



Ohio Legislative Service Commission

Bill Analysis

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Sens. Beagle, Balderson, Gardner, Lehner, Patton, Seitz

BILL SUMMARY

Education energy council (EEC) and governing body

- Permits regional councils of government (RCOGs) to designate themselves as education energy councils (EECs) if they are composed exclusively of school districts and have engaged in acquiring energy supplies for school districts for at least five of the seven years immediately preceding being designated as an EEC.
- Requires an EEC to form a governing body and adopt a resolution establishing the EEC's name, stating that the RCOG is an EEC, and establishing the selection process and terms of office of each governing member, including which members may succeed themselves without limitation.
- Permits an EEC to issue debt in the form of revenue bonds, bond anticipation notes, and refunding obligations to pay the costs of energy acquisition for school districts and establishes provisions governing all aspects relating to issuance, status, holder or owner rights, maturation, and retirement of the debt.
- Permits an EEC to enter into and perform under the terms of energy agreements (electricity supply agreements, gas supply agreements, or any similar agreements) relating to the provision of electricity, gas, or any other type of energy supply to school districts.

EEC service area

- Establishes the service area of an EEC as the retail electric loads and retail natural gas loads of all school districts in the state.

- Stipulates that the established service area does not affect the rights of any electric services company under the public utility law or the rights of any municipal electric utility.
- Restricts the impact that the designation of the service area has on electric suppliers, certified territories, noncompetitive retail electric service, and aggregation of the retail electric loads of an electric load center (1) located in a nonprofit electric supplier's certified territory or (2) receiving transmission or distribution service from a municipal electric utility.

District purchase agreement payments

- Makes payment obligations under a district purchase agreement subject to funds being appropriated for that obligation by the district board of education and requires amounts due to be payable solely from amounts appropriated by the school district board of education in accordance with Ohio law and the policies and procedures of the board.
- States that payment obligations under the agreement do not constitute a debt of the district board of education and that if any district purchase agreement is terminated in accordance with the agreement's terms and after the failure of a school district board of education to appropriate any moneys for the obligations, the termination does not constitute a default under the agreement.

Public money deposit procedure

- Requires public moneys in amounts of over \$1,000, received on behalf of the EEC, to be deposited on the next business day after receipt, but allows amounts of \$1,000 or less to be deposited up to no more than three business days after receipt if the EEC governing body adopts a resolution permitting it and providing for the money to be safeguarded until it is deposited.
- Holds anyone employed by the EEC or working on behalf of the EEC, who has custody or control of public money received or held by the EEC liable for the public money to the same extent as a public official is liable for public money under Ohio law governing liability for public money received or collected.

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CONTENT AND OPERATION

Overview

The bill permits any regional council of government (RCOG) that meets certain strict criteria to become an education energy council (EEC), and as such, to undertake activities, including revenue bond issuance, to acquire energy supplies for school districts. An RCOG under current law is a group of two or more political subdivision governing bodies (located in Ohio only or in Ohio and another state, if permitted by the other state's law) that come together to exercise powers as a single entity. Those powers include, among others, promoting cooperative agreements and contracts among the RCOG members and governmental agencies and entities.¹

EEC creation

The bill permits an RCOG to designate itself as an EEC if it is composed (1) exclusively of school districts and (2) has engaged in acquiring one or more energy supplies for school districts for not less than five of the seven years immediately preceding its designation as an EEC. Under the bill, "school district" includes city, local, exempted village, cooperative education, or joint vocation school districts, or county boards of development disabilities.

¹ R.C. 167.01 and 167.03.



EEC governing body

Under the bill, an EEC that designates itself as such must form a "governing body," which is the EEC's board of trustees. The governing body must adopt a resolution that does all of the following:

- Establishes the name of the EEC;
- States that the RCOG designates itself as an EEC under the law; and
- Establishes the means of selection and term of office of each member of the governing body, including which members may succeed themselves without limitation.²

EEC powers – generally

In addition to the authority granted to RCOGs under existing law, which an EEC retains, the bill also permits an EEC to exercise additional authority described as follows.

