



# Ohio Legislative Service Commission

## Bill Analysis

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### **S.B. 58**

130th General Assembly  
(As Introduced)

Sen. Seitz

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## **BILL SUMMARY**

- Expresses the General Assembly's intent to review and possibly modify the energy efficiency, peak demand reduction, and alternative energy resource provisions established in Ohio's competitive retail electric service law.
- Requires the review to consider various aspects of energy efficiency and peak demand reduction requirements and alternative energy resource requirements established in Am. Sub. S.B. 221 of the 127th General Assembly given specific changes in electric service occurring since 2008.

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## **CONTENT AND OPERATION**

### **General Assembly review of competitive retail electric service law**

The bill specifies that it is the General Assembly's intent to review and possibly modify the energy efficiency, peak demand reduction, and alternative energy resource provisions established in the competitive retail electric service law enacted in Am. Sub. S.B. 221 of the 127th General Assembly (see "**Background**"). The review required by the bill must be made given the "changes in electric service occurring since 2008." Those changes, as defined in the bill include the following:

- Development of large natural gas resources in Ohio;
- Reduced prices for electricity on the wholesale market;
- The impact that energy efficiency programs may have had on depressing wholesale prices in the PJM interconnection regional transmission organization auction area or improving the reliability of the electric grid;

- Consideration of whether energy efficiency is a least cost resource and whether it helps offset or defer the cost of new generation facilities;
- Whether the newly authorized inclusion of combined heat and power and waste energy recovery in the energy efficiency standards makes it possible to cost-effectively meet the standards in the future;
- Whether renewable energy resources have helped to depress wholesale prices in the PJM auction market;
- The hedge value of stable long-term renewables contract prices and the long-term price impact of the low cost of renewable fuels; and
- Whether renewables can offset the cost of new generation facilities and whether they help to achieve energy independence from foreign fuel sources.<sup>1</sup>

### **Energy efficiency and peak demand reduction review**

The bill requires the General Assembly to review the energy efficiency and peak demand reduction requirements under section 4928.66 of the Revised Code. In its review, the General Assembly must consider:

- Whether energy efficiency and peak demand reduction requirements should be:
  - Frozen at a certain level, amended, or repealed; and
  - If amended, reduced or increased.<sup>2</sup>
- Whether an electric distribution utility (EDU) may voluntarily design an energy efficiency and peak demand reduction plan that purposely exceeds the minimum requirements in law, and if so, whether the costs of exceeding the requirements should be a nonbypassable charge that customers must pay;<sup>3</sup>
- Whether the Public Utilities Commission (PUCO) should be granted the authority to require an EDU to do one of the following:

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<sup>1</sup> Section 1(A)(1) to (8).

<sup>2</sup> Section 1(B)(1)(a) and (b).

<sup>3</sup> Section 1(B)(1)(c).



- Implement an energy efficiency and peak demand reduction plan that exceeds the minimum requirements; or
- Bid all or part of its projected energy efficiency and peak demand reduction portfolios into the PJM base residual auction.<sup>4</sup>
- Whether the definition of energy efficiency savings should be consistent with that of PJM if the authority as described above is granted to the PUCO;<sup>5</sup>
- Whether an EDU, which designs an energy efficiency and peak demand reduction plan that exceeds the minimum requirements, should be permitted to implement incentive plans or shared savings plans that allow it to earn a profit upon exceeding the requirements established in its energy efficiency and peak demand reduction plan;<sup>6</sup>
- Whether a 3% cost cap should apply to energy efficiency and peak demand reduction requirements;<sup>7</sup> and
- What the appropriate standards should be for measuring the amount of energy savings and peak demand reduction that an EDU achieves in order to determine whether such savings or reduction may count toward compliance with the energy efficiency and peak demand reduction requirements, including whether the PUCO should be directed to do the following:
  - Clarify that such savings be calculated on an annualized basis based on gross savings and not just those savings net of savings attributed to the customer;
  - Substantially broaden the nature of the energy savings that may be counted towards compliance with the energy efficiency and peak demand reduction requirements under the law as compared to that allowed under current PUCO rules and practice.<sup>8</sup>

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<sup>4</sup> Section 1(B)(1)(d).

