

Utilities

H.B. 128

Primary Sponsors: Reps. Hoops and Stein

Effective date: June 30, 2021

Repeal of nuclear provisions of H.B. 6

- Repeals the following provisions enacted in 2019 by H.B. 6 of the 133rd General Assembly:
 - The requirement that an electric distribution utility (EDU) collect a per-customer monthly charge on all ratepayers in Ohio to subsidize credits for nuclear resources; and
 - The provision that disallows future reductions in the taxable value of tangible personal property of certain electric companies.

Renewable energy credit changes to H.B. 6

- Changes the term “renewable” to “solar” in the provisions governing the renewable energy credit program enacted by H.B. 6.
- Lowers the charges that an EDU may impose on retail electric customers in Ohio for solar resource credits, reflecting the elimination of the nuclear resource credit program and related customer charges.
- Makes changes regarding the Solar Generation Fund’s (SGF’s) administration and the deposit of charges collected from retail customers.
- Permits the Ohio Air Quality Development Authority, subject to Controlling Board approval, to use up to \$300,000 per fiscal year from the SGF for program administrative costs, beginning January 1, 2021 (FY 2022), and ending June 30, 2029 (FY 2029).
- Permits the Authority, subject to Controlling Board approval, to use up to \$300,000 in SGF funds in FY 2022 for program administrative costs incurred in FYs 2020 and 2021.
- Requires the Authority to re-review and approve applications for qualifying solar resources that applied to receive payments for solar energy credits, so long as the application was made before March 1, 2020.
- Relieves the re-reviewed and approved qualifying solar resources from meeting the deadlines for quarterly reports of the megawatt hours produced by the resource that passed before the act’s June 30, 2021, effective date.

Decoupling changes to H.B. 6

Repeals the ability of an EDU to file an application with the Public Utilities Commission (PUCO) to implement a decoupling mechanism for calendar year 2019 and thereafter regarding energy efficiency and peak demand reduction (EE/PDR) programs.

- Terminates any H.B. 6 decoupling mechanism for EE/PDR approved prior to the act's June 30, 2021, repeal of the decoupling mechanism provision, and prohibits any related amount, charge, mechanism, or rider from being assessed or collected from customers.

Electric distribution utility excessive earnings test

- Repeals the requirement established by H.B. 166 of the 133rd General Assembly that PUCO consider total earned return on common equity for affiliated Ohio EDUs operating under a joint electric security plan when conducting the quadrennial and annual significantly excessive earnings test (SEET) reviews for those EDUs.
- Repeals the H.B. 166 provision that allows PUCO to consider the revenue, expenses, or earnings of any EDU affiliate that is an Ohio EDU in its annual SEET review of electric security plan adjustments.

Customer refunds

- Requires the following to be promptly refunded to customers and allocated to customer classes in the same proportion as originally collected:
 - The full amount of revenues collected from customers under the decoupling mechanism established under H.B. 6 for calendar year 2019, and thereafter, regarding EE/PDR programs (repealed as described above);
 - The amounts of money collected from customers resulting from, or attributable to, amendments made to the law by H.B. 166 regarding quadrennial and annual SEET reviews.

Reconsideration of PUCO orders

- Requires PUCO to reconsider any order or determination it made under the law as amended by H.B. 166 regarding quadrennial and annual SEET reviews, and to issue new orders or determinations in compliance with this act's provisions.

Power Siting Board

- Requires the Power Siting Board to submit to the General Assembly, by December 1, 2021, a report, and any legislative recommendations, on whether current requirements for the planning of the power transmission system and associated facilities investment in Ohio are cost effective and in the interest of consumers.
- To complete the report, requires the Board to consult with JobsOhio and permits it to consult with, or be assisted by, PJM Interconnection Regional Transmission Organization L.L.C., PJM's independent market monitor, and other interested stakeholders, such as transmission owners.

