



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 464 of the 128th G.A.

Date: March 24, 2010

Status: As Introduced

Sponsor: Reps. Winburn and Phillips

Local Impact Statement Procedure Required: Yes

Contents: To exempt qualifying wind and solar energy facilities from property taxation for up to 20 years and to require payments in lieu of taxes on the basis of each megawatt of production capacity of such facilities

State Fiscal Highlights

STATE FUND	FY 2010	FY 2011	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	- 0 -	Potential increase in the millions based on applications pending before the Ohio Power Siting Board
Department of Development			
Revenues	- 0 -	Unspecified gain based upon application fees	- 0 -
Expenditures	- 0 -	Potential increase	Potential increase

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- School funding subsidies paid by the state of Ohio via the foundation funding appropriation item (GRF 200550) may be increased if public utility tangible personal property is exempted from taxation.
- The Department of Development will potentially assign one or more full-time equivalent (FTE) staff persons to fulfill the administrative duties identified in this legislation. H.B. 464 permits the Director to collect an application fee from owners of qualified energy projects, but the exact fund to which this revenue will be deposited is not specified.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2010	FY 2011	FUTURE YEARS
Counties, School Districts, and Other Local Governments			
Revenues	- 0 -	Potential loss up to several million dollars based on current applications to the Ohio Power Siting Board	Potential loss up to several million dollars based on current applications to the Ohio Power Siting Board
Expenditures	- 0 -	- 0 -	- 0 -

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- Exempts qualified wind energy and solar energy projects from public utility tangible personal property taxation for tax year (TY) 2011 and TY 2012 if the project received the appropriate approval to begin construction and if construction begins before a specified date.
- If a qualified wind or solar energy project that has a tax exemption for TY 2011-TY 2012 maintains its eligibility in TY 2013 as an approved energy project (as determined by the Director of Development), the tangible personal property put into service before January 1, 2013 is exempt from taxes for TY 2013 and the ensuing seventeen years.
- At least six facilities with the potential to generate about 1,100 megawatts (MW) from renewable wind energy sources and with applications pending before the Ohio Power Siting Board may establish eligible facilities in Ohio.
- A \$6,000 to \$8,000 service payment in lieu of taxes will be made for each MW of nameplate capacity eligible for the tax exemption in TY 2011. The relevant amount would increase by 2% per year over the ensuing 19 years until reaching a range of \$8,741 per MW to \$11,654 per MW in TY 2030. The payment will be allocated to counties, school districts, and local governments in the same manner that public utility tangible personal property is disbursed. The service payment would offset part of the revenue loss incurred from the tangible personal property taxation exemption.
- Establishes a personal property tax assessment rate of 24% for taxable wind and solar production equipment and 85% for other types of taxable property owned by such companies.

Detailed Fiscal Analysis

H.B. 464 provides an exemption from tangible personal property taxes for tax year (TY) 2011 and TY 2012 for a qualifying energy project as determined by the Department of Development using criteria set forth in the bill. If the project maintains its eligibility by meeting certain standards in the construction of the facilities, then the tangible personal property put into service before January 1, 2013 is exempt from taxes for TY 2013 and the ensuing seventeen years.

Any tangible personal property put into service after that date will be taxable according to the rates contained in H.B. 464. Namely, solar and wind conversion equipment, as well as any nonproduction related equipment will be assessed at 85% of its true value. The bill apportions the taxable wind and solar energy conversion equipment of an electric company in the same manner as the electric company's nonproduction equipment--i.e., according to the percentage of Ohio-based value of such equipment located in each taxing district. However, the production equipment is required to be taxed at 24% of true value, and apportioned to the taxing jurisdiction where the property is located.

To become eligible for the tax exemption, a property owner must first apply by September 30, 2010 to the Director of Development for certification as an eligible project. A qualified wind project is one for which such certification is received, an application is approved by the Ohio Power Siting Board (OPSB) and construction begins before December 31, 2010. A qualified solar project is one for which such certification is received, the project received the appropriate OPSB approval and secures a lease agreement before January 1, 2011, and construction begins before August 1, 2011.

H.B. 464 requires the Department of Development to issue a certificate if the application is made on time, the accompanying fee, to be determined by the Director, is paid, and the company fulfills certain other requirements established by the bill. Among those other requirements, an exempt energy facility must: (a) maintain specified ratios of Ohio-resident full-time employees to all full-time employees at the project and (b) establish a procurement goal of 5% for contracting with minority or EDGE business enterprises in the award of contracts for the construction, installation, or maintenance of a wind or solar energy facility based on the availability of eligible program participants by region or geographic area. Furthermore, the energy project should establish a minority workforce goal of 10% in the construction, installation, or maintenance of a wind or solar energy facility. However, if either goal is not attained, the project's owner or lessee may remain eligible if it shows evidence of a good faith effort to attain the goal. The bill includes a prevailing wage requirement in connection with the construction or installation of a wind energy facility; this requirement does not apply to solar energy facilities.

The certified exempt energy facility is required to pay annual service payments in lieu of taxes to the treasurer of the county where the facility is located. A solar facility must remit \$7 per kilowatt of nameplate capacity, which is \$7,000 per megawatt (MW). A wind facility must pay \$6 to \$8 per kilowatt of nameplate capacity, which is equivalent to \$6,000 to \$8,000 per MW. The range of possible charges for a wind energy facility reflects a sliding scale based on the Ohio resident status of those employed by the project.

The service payment will be allocated to counties, school districts, and local governments in the same manner that public utility tangible personal property is disbursed. The service payment would offset part of the revenue loss due to the exemption from tangible personal property taxation.

