentage of industrial-customer load, relative to the total load, to the annual energy efficiency savings requirements. The meaning of this provision is not certain. For instance, it is not clear whether the prohibition is to be applied to waste energy recovery and combined heat and power systems together or separately. The following example illustrates this. The example uses the annual energy efficiency requirement for 2014, which is efficiency savings of 1% of the total, annual average, and normalized kilowatt-hour sales during the prior three years to customers in Ohio. The EDU is able to meet 40% of the requirement (0.004% of the total annual average sales for the past three years) from waste energy recovery and combined heat and power systems. If the EDU's percentage of industrial-customer load to total load for 2014 (a possible interpretation of "total annual percentage") is 30%, the EDU may be limited to meeting only 30% of the 2014 annual requirement, as opposed to 40%, from the waste energy recovery and combined heat and power systems. This would mean that a quarter of the savings from waste energy recovery and combined heat and power systems could not be applied toward the 2014 requirement. This prohibition could be interpreted to apply even if the waste energy recovery and combined heat and power systems were not run by industrial customers.

The prohibition could also be applied separately to savings achieved through waste energy recovery systems versus combined heat and power systems. If the EDU were able to meet 20% of the 2014 annual requirement from waste energy recovery systems and 20% from combined heat and power systems, and the industrial-customer-load percentage remains 30%, the EDU may not be limited at all in using the savings from waste energy recovery and combined heat and power systems.

HISTORY

ACTION	DATE
Introduced	03-22-12
Reported, S. Energy & Public Utilities	05-15-12
Passed Senate (27-6)	05-15-12

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