



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** S.B. 315 of the 129th G.A.

**Date:** March 27, 2012

**Status:** As Introduced

**Sponsor:** Sen. Jones

**Local Impact Statement Procedure Required:** No

**Contents:** Makes changes to energy and natural resources laws and programs

### State Fiscal Highlights

#### Department of Natural Resources

- The Oil and Gas Well Fund (Fund 5180), the primary operating fund for the Division of Oil and Gas Resources Management, will receive new revenues from revised injection well fees and oil and gas drilling permits requiring unit operation of a pool. These new revenues will likely offset increased administrative costs resulting from the implementation of several new oil and gas regulatory requirements.
- The Geological Mapping Fund (Fund 5110) will gain revenues as a result of the bill's requirement that 10% of all injection well disposal fees be deposited into that fund.
- The bill revises the method of calculating the oil and gas cost recovery assessment from a two-tiered calculation based on either the severance tax or the amount of oil and gas produced to a single calculation based only on the severance tax. The effect of this change on Fund 5180 will depend on the number of oil and gas producers affected by the change.
- Additional administrative expenses to Fund 5180 would likely result from provisions requiring site reviews of horizontal well sites, the reporting of chemicals in various fluids used in the production of oil and gas, and new requirements for brine transporters.
- The bill extends the period of validity of in-stream mining permits from two to five years, but retains the \$500 renewal fee. As a result, there could be a reduction in revenues to the Surface Mining Fund (Fund 5270) used by the Division of Mineral Resources Management.

#### Public Utilities Commission of Ohio

- Increasing the magnitude of civil forfeitures for pipeline safety violations and for committing acts prohibited by the Ohio Power Siting Board (OPSB) may increase revenues to the GRF. The GRF revenue increase, if any, will depend on the nature

and the frequency of forfeitures assessed by the Public Utilities Commission of Ohio (PUCO) and the OPSB.

- The bill changes the definition of a "major utility facility" that is subject to approval by OPSB, and revises the application review process undertaken by OPSB. The changes may increase expenditures and affect future revenues to the Power Siting Board Fund (Fund 5610).
- Enforcing the newly defined gas pipeline safety standards may increase PUCO expenditures from the Pipeline Safety Fund (Fund 4L80).
- Requiring PUCO and the Ohio Department of Transportation (ODOT) to conduct the studies, reviews, and analysis duties specified in the bill will require additional expenditures. The expenditures for PUCO and ODOT would be paid from the Public Utilities Fund (Fund 5F60) and Highway Operating Fund (Fund 7002), respectively.

### **Department of Development**

- The bill allows the Ohio Department of Development (ODOD) to issue loans for projects (in addition to grants that are currently awarded) under the Alternative Fuel Transportation Program supported by the Alternative Fuel Transportation Fund (Fund 5CG0).
- The bill requires the Director of Budget and Management to transfer available cash in the Advanced Energy Research and Development Taxable Fund (Fund 7004) and the Advanced Energy Research and Development Fund (Fund 7005) to the Advanced Energy Fund (Fund 5M50). This will provide additional funding for the Advanced Energy Program.

### **Department of Administrative Services**

- The bill requires the Office of Energy Services within the Department of Administrative Services (DAS) to review energy derived from cogeneration as part of the required life-cycle analysis for new construction and major renovations in state facilities that are estimated to exceed \$50 million. The Office of Energy Services will incur some additional costs as a result. The Office is supported by capital project management fees deposited into the State Architect's Fund (Fund 1310).

### **Environmental Protection Agency**

- Once fully operational, the Ohio Environmental Protection Agency (OEPA) expects to spend up to \$3.0 million or more annually to administer the federal Section 404 permitting program. The program's source of funding is uncertain.

## **Local Fiscal Highlights**

- No direct fiscal effect on political subdivisions.

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## Detailed Fiscal Analysis

The bill makes numerous changes to laws regarding energy and natural resources policy, including those affecting oil and gas production, mining, pipelines, utility facilities, utility rates, alternative energy requirements, energy efficiency in state buildings and vehicles, and other provisions. This fiscal analysis breaks down each provision of the bill according to the agency that is primarily responsible for its implementation. In the order in which they are addressed in the fiscal note, these are:

- Department of Natural Resources (oil, gas, and mining);
- Public Utilities Commission of Ohio (utility facilities, regulations, and studies);
- Department of Development (energy efficiency and advanced energy incentives);
- Department of Administrative Services (energy efficiency requirements in state government);
- Environmental Protection Agency (environmental permitting); and
- Various other studies and reports required by the bill.