The bill also requires the facility to offer to sell power or renewable energy credits first to electric distribution utilities and electric service companies subject to the alternative energy portfolio requirements of current law before offering the power and credits to others. Other requirements apply, including restoring roads affected by facility construction, and providing training and equipment to fire and emergency responders where the facility is located.

Fiscal effect

According to information from the Wind Energy Association, which utilized input from the Department of Taxation, a 100 MW commercial wind facility could have a personal property tax liability of approximately \$4 million. If the proposed legislation is enacted, such a facility would make a \$600,000 to \$800,000 payment in lieu of the public utility tangible personal property taxes for TY 2011, but counties and other local governments would forego future revenues from the property taxes on qualifying solar and wind energy property put into service before January 1, 2013. The service payment in future years will grow at an annual rate of 2% before peaking in the final year of the 20-year exemption. Payments would not be required in the 21st year as the tangible personal property would no longer be exempt from taxation. If the tangible personal property is still in service at that time, it will be subject to property taxation.

Currently, Ohio does not have any renewable energy facilities that would qualify for the property tax exemption. However, six wind facilities (Table 1 below) have applications pending before, or recently approved by, the OPSB. These facilities appear to be the only ones that may qualify for the tax exemption, due to the bill's time limits. If all six wind facilities are put into service with the maximum estimated generating capacity, it would yield up to \$8 million in annual revenue to the counties from payments in lieu of taxes during the earliest years of the 20-year exemption. But the bill's exemption from public utility tangible personal property taxes would eliminate

millions in additional property tax revenue that would have been raised if those projects had been undertaken in the absence of the bill.¹

Table 1: Wind Projects with Cases Pending Before the Ohio Power Siting Board²

Case No.	Project (County)	Company	Generating Capacity (Est.)
08-0666-EL-BGN	Buckeye Wind Project (Champaign)	Buckeye Wind, LLC, a subsidiary of EverPower Wind Holdings, Inc.	125 to 175 MW
09-0277-EL-BGN	Hardin County North Wind Farm (Hardin)	JW Great Lakes Wind, LLC, a subsidiary of juwi Wind GmbH	50 MW (approx.)
09-0479-EL-BGN	Hardin Wind Farm (Hardin)	Hardin Wind Energy, LLC, a subsidiary of Invenergy LLC	300 MW
09-0546-EL-BGN	Black Fork Wind Project (Crawford and Richland)	Black Fork Wind, LLC	201.6 MW
09-0980-EL-BGN	Timber Road Wind Farm (Paulding)	Paulding Wind Farm, LLC, a subsidiary of Horizon Wind Energy	48.6 MW
09-1066-EL-BGN	Blue Creek Wind Farm Project (Paulding and Van Wert)	Heartland Wind, LLC, a subsidiary of Iberdrola Renewables	Up to 350 MW

Although the six projects are all wind facilities, solar projects with a nameplate capacity in excess of 250 kilowatts would also qualify for the exemption. The total number of projects that may qualify for the tax exemptions is potentially larger than the six facilities mentioned above, including nonwind renewable energy facilities. The net fiscal effect on local governments may vary from the example above based on the type of facilities and the tangible personal property taxes in the counties where those projects may be located.

Based on the information from these six projects, it can be determined that the wind projects will produce several million dollars less in potential tangible personal property tax revenues during the earliest years of the 20-year exemption period. However, as the taxable value of the tangible personal property decreases due to the depreciation schedule set forth by the Tax Commissioner in accordance with Administrative Rule, the amount of foregone tax revenue will decrease every year during the 20-year exemption. Separately, the bill mandates that service payments in lieu of taxes increase by 2% every year for each MW of energy produced by wind energy projects. Therefore, if wind energy production generates the estimated amount specified in the pending OPSB applications, it is possible that the net revenue effect in a given year for some projects could be positive for some taxing jurisdictions towards the end of the 20-year exemption period after the taxable value of public utility property

¹ Property tax estimate made using examples provided in the sponsor testimony, which utilized information from participating companies and trade associations.

² Source: <http://www.opsb.ohio.gov>. The first three projects listed were approved on March 22.

depreciated³ and the compounding effect of the 2% annual increases in the service payments in lieu of taxes.

If the six projects with pending applications before the OPSB were completed with the tax exemption in H.B. 464, the local school districts would collect less tangible property tax revenues, but there is a chance that the loss in property tax revenue would be offset by an increase in school aid paid by the state foundation funding program. The foundation funding appropriation item (GRF 200550) is the largest state source for subsidy payments to local school districts. The tangible personal property exempted from taxation in TY 2011 and TY 2012 by H.B. 464 would reduce the local contribution (as measured by the foundation formula) for the applicable school districts in FY 2013-FY 2014. Generally, state funding will pay for the amount determined by the funding formula that is in excess of the local contribution amount. Thus, any legislation that reduces the tax base reduces the assumed local contribution. However, this premise is very general and does not take into consideration other complicating factors, such as the presence of funding guarantees.

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³ The proposed wind turbines will likely fall under a 30-year depreciation schedule. All electric production equipment placed into service after 10/04/1999 is deemed to have a 30-year service life. According to the PUCO Staff Report of Investigation for Case No. 08-666-EL-BGN, "*Per researched wind project applications and industry data, megawatt-scale wind turbine generators typically have a life expectancy of 20-25 years.*" However, the service life will vary depending on the individual model. The models under consideration by the six companies with pending applications before the OPSB are generally marketed by the manufacturer to have a service life of 20 years, though some manufacturers do not provide an explicit term and instead specify a service life of "at least 20 years." Thus, it is possible that the wind turbines will be taken out of service after 20 years and no tangible personal property taxes will be collected upon the expiration of the 20-year tax exemption.