H.B. 201

Primary Sponsor: Rep. Stephens

Effective date: September 30, 2021

- Guarantees that every person has the right to obtain:
 - Distribution service or retail natural gas service from a natural gas company capable of providing service to the person;
 - Competitive retail natural gas service from any competitive retail natural gas service supplier certified to provide that service to the person in that location; or
 - Propane from any energy dealer willing to provide propane to that customer in that location.
- Provides that the natural gas guarantees are:
 - Limited by public utilities law governing natural gas utilities and any regulations adopted under that law by the Public Utilities Commission (PUCO) and tariffs approved by PUCO; and
 - Subject to municipal corporation utility home rule authority granted under the Ohio Constitution.
- Provides that the propane guarantee is:
 - Limited by Ohio law governing propane, the Propane Council, and propane marketing, and any regulations adopted under that law by the Department of Agriculture; and
 - Subject to municipal corporation utility home rule authority granted under the Ohio Constitution.
- Bars any political subdivision, by ordinance, resolution, building code, contractual provision, or other requirement, from limiting, preventing, or prohibiting any consumer within its boundaries from using distribution services, retail natural gas service, or propane.
- Provides that, other than the limitations described above, a municipality's right to enter into and administer franchise agreements is not inhibited or restricted.
- States that the provisions establishing the guarantees and delineating political subdivision authority cannot prevent or limit a municipal corporation from exercising its authority regarding electric aggregation, securitization of electric distribution utility costs, and the PUCO's Federal Energy Advocate and the Advocate's duties.
- States that the provisions establishing the guarantees and delineating political subdivision authority cannot limit a natural gas company's ability to provide service to new customers or to require free extensions of service.

- Provides that the act promotes state policy to increase utilization of Ohio’s indigenous energy resources, promote the availability of natural gas goods and services, and encourage the utilization of propane.

S.B. 52

Primary Sponsors: Sens. Reineke and McColley

Effective date: October 11, 2021

County designations of restricted areas for utility facilities

- Allows a board of county commissioners to designate all or part of an unincorporated area of the county as a restricted area, prohibiting the construction of any or all of the following (collectively, known as “utility facilities”):
 - Economically significant wind farms;
 - Large wind farms;
 - Large solar facilities.
- Establishes a procedure for adopting a resolution establishing a restricted area, including notice requirements for a meeting at which the resolution will be discussed.
- Prohibits applications for a certificate, or material amendment, for a utility facility from the Power Siting Board (PSB) in a restricted area prohibiting the construction of that type of facility.
- Establishes a referendum and related requirements for the approval or rejection of a resolution of a board of county commissioners designating a restricted area.
- Defines “material amendment” as an amendment to an existing PSB certificate for a utility facility that does any of the following:
 - For a utility facility:
 - ❖ Changes the facility’s generation type from one type of utility facility to another;
 - ❖ Increases the facility’s nameplate capacity;
 - ❖ Changes the boundaries of the facility, unless the new boundaries are completely within the previous boundaries or the facility components outside the previous boundaries are underground.
 - For a large wind farm or economically significant wind farm:
 - ❖ Increases the number of wind turbines;
 - ❖ Increases the height of a wind turbine.
- Specifies the addition of a battery storage system to a utility facility does not constitute a material amendment.

County approval regarding utility facilities

- Requires a person, before applying for a PSB certificate, or material amendment to an existing certificate, for placement of a utility facility in the unincorporated area of a county, to hold a public meeting in each county where the facility is to be located.
- Requires the prospective applicant to provide certain information at the public meeting and to the board of county commissioners regarding the utility facility.
- Allows a board of county commissioners, no later than 90 days after receiving information about the utility facility at the public meeting, to adopt a resolution prohibiting its construction or limiting its geographic size.