An EEC may **issue debt** in the form of revenue obligations, bond anticipation notes, and refunding obligations to pay for the costs of energy acquisition for school districts.³

An EEC may also enter into **energy agreements** (electricity supply agreements, gas supply agreements, or any similar agreements) on behalf of itself or a school district.⁴

The bill also permits an EEC to exercise **ancillary authority** to aid in energy acquisition for school districts. That authority includes entering into commodity swaps, interest rate hedges, and credit enhancement facilities. That authority also includes obtaining the assistance of other persons or entities, such as paying agents, trustees, underwriters, investment bankers, and attorneys, to name a few.⁵

These EEC powers are discussed in more detail below.

² R.C. 167.20 and 167.21(B).

³ R.C. 167.21(C)(1).

⁴ R.C. 167.21(C)(2).

⁵ R.C. 167.21(C)(2) to (4).

EEC powers – debt issuance

Revenue obligations

The bill permits an EEC to issue revenue obligations, from time to time, to pay the energy acquisition costs for school districts identified by the EEC, which may include nonmember school districts that request inclusion. The issuance and principal amount of the issuance are to be determined by resolution of the EEC's governing body.⁶

"Costs of energy acquisition" under the bill are the costs of acquiring energy supply and of the financing of those costs, including for example, EEC administrative expenses, financing costs, costs of acquiring contract rights for energy supplies, and payments required under the terms of any commodity swap or interest rate hedge. The costs do not include, except by mutual consent, costs for distribution services of an electric distribution utility (EDU) or natural gas company (NGC). "Energy supply" means electricity, gas, or other type of energy supply. EDU and NGC have the same meaning as those terms are used in the Competitive Retail Electric Service Law (R.C. Chapter 4928.) and the Alternative Rate Plan Law (R.C. Chapter 4929.).⁷

A "commodity swap" is an agreement relating to the exchange of payments, either fixed for variable or variable for fixed, with respect to the energy supply that is the subject of an energy agreement or district purchase agreement. "Interest rate hedge" is defined under Ohio's Miscellaneous Bond Law and basically allows entities to reduce their vulnerability to changes in interest rates.⁸

Bond proceedings

The bill defines "bond proceedings" to mean the resolutions, agreements, trust agreements, indentures, certificates of award, credit enhancement facilities and amendments and supplements to any of those, or any combination of them, that provide for the terms and conditions for the security or liquidity of obligations and their provisions. The bond proceedings for the revenue obligations must determine (1) the principal amount of the obligations, (2) the maturity, which cannot exceed 35 years, (3) the interest rate or rates, or, in the case of variable rate obligations, the method of determining the interest rate or rates, and the maximum interest rate or rates, (4) the

⁶ R.C. 167.22.

⁷ R.C. 167.20; R.C. 4928.01 and 4929.01 (not in the bill).

⁸ R.C. 167.20; R.C. 9.98 (not in the bill).



interest payment date or dates, (5) the denominations, and (6) the place or places the bond service charges are to be paid, which may be inside or outside Ohio.⁹

The bond proceedings may contain numerous additional provisions customary or appropriate to the financing or to the obligations. Those additional provisions may include, for example, the redemption of obligations prior to maturity, the form of and other terms of the obligations, the establishment, deposit, investment, and application of special funds (and the safeguarding of moneys on hand or on deposit in lieu of application of the Public Depository Law – R.C. Chapter 135.), the rights and remedies of holders and obligation owners, and any other or additional agreement with the obligation owners and such other provisions as the governing body determines.¹⁰

The bill defines "special funds" or "funds," unless the context requires otherwise, to mean the bond service fund and any other funds, including any reserve funds, created under the bond proceedings and stated to be special funds in those proceedings, including moneys, investments, and earnings from investments, credited and to be credited to the particular fund.¹¹