### Department of Natural Resources – Oil and Gas

The bill makes a number of changes to the Oil and Gas Law regarding horizontal wells and hydraulic fracturing. Some of these changes are administrative in nature and will have a negligible or nonexistent fiscal effect on the Department of Natural Resources (DNR). However, there are a number of other provisions that will or will likely have a fiscal effect. These are discussed in further detail below.

#### Calculation of the oil and gas cost recovery assessment

The bill revises the methodology used by DNR to calculate the cost recovery assessment charged to owners of oil and gas wells, excluding exempt domestic wells. Under current law, the assessment is ten cents per barrel of oil or one half of one cent per thousand cubic feet of natural gas, unless the sum of those amounts plus the oil and gas severance tax charged to the owner is less than the equivalent of \$15 per well. If that sum is less than \$15 per well, then the cost recovery assessment is \$15 per well minus the amount of the severance tax owed. The current formula used for calculating the cost recovery assessment is illustrated in Figure 1 below.

**Figure 1. Calculation of Oil and Gas Cost Recovery Assessment under Current Law**

**If**  
 $((\$0.10 \times \text{bbl of oil}) + (\$0.005 \times \text{mcf of natural gas}) + \text{Severance tax}) > (\$15 \times \text{number of wells})$

**Then**  
Cost recovery assessment =  $(\$0.10/\text{bbl} + \$0.005/\text{mcf})$

**If**  
 $((\$0.10 \times \text{bbl of oil}) + (\$0.005 \times \text{mcf of natural gas}) + \text{Severance tax}) < (\$15 \times \text{number of wells})$

**Then**  
Cost recovery assessment =  $(\$15 \times \text{number of wells}) - \text{Severance tax}$

Under the bill, the oil and gas cost recovery assessment will be \$15 per well minus the severance tax owed by an owner, and will only apply if the amount of the severance tax owed is less than \$15 per well. This is shown in Figure 2 below.

**Figure 2. Revised Calculation of Oil and Gas Cost Recovery Assessment under S.B. 315**

**If**  
Severance tax  $< (\$15 \times \text{number of wells})$

**Then**  
Cost recovery assessment =  $(\$15 \times \text{number of wells}) - \text{Severance tax}$

The effect of this change on the Oil and Gas Well Fund (Fund 5180) will depend on the number of wells and well owners subject to each portion of the current cost recovery assessment formula, and the number that would be subject to the assessment under the new formula. Under the bill, the cost recovery assessment applies only if the amount of a well owner's total severance tax for all the owner's wells is less than the equivalent of \$15 for each of the owner's wells. If the severance tax is more than that amount, the owner would not be required to pay the assessment.

**Fee for unit operation of a pool**

Under current law, an oil or gas drilling permit may require unit operation of a pool (that is, the operation of a single drilling unit across multiple tracts of land) upon a motion of the Chief of the Division of Oil and Gas Resources Management or the application of the owners of at least 65% of the land overlying a pool of oil and gas. The bill creates a new fee of \$15,000 for a permit that requires unit operation of a pool. The fee will be deposited into the Oil and Gas Well Fund (Fund 5180). The actual amount of revenue from this fee will depend on the number of permits that require unit operation of a pool. However, this number is likely to be relatively low.

## **Injection well fees**

Under current law, there is a fee of five cents per barrel of each substance that is to be injected into an injection well if the substance is produced in the same or an adjoining regulatory district, and a fee of 20 cents per barrel if the substance is produced outside that area. All amounts collected from these fees are deposited into the Oil and Gas Well Fund (Fund 5180).

The bill increases these fees to 10 cents per barrel for disposal in the same or adjoining district, and \$1 per barrel for substances produced outside the same or adjoining district. The bill also changes the distribution of the fees so that 90% is deposited into Fund 5180 and 10% is deposited into the Geological Mapping Fund (Fund 5110), which funds DNR's Division of Geological Survey. This increase and redistribution will have the overall effect of increasing injection well fee revenues to both funds.

