

Detailed Fiscal Analysis

The bill defines the value of electric production equipment for the purposes of taxation to include “the value of patterns, jigs, dies, or drawings included in the cost capitalized on the books and records of a public utility.” The point of the provision is to clarify that such property was always intended to be included in the definition of true value of electric production property since the passage of S.B. 449 in November 1988. This definition is the subject of several valuation cases currently pending in Ohio courts – most notable *Duquesne v. Tracy*.

Duquesne v. Tracy is the consolidation of three separate appeals before the Board of Tax Appeals (BTA) involving Perry Nuclear Power Plant.¹ The first (Case No. 95-K-40) involves an air pollution control facility exemption for tax years 1988 to 1991, and the main issue is retroactivity. The second and third (Nos. 95-K-71 and 95-K-72) dispute the Tax Commissioner’s valuation of Perry for tax years 1992 and 1993. Duquesne claims that the Tax Department’s definition of true value included certain costs that should be excluded – such as the value of certain architectural drawings, retired equipment, certain non-property expenditures and intangibles. The Tax Department argued that the exclusion of these items was already taken into consideration in the definition of true value. The bill attempts to support the Tax Department’s case.

In its November 6, 1998, ruling the BTA for the most part found in favor of Duquesne. **Table 1** shows the values of the separate exemptions granted by the BTA. The overall cost of these exemptions depends upon how much of each of the now-exempted values was

apportioned to which taxing districts in each tax year and what the tax rate on public utility property for each of those districts was for each tax year. The required refund for each district would equal the change in taxable value times the applicable tax rate. (Plus the accumulated interest.) If the ruling stands the immediate cost to schools and local governments (in terms of refunds) is estimated to be \$24 million.²

**Table 1 - *Duquesne v. Tracy*
Property Values Exempted by BTA**

<i>Tax year</i>	<i>Type of exemption</i>	<i>Exempted value</i>
1988	Pollution control facilities	\$45.6 million
1989	Pollution control facilities	\$45.6 million
1990	Pollution control facilities	\$45.6 million
1991	Pollution control facilities	\$45.6 million
1992	Engineering drawings	\$23.5 million
	Retired units	\$5.0 million
	Non-property costs	<i>Exemption not granted</i>
	Intangibles	\$21.1 million
	Total	\$49.6 million
1993	Engineering drawings	\$23.4 million
	Retired units	\$5.7 million
	Non-property costs	<i>Exemption not granted</i>
	Intangibles	\$21.0 million
	Total	\$50.1 million

¹ *Duquesne Light Company v. Tracy*, 1998, Ohio Board of Tax Appeals (Case Nos. 95-K-40, 95-K-71, 95-K-72) November 6, 1998. <http://www.state.oh.us/bta/981106dk.htm>. Appeal filed November 9, 1998, Ohio Supreme Court 98-2365.

² “Duquesne wins Perry Nuclear tax valuation case; could cost schools, local governments million,” *Ohio Report No. 215*, Volume 67, Gongwer News Service, 11/9/1998. <http://www.gongwer-oh.com/reports/1998/11/110998i.html> (12/22/98). The estimated loss assumes that the exemptions for 1992 and 1993 will be extended for the 1994 through 1998 tax years.

The valuation of drawings represents 16.6% of the total, so that the cost of that provision to local governments is estimated to be \$3.8 million.

Duquesne is only the beginning. Duquesne Light Co. represents only 13.74 percent of the ownership of Perry. The exemptions granted would most likely be extended to the other owners of Perry. FirstEnergy reportedly expects refunds in excess of \$230 million on the basis of the *Duquesne* ruling.³ (The drawings component represents between \$24 and \$38 million of that.) Other utilities have filed additional valuation cases contesting the inclusion of the value of drawings in the determination of true value. The statewide losses in such cases could exceed \$600 million (plus interest), although, it is not clear what proportion of those losses hinges on the value of drawings *per se*.⁴

The Tax Department has appealed the ruling to the Ohio Supreme Court, where it is currently pending.

If the bill were to have any impact on the outcome of those cases, it could save school districts and other local governments more than \$100 million in tax refunds. This assumes that the Supreme Court would otherwise rule in favor of *Duquesne* on the drawings issue but instead rule against *Duquesne* (or other utilities in subsequent cases) on the basis of the provisions in this bill. Consequently, any assumption of fiscal impact of this bill is highly speculative.

Assuming, however, that the bill would have the above impact on the outcome of the property valuation cases, it would also save the State GRF some money in subsequent years. The *Revised Code* provides some financial assistance to certain school districts that must make substantial property tax refunds. Since the value of Perry nuclear power plant apportioned to Perry Local School District is capped, any change in the value of Perry will most likely affect all of the school districts containing any transmission and distribution property belonging to any of the owners of the power plant (Cleveland Electric Illuminating, Toledo Edison, Ohio Edison, Duquesne Light Co., and Pennsylvania Power Co.) – roughly half of the school districts in the state. According to section 3317.026 of the *Revised Code*, the state will pay a qualifying school district – i.e., those whose refunds exceed 3% of their taxes paid and charged in the year of the refund – the foundation aid that the district originally lost because its property was overvalued. However; this assistance only helps those school districts that are on the foundation formula; and it only helps them for the first 23 mills of the value subject to refund.⁵ Consequently, the money a school district would save by not having to make the refund in the first place would exceed any gain they would otherwise have received in recalculated basic aid.

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³ “Groups see different impacts of Perry nuclear plant tax decision on deregulation,” *Ohio Report No. 217*, Volume 67, Gongwer News Service, November 12, 1998. <http://www.gongwer-oh.com/reports/11/111298b.html>

⁴ Eric R. Burchard, Written Testimony of the Ohio Education Association submitted to the House Public Utilities Committee, April 28, 1999.

⁵ The average school district tax rate on tangible property in 1988 was about 40 mills; the average tax rate in 1997 was about 48 mills. So, the foundation replacement is only 48% to 52% of the revenue loss.