<sup>5</sup> Section 1(B)(1)(d).

<sup>6</sup> Section 1(B)(1)(e).

<sup>7</sup> Section 1(B)(1)(f).

<sup>8</sup> Section 1(C)(2).

## Alternative energy resource review

The bill also requires the General Assembly to review certain topics related to the alternative energy resource requirements under division (B) of section 4928.64 of the Revised Code. In its review, the General Assembly must consider whether:

- Alternative energy resource requirements should be:
  - Frozen at a certain level, amended, or repealed; and
  - If amended, reduced or increased.<sup>9</sup>
- The compliance payments under existing law, including those for failure to meet solar energy requirements, should be amended or indexed to the Consumer Price Index;<sup>10</sup>
- The 3% cost cap provisions under existing law have been properly interpreted by the PUCO or should be amended;<sup>11</sup>
- EDUs and electric services companies (ESCs) may exceed the 3% cost cap, and if so, to what extent, and whether the additional costs may be recovered from some or all customers and how that may be done;<sup>12</sup>
- Ohio's alternative energy resource law should continue to provide separate requirements for particular forms of energy, such as solar energy, or whether the law should be changed to apply equally to all forms of energy, thereby allowing all energy providers to compete directly;<sup>13</sup>
- A portion of the renewable energy resources implemented by an EDU or ESC should be met, as is currently required under existing law, through facilities located in this state or with resources shown to be deliverable into this state;<sup>14</sup> and

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<sup>9</sup> Section 1(B)(1)(g) and (h).

<sup>10</sup> Section 1(B)(1)(i).

<sup>11</sup> Section 1(B)(1)(j) and (k).

<sup>12</sup> Section 1(B)(1)(l).

<sup>13</sup> Section 1(B)(1)(m).

<sup>14</sup> Section 1(B)(1)(n).



- Requirements for advanced energy are achievable without providing incentives to meet the capital costs for meeting the advanced energy requirements or whether these requirements are necessary given the current low price of electricity and the excess generating capacity that now exist.<sup>15</sup>

### **Review of additional competitive retail electric law provisions**

Some topics required to be reviewed by the bill apply to provisions of the competitive retail electric service law that address both energy efficiency and peak demand reduction requirements and alternative energy resource requirements. In its review, the General Assembly must consider:

- Whether the costs incurred by EDUs and ESCs in complying with the energy efficiency and peak demand reduction requirements and the alternative energy resource requirements are bypassable, and if they are bypassable, to what extent, and whether these costs should be bypassable or nonbypassable, and if so, to what extent;<sup>16</sup>
- Whether EDUs and ESCs should be required to provide, as a separate line item on customer bills, the EDU's or ESC's cost of complying with the energy efficiency and peak demand reduction requirements and the alternative energy resource requirements;<sup>17</sup>
- Whether a comprehensive cost-benefit analysis of the competitive retail electric service law, including requirements for renewable and advanced energy, energy efficiency, and peak demand reduction, should be prepared to determine whether consumers are deriving sufficient benefits based on how the benefits and costs are allocated;<sup>18</sup>

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<sup>15</sup> Section 1(B)(1)(o).

<sup>16</sup> Section 1(B)(1)(p). Under existing law, ESCs are not subject to energy efficiency and peak demand reduction requirements. See R.C. 4928.66.

<sup>17</sup> Section 1(B)(1)(q). Under existing law, ESCs are not subject to energy efficiency and peak demand reduction requirements. See R.C. 4928.66.

<sup>18</sup> Section 1(B)(1)(r).