These revenues will likely serve to offset new administrative costs that the Division of Oil and Gas Resources Management could incur to implement new injection well regulatory measures required under the bill. These include establishing a maximum depth for an injection well, developing rules to respond to health and safety concerns regarding injection wells, and entering into cooperative agreements with other state agencies to assist in the enforcement of the Oil and Gas Law.

## **Oil and gas permit application requirements**

The bill adds several items to the information required to be submitted to the Division of Oil and Gas Resources Management with an application to drill a new oil or gas well. These include copies of local road maintenance agreements and water source identifications for horizontally drilled wells, and water sampling results for horizontal wells at any location and nonhorizontal wells in urbanized areas. The bill also requires the Division to conduct a site review of a proposed horizontal well before issuing a permit. These provisions, especially the site review requirements, will result in additional administrative costs to the Oil and Gas Well Fund (Fund 5180).

## **Disclosure of chemicals**

The bill requires oil and gas well owners to file annually with the Division of Oil and Gas Resources Management a list of all chemicals (excluding cement) used in the operation, servicing, and plugging of a well, and requires the Division to post each list of chemical compounds on its web site. The reporting requirements will likely result in additional administrative costs to Fund 5180. The Division might also incur some minimal additional GRF costs for posting this information on its web site.

## **Reporting requirements for high volume horizontal wells**

The bill defines a high volume horizontal well (see the LSC bill analysis) and specifies that owners of such wells are required to report a statement of production to the Division of Oil and Gas Resources Management on a quarterly basis. While this provision essentially subjects high volume horizontal wells to the same reporting

requirements as other wells, the Division of Oil and Gas Resources Management could incur minimal additional administrative costs to implement the new requirements for high volume horizontal wells. Any new costs would be paid from Fund 5180.

### **Requirements for brine transporters**

The bill requires all brine transporters to install an electronic transponder on each vehicle that will be used to transport brine before registering for or renewing a brine transporter certificate. Under the bill, transporters are required to allow the Division of Oil and Gas Resources Management to electronically verify a transporter's status and the origin and disposition of the fluid being transported. However, the bill exempts from this requirement transporting entities that own both the well that produced the brine and the facility that will be used to dispose of it. The bill also requires brine transporters to identify each vehicle, trailer, or container that will be used to transport brine, and requires transporters to disclose to the Division the same lists of chemicals required to be reported to the owner of an injection well. Together, these provisions could result in additional costs to the Division from Fund 5180.

### **Department of Natural Resources – Strip Mining and Industrial Mining**

The bill makes various administrative changes to the laws governing in-stream mining permits (see the LSC bill analysis for more detailed information regarding the specific provisions). Among these are revisions to the in-stream mining permit renewal process used by DNR's Division of Mineral Resources Management. In particular, the bill extends the period for which a permit is valid from two to five years. Under current law, unchanged by the bill, the fee to renew an in-stream mining permit is \$500. As permits would be renewed every five years under the bill, rather than every two years as under current law, these \$500 renewal fees would be collected less frequently and thus could result in reduced revenues to the Surface Mining Fund (Fund 5270).

### **Public Utilities Commission of Ohio**

#### **Ohio Power Siting Board**

The bill expands the scope of gas gathering pipelines, processing plant stub pipelines, and natural gas liquids pipelines and related facilities that are exempt from the certification requirements of the Ohio Power Siting Board (OPSB). Under current law, a Certificate of Environmental Compatibility and Public Need must be obtained from OPSB before construction can begin on any "major utility facility" or "economically significant wind farm" within the state of Ohio.

The bill enables OPSB to "modify and approve" certificate applications for major utility facilities whereas previously it could only approve or disapprove them. Moreover, the bill requires the Board to grant, deny, or modify an economically significant wind farm's application for certification under the same process specified for major utility facilities.

The bill requires the Board to adopt rules for an accelerated review, including automatic certification, of an application for construction for certain electric transmission lines, electric generating facilities using waste heat, and certain gas pipelines.

OPSB is funded by fees submitted by applicants seeking a certificate of environmental compatibility and public need. The Power Siting Board Fund (Fund 5610) may realize an increase or decrease in revenues due to the revised application approval process and the expanded exemptions contained in this bill. Requiring OPSB to modify applications or accelerate review of certain applications may increase staffing and investigation costs for the Board.