Execution

Revenue obligations that must be executed are to be signed as provided in the bond proceedings. The bill provides that an authorized signer may sign the obligation on the execution date even if "on the date of these obligations" the individual is not an authorized signer (it is not clear to what date the "date of these obligations" refers). Also, if an authorized signer ceases to be authorized after execution but before delivery, the signature or facsimile is still considered valid and sufficient for all purposes.¹²

Repayment; lien of pledge

Revenue obligations are to be repaid solely from the revenues and special funds pledged to that purpose under the bond proceedings. This payment requirement must also appear on each revenue obligation.¹³

Bond service charges and all other payments required by the bond proceedings are to be payable solely from the EEC revenues pledged as provided in the bond

⁹ R.C. 167.20 and 167.23(A).

¹⁰ R.C. 167.23(B).

¹¹ R.C. 167.20.

¹² R.C. 167.25.

¹³ R.C. 167.24 and 167.26(A).

proceedings. The pledged revenue is subject to the lien of the pledge and the lien is valid against all parties with claims against the revenue or the EEC. The pledge is considered a perfected security interest under Ohio law without the necessity of any actions and may be applied to the purpose for which it was pledged. Every pledge, and every covenant and agreement made with respect to the pledge, made in the bond proceedings may be extended to benefit the owners and holders of obligations and any trustees, in order to secure the payment of the bond service charges and any financing costs related to credit enhancement facilities, and any rights under any agreements regarding the pledge may be assigned for such purpose. Financing costs are payable, as may be provided in the bond proceedings, from obligation proceeds, special funds, or other moneys available for the purpose.¹⁴

"Revenue" under the bill means fees, charges, revenues, grants, subsidies, income from the investment of money, proceeds from the sale of goods or services, and all other revenues or receipts received by or on behalf of an EEC in connection with the provision of energy supply to school districts that are available to pay bond service charges. This includes, for example, payments pursuant to purchase agreements, revenues or receipts an EEC receives from the sale of energy supply and the proceeds from debt issued under the bill, and any moneys, gifts, grants, donations, and pledges. "Bond service charges" means principal, including any mandatory sinking fund requirements for retirement obligations, interest, and redemption premiums, if any required to be paid to an EEC on obligations.¹⁵

Rights of owners and providers of credit enhancement facilities

The bill specifies that any owner of revenue obligations or provider of a credit enhancement facility may protect and enforce any rights relating to obligations or that facility under Ohio law or granted by the bond proceedings. This may occur by any suitable form of legal proceedings except to the extent that those rights are restricted by the bond proceedings.

Those rights that may be protected or enforced include the right to compel the performance of all applicable duties of the EEC governing body. The bill establishes that each duty of the governing body and its officers, staff, and employees, undertaken under the bond proceedings, is a duty of the entity or individual having authority to perform that duty and is a duty specifically enjoined by law and resulting from an office, trust, or station within the meaning of mandamus under Ohio law. The bill also states that individuals who are, from time to time, members or officers of the governing

¹⁴ R.C. 167.26(B).

¹⁵ R.C. 167.20.



body, or officers of the EEC, or the staff or employees of either of them, are not liable in their personal capacities on any obligations or otherwise under the bond proceedings.¹⁶

The bill refers separately to the officers, staff and employees of the EEC governing body and the officers, staff and employees of the EEC, but it is not clear whether any of these positions overlap.

Restrictions on holders

Under the bill, the holders of revenue obligations do not have a right to certain revenues, taxes or excises, or any guarantees, and the bill requires a statement to that effect to appear on each revenue obligation. Specifically, they do not have the right to any revenue of the EEC, other than the revenues and special funds pledged pursuant to bond proceedings of revenue obligations for the payment of bond service charges. Neither do the holders or owners have a right to any guarantee of the payment of the bond service charges from any school district, the state, or any political subdivision of the state, nor do they have a right to the levy or imposition of any tax or excise by the EEC, any of the EEC's member school districts, the state, or any political subdivision of the state, including any school district purchasing energy under a district purchase agreement, for the payment of bond service charges.