- Whether the PUCO has correctly upheld the intent of Am. Sub. S.B. 221 in permitting incentive programs that have the effect of making certain charges nonbypassable;<sup>19</sup>
- Whether renewable energy resource providers and energy efficiency program providers face undue legal barriers to competing more cost effectively and whether such barriers could be reduced by:
  - Implementing programs such as virtual net metering and feed-in tariffs;
  - Facilitating master limited partnerships;
  - Decentralizing portions of the transmission and distribution system by investing in distributed generation and microgrids; or
  - Pursuing other state efforts to drive down costs of energy efficiency and renewable energy.<sup>20</sup>
- Whether legislation or administrative rules are needed to permit more accurate and transparent levelized cost comparisons of the actual cost of the various fuels available to produce electricity for this state;<sup>21</sup>
- Whether adequate processes exist to determine whether EDUs and ESCs prudently purchase energy to fulfill the requirements of the energy efficiency law and alternative energy resource law;<sup>22</sup> and
- Whether the law should be amended to include provisions to protect the ability of an EDU or an ESC to recover costs committed to or incurred to comply with mandates and to protect the validity of contracts made in good faith pursuant to current law, if the energy efficiency, peak demand reduction, and alternative energy resource standards are significantly altered or repealed, and if the law is significantly amended or repealed, to what extent such protections should be granted;<sup>23</sup>

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<sup>19</sup> Section 1(B)(1)(s).

<sup>20</sup> Section 1(B)(1)(t).

<sup>21</sup> Section 1(B)(1)(u).

<sup>22</sup> Section 1(B)(1)(v).

<sup>23</sup> Section 1(B)(1)(w).

- What effects there would be on the Ohio job market and on planned in-process investments and committed investments in Ohio, if cost recovery or contract protections were established following the alteration or repeal of the state's energy efficiency, peak demand reduction, and alternative energy resource standards;<sup>24</sup> and
- How to protect ratepayers against future price changes that may occur if the energy efficiency, peak demand reduction, and alternative energy resource requirements remain law.<sup>25</sup>

## Background

The competitive retail electric service law enacted in Am. Sub. S.B. 221 requires EDUs to meet specific energy efficiency benchmarks that total over 22% of energy savings by 2025 and peak demand reduction benchmarks that result in a 7.75% reduction in demand by 2018.<sup>26</sup> The law also requires the PUCO to produce an annual report containing its verification of an EDU's compliance with these benchmarks. If the PUCO determines, based on its report and after notice and opportunity for hearing, that an EDU has failed to comply with the benchmarks, the PUCO must assess a forfeiture on the EDU in the amount of up to \$10,000 per day per undercompliance or noncompliance, or in an amount equal to the market value of one renewable energy credit (REC) per megawatt hour of undercompliance or noncompliance.<sup>27</sup>

The law also includes alternative energy resource benchmarks requiring EDUs and ESCs to provide, by 2025, 25% of their electricity supply from alternative energy resources a specific portion of which must be from solar energy. Alternative energy resources are advanced energy resources and renewable energy resources. Advanced energy resources include such resources as clean coal technology and advanced nuclear energy technology. Renewable energy resources include such resources as solar photovoltaic or solar thermal energy, wind energy, power produced by a hydroelectric facility, and geothermal energy.<sup>28</sup> EDUs and ESCs that are noncompliant or undercompliant with the renewable energy resource benchmarks are subject to compliance payments imposed by the PUCO.<sup>29</sup> Under the law, EDUs and ESCs do not

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<sup>24</sup> Section 1(C)(3).

<sup>25</sup> Section 1(C)(1).

<sup>26</sup> R.C. 4928.66.

<sup>27</sup> R.C. 4928.66(B) and (C).

<sup>28</sup> R.C. 4928.64(B).

<sup>29</sup> R.C. 4928.64(C)(1) and (2).

have to comply with the benchmarks under two exceptions: (1) a 3% cost cap if the reasonably expected cost of compliance with the solar and nonsolar benchmarks exceeds the reasonably expected cost of otherwise producing or acquiring the requisite electricity, and (2) a force majeure determination of the PUCO upon application by an EDU or ESC if renewable energy resources (including RECs) are not available to permit compliance.<sup>30</sup>

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## HISTORY

ACTION	DATE
Introduced	02-27-13

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<sup>30</sup> R.C. 4928.64(C)(3) and (4).