### **Natural gas pipeline safety**

The bill includes additional definitions for use in the natural gas pipeline safety standards governing both high and low pressure gas gathering pipelines. The various safety standards reference federal regulations, existing Ohio rules, and newly defined standards governing high pressure gas gathering pipelines and high pressure processing plant gas stub pipelines.

PUCO investigators inspect pipeline systems and review records and procedures implemented by local distribution companies. When violations are detected, PUCO orders corrective action. The funding for these activities is derived from assessments against natural gas suppliers and natural gas pipeline operators. Pipeline safety standards in the bill may increase PUCO expenditures from the Pipeline Safety Fund (4L80), but revenues and appropriation may be sufficient to absorb the additional duties.

### **Civil forfeitures assessed by PUCO and Power Siting Board**

The bill increases from \$500,000 to \$1 million, the maximum aggregate forfeiture that the Public Utilities Commission may assess upon certain pipeline operators for violations of or noncompliance with the pipeline safety code.

The bill increases the potential fine levied by the Power Siting Board from \$1,000 per day to \$100,000 per day per violation for anyone who: (1) constructs a major utility facility or economically significant wind farm without a Board certificate, (2) any person who constructs, operates, or maintains a major utility facility or economically significant wind farm other than in compliance with the issued certificate, or (3) any person or economically significant wind farm who fails to comply with an order or suspension by the Board.

Under existing law, fines for these types of violations are deposited in the GRF. The bill's provision may increase revenues to the GRF, but the revenue increase, if any, will depend on the nature and the frequency of forfeitures assessed by the Public Utilities Commission and the Ohio Power Siting Board.

## **PUCO regulation of utilities' rates and terms of service**

When filing an Electric Security Plan, which is a rate plan for the supply and pricing of electric generation service, each major utility must furnish PUCO with a "resource plan," which is a long-term forecast report. The bill changes the description of resource plans to "resource planning projections." Both names keep the existing requirement that a utility provide a year-by-year, ten-year forecast of annual energy demand, peak load, reserves, and a general description of the planning to meet demand.

Under the bill, PUCO must incorporate information learned from the "resource planning projections" (as opposed to resource plans) as well as information learned from hearings about the resource planning projections when determining a nonbypassable surcharge for a new generation facility (existing law permits utilities to recover the costs of new generation facilities through nonbypassable surcharges). LSC staff does not anticipate additional agency expenditures will be incurred by PUCO as a result of this provision.

## **Changes to energy efficiency and peak demand reduction requirements, and to alternative energy portfolio standards**

The bill amends Ohio's renewable energy benchmarks to permit a waste energy recovery system, which is defined in the bill, that was placed into service or retrofitted in 1998 or later, and that was not used to meet the energy efficiency requirement, to now qualify as a renewable energy resource. Ohio law requires electric distribution utilities (EDU) and electric services companies to secure an increasing portion of their electricity supplies from alternative energy resources every year. By the year 2025, at least 12.5% must be generated from renewable energy resources, which currently includes wind, hydro, biomass and at least 0.5% solar.

The bill permits a waste energy recovery system that was placed into service or retrofitted in 2006 or later, and that was not used to meet the alternative energy portfolio standards, to qualify as energy efficiency towards mandated benchmarks. Existing law requires that EDUs achieve efficiency savings each year, and the standard increases to 22% by 2025; under existing law the utility may seek recovery of its costs to comply with its energy efficiency program portfolio plan.

The bill defines "smart grid" within the competitive retail electric service law, and adds cost-beneficial smart grid investment programs to those programs that an EDU may include to meet energy efficiency and peak demand reduction requirements. "Smart grid" means capital improvements to an EDU's distribution infrastructure, including, but not limited to, advanced metering and automation of system functions.

Expanding the available options for EDUs to comply with existing benchmarks for use of renewable energy resources, energy efficiency increases, and peak demand reduction may reduce a utility's recoverable costs. These changes could thereby reduce customers' electricity rates, including those of state and local governments.

### **Green pricing program review**

The bill permits PUCO to periodically review any green pricing program offered in Ohio as part of retail electric service and make recommendations for improving or expanding the program. This provision may increase PUCO's expenditures. Any such costs would be paid from the Public Utilities Fund (Fund 5F60).