A "district purchase agreement" is an agreement between an EEC and a school district relating to the provision of electricity, gas, or other type of energy to such school district. Gas includes natural gas or synthetic gas, propane, manufactured gas or gaseous hydrocarbons and any mixture of any of these in gaseous or liquid form.¹⁷

Bond anticipation notes and refunding obligations

The bill provides that the EEC governing body, in addition to issuing revenue bonds, may also issue bond anticipation notes and refunding obligations. With respect to the bond anticipation notes, the bill provides that they may be renewed from time to time by issuance of new notes and provides for their security, repayment, and maturity. The bill also subjects the notes to all the same provisions and conditions applicable to the issuance of the revenue obligations under the bill, except where expressly provided otherwise.¹⁸

Refunding obligations may be issued in amounts sufficient to pay or to provide for repayment of the principal amount of prior obligations, including any redemption

¹⁶ R.C. 167.28; R.C. 2731.01 (not in the bill).

¹⁷ R.C. 167.20 and 167.27.

¹⁸ R.C. 167.29(A).



premiums and various other financing costs, interest, and expenses as provided in the bill. Any refunding obligations are to be considered issued for the same purposes for which the prior obligations were issued and are subject to the same provisions and conditions applicable to the prior obligations under the bill.¹⁹

Sale

All obligations issued under the bill may be sold at public sale or at private sale. Sales must be in such manner and at such a price that is at, above, or below par, all as provided by the governing body in the bond proceedings.²⁰

Lawful investments

Obligations issued under the bill are lawful investments for banks, savings and loan associations, credit union share guaranty corporations, trust companies, trustees, fiduciaries, insurance companies, trustees or other officers having charge of sinking and bond retirement or other special funds of the state and political subdivisions and taxing districts of this state, the sinking fund, the administrator of workers' compensation, and the state's retirement systems. The investments are lawful notwithstanding any provision of Ohio law or rules adopted by a state agency with respect to an agency investment. The obligations are acceptable as security for the repayment of the deposit of public moneys and are exempt from state taxation, as provided for in "particular sections" of the Ohio Constitution and state law.²¹

Obligations issued pursuant to the bill are considered investment securities under Ohio's investment securities law. They may be issued in bearer or in registered form and may be registered as to principal alone or as to both principal and interest, or both, or in certificated or uncertificated form, as the EEC governing body determines.

The bill permits the exchange, conversion, or transfer of obligations and for reasonable charges for registration, exchange, conversion, and transfer. Pending preparation of final obligations, the governing body also may provide for the issuance of interim instruments to be exchanged for the final obligations.²²

¹⁹ R.C. 167.29(B).

²⁰ R.C. 167.31.

²¹ R.C. 167.30(A).

²² R.C. 167.30(B); R.C. Chapter 1308. (not in the bill).



Managing funds

Bond service fund

The bill declares that each bond service fund is a trust fund pledged to the payment of debt service on the applicable obligations. Payment of that debt service does not require an appropriation and must be made or provided for by the EEC governing body in accordance with the bond proceedings. The bill permits bond proceedings to provide for the establishment of separate accounts in the bond service fund. It also permits bond proceedings to limit the application of those accounts to debt service on specific obligations and to provide for other accounts in the bond service fund within the general purposes of that fund.²³

Investment of special fund money

The bill specifies when moneys to the credit of special funds may be invested by or on behalf of the EEC. Unless otherwise provided in any applicable bond proceedings, such moneys may only be invested in one or more of the following:

- Notes, bonds, or other direct obligations of the United States or of any agency or instrumentality of the United States, or in no-front-end-load money market mutual funds consisting exclusively of those obligations, or in repurchase agreements, including those issued by any fiduciary, secured by those obligations, or in collective investment funds consisting exclusively of those obligations;
- Obligations of this state or any political subdivision of this state;
- Certificates of deposit of any national bank located in Ohio and any bank, that is subject to inspection by the Superintendent of Financial Institutions;
- The state treasurer's investment pool, which must be credited to special funds or otherwise as the EEC governing body determines in the bond proceedings and may be sold or exchanged at times as the governing body determines, provides for, or authorizes.²⁴

Disbursement of money from special fund

The bill requires moneys to the credit of or in a special fund to be disbursed on the order of the EEC governing body, unless otherwise provided. For payments of debt

²³ R.C. 167.32(B).

²⁴ R.C. 167.32(C); R.C. 135.45 and 1101.01 (not in the bill).



service when due from the bond service fund or other special fund, or for required payments under credit enhancement facilities, no governing body order is required under the bill. Payments received with respect to interest rate hedges entered into as credit enhancement facilities under the bill, unless otherwise provided in the applicable bond proceedings, must be deposited to the credit of the bond service fund for the obligations to which those credit enhancement facilities relate.²⁵

Application of Miscellaneous Bond Law

All obligations issued under the bill are subject to the provisions of Ohio's Miscellaneous Bond Law.²⁶

EEC powers – energy agreements

As described above, an EEC may enter into energy agreements on behalf of itself or a school district. The table below describes the nature of these agreements.

Agreement	Definitions (R.C. 167.20)
District purchase agreement	An agreement between an EEC and a school district relating to the provision of energy supply to such school district.
Electricity supply agreement	Any agreement, contract, right, or other similar arrangement, or any amendment to any of these, between an EEC and an electric services company or a wholesale supplier of electricity relating to the provision of competitive retail electric service, excluding billing and collection service components, to the members of such EEC and any other school district. An electric services company is defined in the competitive retail electric service law and generally refers to a person who supplies or arranges for the supply of only a competitive retail electric service in Ohio. ²⁷
Gas supply agreement	Any agreement, contract, right, or other similar arrangement, or amendment to any of these, between an EEC and a retail natural gas supplier or a wholesale supplier of gas relating to the provision of retail natural gas service to the members of such EEC and any other school district. A retail natural gas supplier is defined in the alternate rate plan law for natural gas companies and generally refers to a person who supplies or arranges for the supply of a competitive retail natural gas service. ²⁸

²⁵ R.C. 167.32(A).

²⁶ R.C. 167.33.

²⁷ R.C. 4928.01 (not in the bill).

²⁸ R.C. 4929.01 (not in the bill).



EEC powers – ancillary authority

The bill permits an EEC to enter into and perform under the terms of (1) any commodity swap (defined above) in connection with the acquisition of an energy supply, and (2) any interest rate hedge (defined above) or credit enhancement facility entered into in connection with the acquisition of an energy supply. A "credit enhancement facility" is defined under Ohio's Uniform Public Securities Law and generally refers to any method used by an entity to improve its debt or credit worthiness so as to obtain better debt terms. They include surety arrangements, guarantees, and letters of credit.²⁹

The bill also permits an EEC to appoint or provide for the appointment of paying agents, bond registrars, Securities depositories, clearing corporations, transfer agents, trustees, and escrow agents. An EEC may also retain or contract for the services of underwriters, investment bankers, financial advisers, attorneys, accounting experts, marketing, remarketing, indexing and administrative agents, other consultants, and independent contractors, including printing services that are necessary in the governing body's judgment to carry out its functions.³⁰

EEC service area

The bill distinguishes an EEC service area from a certified territory of a utility under Ohio public utility law. For purposes of the EEC provisions in the bill and public utility law, the service area of an EEC is the retail electric loads and retail natural gas loads of all school districts in the state. A "certified territory" under the public utility law is the geographical boundary within which an electric supplier is authorized and required to provide electric service.³¹ The bill also stipulates that this definition does not affect the rights of any electric services company under the public utility law or the rights of any municipal electric utility. Municipal utilities operate under the authority of the Ohio Constitution as granted to municipal corporations.³²

The bill specifically states that it does not do any of the following:

- Affect the rights of any electric supplier regulated by the public utilities law to supply all noncompetitive retail electric service components to all

²⁹ R.C. 167.20 and 167.21(C)(2); R.C. 133.01(H) (not in the bill).