PSB membership regarding utility facilities

- Requires that, for all applications pertaining to a certificate, or a material amendment to an existing certificate, for a utility facility, PSB must include two voting ad hoc members to represent the interests of the residents of the counties and townships where the utility facility is to be located.
- Requires the voting ad hoc members to be the chairperson of the board of township trustees and the president of the board of county commissioners of the township and county where the utility facility is to be located, or their designees.
- Stipulates that, if the utility facility is to be located in multiple townships or counties, a single voting ad hoc member will be chosen by a majority vote the boards of township trustees to represent all of those townships, and a single voting ad hoc member will be chosen by a majority vote of all the boards of county commissioners to represent all of those counties.
- Requires that a board of county commissioners and a board of township trustees designate one voting ad hoc PSB member each, not later than 30 days after receiving notice that an application to PSB for a certificate or amendment for a utility facility has been determined to be complete and accepted.

Ad hoc PSB member restrictions

- Prohibits, if a board of township trustees or board of county commissioners seeks to adopt a resolution to intervene in a power siting board case for which it is entitled to have a voting ad hoc member, the member who will serve as an ad hoc member from voting on the resolution to intervene unless they designate another as the ad hoc member.
- Prohibits present and former voting ad hoc PSB members from disclosing or using confidential information acquired in the course of official duties without appropriate authorization.
- Exempts voting ad hoc PSB members from limits on ex parte communications with any party to a PSB proceeding, but requires the ad hoc member and the party to disclose the date of the conversation and all participants in the conversation who are parties.

PSB certification process

- Requires PSB to notify boards of township trustees and boards of county commissioners that an application has been filed for a certificate, or a material amendment to an existing certificate, to construct a utility facility in their township or county.
- Prohibits PSB from granting a certificate, or material amendment, for a utility facility if the prospective applicant provided different information to the board of county commissioners for the public meeting regarding nameplate capacity, geographic area, and generation type than what PSB possesses.
- Prohibits PSB from granting a certificate, or a material amendment to an existing certificate, if the utility facility exceeds the limited boundaries set by the board of county commissioners by resolution.

Decommissioning requirements for wind and solar facilities

- Requires an applicant for a certificate, or a material amendment to an existing certificate, for a utility facility to submit a comprehensive decommissioning plan for the facility for PSB to review and approval 60 days before beginning construction.
- Requires the plan to be prepared by a professional engineer, designate the responsible parties for decommissioning, a schedule of decommissioning, and cost estimates.
- Requires the posting of a performance bond that meets certain requirements imposed by the act before construction may begin.

Pending certificates for utility facilities

- States that, for an application for a certificate, or a material amendment to an existing certificate, for a utility facility that has been filed with PSB, but has not been found to be in compliance with the application requirements and accepted, as of the act's effective date (October 11, 2021), the PSB must include voting ad hoc members.

Pending certificates for wind farms

- States that the act applies to any application for an economically significant wind farm or large wind farm that has been filed with PSB, but has not has been found to be in compliance with the application requirements and has not been accepted, by November 10, 2021 (30 days after the act's effective date).
- States that any application for such a wind farm is subject to review and approval by the board of county commissioners and the board has until January 10, 2022, to prohibit its construction or limit its size.

Pending certificates for large solar facilities

- States that applications for a certificate or material amendment to an existing certificate for a large solar facility are not subject to the act's provisions if, as of October 11, 2021:

- The facility is in the PJM Interconnection and Regional Transmission Organization, L.L.C. (PJM), New Services Queue;
- The application has been found to be in compliance with the application requirements by the PSB Chairperson (or the Chairperson's designee) and has been accepted by PSB; and
- The applicant has received a completed system impact study from PJM and has paid the filing fee for the facilities study to PJM.
- States that if a large solar facility meets the above requirements and has multiple positions in the New Services Queue under the same legal entity as an applicant, all the queue positions in effect on October 11, 2021, are exempt from the act.
- States that if, after October 11, 2021, the applicant files an additional new service request with PJM pertaining to the facility, the application is subject to review by the board of county commissioners of the county.
- States that if a large solar facility submits a new queue position for an increase in capacity interconnection rights after October 11, 2021, in order to participate in PJM's capacity market which does not increase the facility's nameplate capacity, the change does not subject the facility to the act.