Ohio Legislative Service Commission

Final Analysis

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Reps. Bolon, Book, Bubp, Celeste, Domenick, Driehaus, Evans, Fende, Garland, Garrison, Gerberry, Harris, Harwood, Hite, Koziura, Letson, McClain, Murray, Newcomb, O'Farrell, Otterman, Ruhl, Szollosi, Walter, B. Williams, Yuko

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ACT SUMMARY

Qualified energy project tax exemption

- Exempts from property taxation the tangible personal property of qualified energy projects, as certified by the Director of Development, that generate electricity from renewable energy resources, clean coal technology, advanced nuclear technology, and cogeneration technology.

- Specifies that the exemption does not apply to any facility used to supply electricity before December 31, 2009.

- Extends the tax exemption to the real property of an energy facility that is a qualified energy project for any tax year for which the tangible personal property tax for the same project is exempted.

- Requires a qualified energy project using renewable energy resources to meet the following conditions in order to be eligible for the property tax exemption:

  --On or before December 31, 2011, the owner or lessee of the project filed a Power Siting Board certificate, if applicable, or any other required approval, consent, permit, or certificate for the construction or initial operation of the project;

--Project construction must have begun on or after January 1, 2009, and before January 1, 2012;

--For projects of five megawatts or greater, a board of county commissioners of a county in which property of a qualified energy project is located has approved the exemption.

--Project property must be placed in service before 2013.

- Requires a qualified energy project using clean coal, advanced nuclear, or cogeneration technology to meet the following conditions in order to be eligible for the property tax exemption:

--For projects of five megawatts or greater, a board of county commissioners of a county in which project property is located has approved the exemption.

--Project property must be placed in service before 2017.

County approval of tax exemption

- Requires the Director of Development to notify counties and taxing units of energy projects with a nameplate capacity of five megawatts or greater.

- Requires a board of county commissioners to adopt a resolution to approve or reject a tax exemption application or to adopt a resolution providing ongoing approval.

- Permits a board of county commissioners to require service payments in addition to the mandatory service payments required under the act for such projects.

Qualified energy project certification

- Requires the Director of Development to certify an energy project as a qualified energy project if:

--An application is received before 2012 for projects using renewable energy resources, and before 2014 for projects using clean coal, advanced nuclear, or cogeneration technology;

--For projects of five megawatts or greater, the application was approved by a resolution of the board of county commissioners of at least one county in which the project is located; and

--No part of the project facility was used to supply electricity before December 31, 2009.

- Requires the Director to deny a certification application and authorizes the Director to revoke the certification of a qualified energy project if the owner or lessee fails to comply with any requirements of the act.

- Makes an energy project ineligible for exemption from taxation after revocation.

Criteria for qualified energy projects

- Requires owners and lessees of qualified energy projects to do the following:

  --Comply with applicable regulations;

  --File construction progress reports each year during construction or installation;

  --Employ a certain percentage of full-time equivalent employees domiciled in Ohio in the construction and installation of qualified energy projects;

  --File reports concerning the number of full-time equivalent employees, and the number of full-time equivalent employees domiciled in Ohio, employed during the construction and installation of the project;

  --For projects of five megawatts or greater, repair to preconstruction condition all roads, bridges, and culverts affected by the project;

  --Provide or facilitate training for fire and emergency responders in handling emergencies at the project, and, for projects of five megawatts or greater, provide proper equipment for their use in emergencies, at the owner's and lessee's expense;

  --Offer to sell power and renewable energy credits, unless exempted by the act, to electric distribution utilities or electric service companies that have issued requests for proposals for such power and credits, before selling to anyone else, with certain exceptions;

  --Make annual service payments between $6,000 and $9,000 per megawatt of nameplate capacity, depending on the type of project, for every year the project is exempt from taxation.

  --For projects of two megawatts or greater, cooperate with a state higher education institution or an apprenticeship program to educate or train persons for employment in wind or solar energy fields.

- Requires the Director of Development, and in consultation with the Tax Commissioner, to adopt rules to implement the provisions of the act.

Energy companies and energy facilities

- Creates, as a new class of public utility for taxation purposes, an energy company engaged in the business of generating, transmitting, or distributing electricity from an energy facility with an aggregate nameplate capacity of more than 250 kilowatts.

- Specifies that an owner or lessee of an energy facility with an aggregate nameplate capacity of 250 kilowatts or less is not supplying electricity to others and therefore is not a public utility for taxation purposes.

- Specifies that political subdivisions that own an energy facility, regardless of the facility's nameplate capacity, are not a public utility if the purpose of the facility is to supply electricity for the subdivision's own use.

Taxation of energy company and energy facility property

- Exempts from taxation any fixture or other real property included in an energy facility with a capacity of 250 kilowatts or less if construction or installation of the facility is completed on or after January 1, 2010.

- Specifies that, if an energy facility is installed or constructed on a portion of land valued at its Current Agricultural Use Value (CAUV), the remaining part of the land still qualifies for CAUV, and no tax savings recoupment charge applies, if the remaining portion of the tract continues to meet the qualifications for CAUV treatment.

- Specifies that the tangible personal property of an energy company, not exempted for tax years 2011 and thereafter, is taxable property if, on December 31 of the preceding year, the property was located in Ohio and was either owned or leased by the company.