### **Required studies and reports**

The bill requires PUCO and, in the case of one report, the Ohio Department of Transportation (ODOT) to perform studies and publish reports on various subjects. For PUCO, these duties would likely increase costs paid from Fund 5F60, though the bill does not increase existing appropriations from the fund. It is possible that existing appropriations are sufficient to absorb any increase in cost. The studies and reports include:

1. A study to examine whether certain aspects of electric service, including an evaluation of emerging technologies, would provide increased opportunities for customer choice. PUCO must initiate such study within 18 months after the effective date of the bill, prepare a report of its findings, and make it available on its web site.
2. A review of the electric distribution infrastructure and transmission facilities to be conducted in consultation with EDUs and regional transmission organizations (RTOs) and entities that own or control transmission facilities. The bill also requires PUCO to evaluate the distribution and transmission infrastructure in Ohio and to order any necessary improvements to ensure adequate and reliable service, enable new electric generation, and promote new industry in this state. Although PUCO already maintains authority over reliability standards, the provision explicitly requires PUCO to consult with EDUs.
3. An analysis, to be performed in conjunction with ODOT, of the cost effectiveness of purchasing vehicles that operate on compressed natural gas (CNG) and the conversion of certain state motor vehicles to operate on CNG. ODOT and PUCO must submit a joint report to legislative leaders and the Governor not later than January 30, 2013. This provision will likely increase expenditures for ODOT (in addition to an increase in cost for PUCO, as described above). Any such costs would be paid from the Highway Operating Fund (Fund 7002).

In addition to these required reports and studies, the bill allows PUCO, in cooperation with the ODOT, to work with other states to develop a multi-state study on the development of CNG infrastructures for transportation.

## **Department of Development**

### **Alternative Fuel Transportation Program**

Under current law, the Ohio Department of Development (ODOD) operates an Alternative Fuel Transportation Grant Program. This program currently offers grants to businesses, nonprofit organizations, public school districts, and local governments to buy and install alternative fuel refueling facilities and alternative fuels, and operates out of the Alternative Fuel Transportation Fund (Fund 5CG0). The current source of revenue for the program is cash transfers from the Advanced Energy Fund (Fund 5M50).

The bill makes two changes related to the program. First, the bill allows ODOD to issue loans and collect various fees and interest under the program, and changes the name of the initiative accordingly to the Alternative Fuel Transportation Program. Second, the bill requires that future repayments of loans made from the Advanced Energy Research and Development Taxable Fund (Fund 7004) be deposited into Fund 5CG0 instead of the Facilities Establishment Fund (Fund 7037) as under current law. Accompanying uncodified law requires the Director of Budget and Management to transfer cash amounts equivalent to these loan repayments that have been previously deposited into funds other than Fund 7037.

### **Advanced Energy Program**

The bill requires the Director of Budget and Management to make certain transfers of cash to the Advanced Energy Fund (Fund 5M50) that will be used to supplement amounts available to make awards under the Advanced Energy Program. These cash transfers are to consist of amounts available in the Advanced Energy Research and Development Taxable Fund (Fund 7004) and the Advanced Energy Research and Development Fund (Fund 7005).

The Advanced Energy Program provides funding for renewable energy and energy efficiency projects in the industrial, commercial, and residential sectors. The goal is to fund projects that reduce energy usage and associated costs, avoid fossil fuel emissions, and create or retain jobs. To date, the program has funded 660 projects. Funding for the Advanced Energy Program was previously derived from a \$.09 per month rider collected on utility bills for retail electric service that was deposited into Fund 5M50. That authority, however, expired on December 31, 2011. As a result, the program now operates as a revolving loan program. The bill requires that interest charges, loan repayments schedules, other related charges, and matching requirements that currently apply to the program be established in rules.