³⁰ R.C. 167.21(C)(3) and (4).

³¹ R.C. 167.34; R.C. 4933.81 (not in the bill).

³² OH Const., art. XVIII, § 4.



electric load centers, including school districts and EECs, located within the electric supplier's certified territory;

- Create or authorize a new certified territory or affect any certified territory;
- Authorize the supply of a noncompetitive retail electric service by an EEC on its own behalf or on the behalf of a school district;
- Authorize the aggregation of the retail electric loads of an electric load center located within the certified territory of a nonprofit electric supplier or of an electric load center receiving transmission or distribution service from a municipal electric utility.³³

"Electric load centers" are all the electric-consuming facilities owned, occupied, controlled, or used at a single location to which electric service is provided through a metered point of delivery. An electric supplier is any electric light company (a company engaged in the business of supplying electricity, including electric transmission service), including electric light companies organized as nonprofit corporations, but not including municipal corporations or other units of local government that provide electric service. An "electric services company" (ESC) is an electric light company that is engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of only a competitive retail electric service in Ohio. An ESC excludes an electric cooperative, municipal electric utility, governmental aggregator, or billing and collection agent.³⁴

District purchase agreement payments

An obligation to pay for the supply of energy any amounts due from a school district pursuant to a district purchase agreement is subject to funds being appropriated for that obligation by the district board of education. Amounts due under the agreement are payable solely from amounts appropriated by the school district board of education for purposes of the agreement in accordance with the laws of Ohio and the policies and procedures of the board. Payment obligations under the agreement do not constitute a debt of the district board of education. And, if under the bill, any district purchase agreement is terminated, in accordance with the agreement's terms and as a result of the failure of a school district board of education to appropriate any moneys

³³ R.C. 167.34; R.C. 4933.81 to 4933.90 (not in the bill).

³⁴ R.C. 167.34; R.C. 4928.01 and 4933.81 (not in the bill).



with respect to the financial obligations of the district, the termination does not constitute a default under the agreement.³⁵

Public money deposit procedure

If an officer or employee of an EEC, or individual on behalf of the EEC or as a purported EEC representative or agent, receives more than \$1,000 of public money in the person's capacity as such an officer or employee, or on behalf of the EEC or as a purported representative or agent, the person, on the next business day after receiving it, shall deposit the money into the fund or account into which it is required to be deposited under law or the EEC by-laws or resolutions. If a person receives \$1,000 or less of public money, the person shall deposit it on the next business day after receiving it unless the EEC governing body adopts a resolution permitting a different time period, and the person is able to safeguard the money until it is deposited. A deposit time period adopted by such a resolution may not exceed three business days next following the day of receipt of the money. Any resolution of this type must include provisions and procedures to safeguard public money until it is deposited.

Any officer or employee of the council, or individual on behalf of the council or as a purported EEC representative or agent, who has custody or control of public money received or held by the EEC is liable for the public money to the same extent as a public official is liable for public money under Ohio law governing liability for public money received or collected. "Public money" includes all money received or collected by or due an officer or employee of an EEC, whether in accordance with or under authority of any law, ordinance, resolution, or order, under color of office, or otherwise. Public money also includes any money collected by any individual on behalf of the council, or as a purported representative or agent of the council.³⁶

HISTORY

ACTION	DATE
Introduced	03-05-13

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³⁵ R.C. 167.35.

³⁶ R.C. 167.36; R.C. 9.39 and 117.01 (not in the bill).