## **Department of Administrative Services**

### **Cogeneration review for construction of state-owned buildings**

Under current law, construction of state-owned facilities with an area of 5,000 square feet or greater may proceed only after a life-cycle cost analysis is

conducted according to guidelines developed by the Office of Energy Services, a unit of the State Architect's Office within the Department of Administrative Services (DAS). A life-cycle cost analysis is required to determine, for the economic life of the facility, the reasonably expected costs of facility ownership, operation, and maintenance including labor and materials. Under the bill, the life-cycle cost analysis for construction projects with an estimated cost exceeding \$50 million dollars must include a review of cogeneration as an energy source. The bill defines cogeneration as the simultaneous production of thermal energy and electricity for use primarily within a building or complex of buildings. This additional requirement could add some cost to the process of conducting a life-cycle analysis for large construction projects, depending upon their complexity. The Office of Energy Services is supported by various capital project management fees deposited into the State Architect's Fund (Fund 1310).

### **Energy and water conservation measures at state-owned facilities and state institutions of higher education**

Under current law, a contract for a cogeneration system may not be awarded unless the cost of the contract is likely to be less than the amount of money that would be saved in energy and operating costs over no more than five years. A contract for any other energy saving measure may not be awarded if the cost of the contract is likely to be less than the amount of money that would be saved in energy and operating costs over no more than ten years. The bill removes these conditions and instead allows the Director of Administrative Service to select proposals most likely to result in the greatest energy, water or wastewater savings, operating costs savings, and avoided capital costs. The energy or water conservation contracts may then be awarded pursuant to the public improvements law under Chapter 153. of the Revised Code, or with Controlling Board approval upon the solicitation of at least three bids. Eliminating the contracting restrictions may affect the amount of time before cost savings are realized from the implementation of energy or water conservation measures.

### **Expansion of energy and water conservation measure definitions**

The bill expands the definition of energy conservation measures by including the following: (1) installation or modification of trigeneration systems that produce heat and cooling as well as electricity, (2) installation or modification of systems that harvest renewable energy from solar, wind, water, biomass, bio-gas, or geothermal sources, (3) retro-commissioning or recommissioning energy related systems to verify that they are installed and calibrated to optimize energy and operational performance, (4) consolidation, virtualization, and optimization of computer servers, data storage devices, or other information technology hardware and infrastructure, and (5) any other modification, installation or remodeling at a state owned building or state institution of higher education approved by the Director of Administrative Services. This allows for additional energy and water conservation options to be considered in planning and constructing projects for the state or state institutions of higher education.

## **Fleet vehicle replacement review**

The bill requires DAS and ODOT 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. Both DAS and ODOT could incur some additional costs to conduct this analysis.

## **Environmental Protection Agency**

### **Federal Section 404 permitting program**

The bill permits the Director of the Ohio Environmental Protection Agency (OEPA) to apply for approval from the U.S. Environmental Protection Agency to assume responsibility for administering the Section 404 permitting program regulating the discharge of dredged or fill material into navigable waters established under the federal Water Pollution Control Act. The program is currently administered by the U.S. Army Corps of Engineers.

The OEPA plan is to phase-in program implementation costs with the first year's expenses expected to be around \$500,000, which includes hiring the equivalent of four to five full-time employees. Once fully operational, the program's annual expenses are expected to be around \$3.0 million, including the equivalent of 25 to 30 full-time employees. The source of funding for these program expenses is uncertain.

## **Other studies and reports**

### **Evaluation of wastewater treatment technologies; study of power generation regulation**

The bill requires OEPA to coordinate with the Department of Natural Resources (DNR), the U.S. Environmental Protection Agency, and other entities as appropriate, to evaluate emerging wastewater treatment and recycling technologies that may reduce the reliance on underground injection wells and advance industry. The bill also requires OEPA to coordinate with PUCO, the U.S. EPA, and other entities as appropriate, to conduct a study that identifies current and future environmental regulatory requirements and determine the impact of those requirements on current and future power generation and transmission in Ohio. The cost of these onetime activities for any participating state agency will generally be minimal, and potentially absorbed within existing staffing and funding levels.

### **School district energy consumption reports**

H.B. 153 of the 129th General Assembly added two requirements to a report that school districts must submit to the School Facilities Commission (SFC) for approval in order to participate in SFC's Energy Conservation Program. One of the two additional requirements specified the report had to include estimates of a baseline analysis of actual energy consumption data for the preceding five years. The bill continues this

reporting requirement but reduces, from the preceding five years to the preceding three years, the number of years that the baseline analysis covers. Any direct fiscal impact for school districts from this change is not likely to be significant.

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