- Specifies the true value of energy conversion equipment of an electric company, rural electric company, or energy company under the tax law and specifies the percentages at which the taxable property of conversion equipment and production equipment is assessed and in what proportions the taxable value is to be apportioned among taxing districts in which the property is physically located. (Energy conversion equipment generally is defined as tangible personal property connected to wind turbine towers, solar radiation collector areas, or any other property used to generate electricity from a renewable energy resource, clean coal technology, advanced nuclear technology, or cogeneration technology.)

- Exempts from the sales and use tax energy conversion equipment.

- Exempts from the annual public utilities excise tax the gross receipts of an energy company generating, transmitting, or distributing electricity from an energy facility with an aggregate nameplate capacity of more than 250 kilowatts, thus making the gross receipts subject to the commercial activity tax.

- Specifies that the cost of compliance calculated in determining whether an electric distribution utility or electric services company qualifies for an exemption from alternative-energy portfolio benchmarks should be calculated as though there were no tax exemption for a qualifying energy facility.

Alternative energy revolving loan program

- Expands the low-cost solar panel revolving loan program to include assisting owners of real property within a municipal corporation (rather than residents) with the installation and implementation of alternative energy technologies and energy efficiency technologies, products, and activities (instead of just solar panels) on their real property.

- Specifies that alternative energy technologies include solar photovoltaic or solar thermal energy, geothermal energy, and certain wind, biomass or gasification facilities defined in the act as customer-generated energy projects.

- Provides that energy efficiency technologies, products, and activities are those that reduce energy consumption, allow for the reduction in demand, or support the production of clean, renewable energy.

Special energy improvement projects within special improvement districts

- Expands the authority of a special improvement district to undertake special energy improvement projects to include wind energy projects, geothermal energy projects, biomass energy or gasification projects, and energy efficiency improvements.

- Permits special improvement district plans for public improvements and public services to include hiring consulting and energy auditing services and makes those services allowable plan costs.

PUCO study

- Requires the PUCO to conduct a study to review the condition of reactive power in Ohio and issue a report to the General Assembly not later than one year after the act's effective date.

Emergency

- Declares an emergency.

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CONTENT AND OPERATION

Property tax exemption of energy facilities

Continuing law subjects electric companies and rural electric companies to real and personal property taxation, commercial activity taxation, and, if the company

distributes electricity to end users in Ohio, to the kilowatt-hour tax, which is an annual tax measured by the number of kilowatt-hours distributed.

Qualified energy projects

(R.C. 5727.01(P) and (Q) and 5727.75(A), (B), and (C))

The act exempts from property taxation the real and tangible personal property of an energy project certified by the Director of Development as a qualified energy project. An energy project is defined to be a project to provide electric power through the construction, installation, and use of an "energy facility."

Energy facilities

(R.C. 5727.01 and 5727.75(B), (C), and (E))

An "energy facility" is one or more interconnected wind turbines, solar panels, or other tangible personal property used to generate electricity from an energy resource[1] owned by the same person. The facility includes all interconnection equipment, devices, and related apparatus connected to the tangible personal property; and all cables, equipment, devices, and related apparatus that connect the generators to an electricity grid or to a building or facility that directly consumes the electricity produced, that facilitate the transmission of electrical energy from the generators to the grid, building, or facility, and, where applicable, that transform voltage before ultimate delivery of electricity to the grid, building, or facility.

Also included in the definition of energy facility are buildings, structures, improvements, or fixtures exclusively used to house, support, or stabilize tangible personal property constituting the facility or that are otherwise necessary for the operation of that property; and so much of the land on which such tangible personal property is situated as is required for operation of the facility and is not devoted to some other use. In the case of wind turbines, the facility includes only up to one-half acre of land for each wind turbine. The land included in an energy facility need not be owned by the same person that owns or leases the tangible personal property.

Tax exemption application

To obtain a tax exemption, a person must apply to the Director of Development for certification of the energy project as a qualified energy project before 2012 for energy

[1] "Energy resource" means any of the following as defined or described in R.C. 4928.01: (1) renewable energy resource, (2) clean coal technology, (3) advanced nuclear technology, or (4) cogeneration technology. See "**Definitions**" at end of analysis.

projects using renewable energy resources, and before 2014 for energy projects using clean coal, advanced nuclear, or cogeneration technology.

County approval of tax exemption

The act requires the Director of Development to forward a copy of an application for an energy project with a nameplate capacity of five megawatts or greater to the board of county commissioners of each county in which the project is located and to each taxing unit with territory located in each of the affected counties. Within 30 days of receiving a copy of an application for the tax exemption (or within a longer period if authorized by the Director), a board must adopt a resolution to approve or reject the exemption. Alternatively, the board may adopt a resolution declaring the county to be an "alternative energy zone," providing for blanket approval of exemptions in the county for as long as the zone is in effect. The board may require in either resolution that annual service payments be made in addition to the mandatory service payments required by the act. The sum of the two payments may not exceed $9,000 per megawatt of nameplate capacity in the county. See "**Service payments in lieu of property taxes**" below. After the board adopts the resolution, it must send copies of the resolution by certified mail to the owner of the facility and the Director.

If a qualified energy project is located in more than one county and the board of county commissioners of one or more of the counties adopts a resolution rejecting a tax exemption for the project or fails to adopt a resolution to approve or reject the tax exemption, the exemption applies only to that part of the project that is physically located in a county whose board of county commissioners adopts a resolution approving the exemption.

Qualified energy project certification

The Director must certify a project if the application is timely submitted, no portion of the project facility was used to supply electricity before December 31, 2009, and, for projects with a nameplate capacity of five megawatts or greater, the exemption application was approved by a board of county commissioners of at least one county in which the project is located. The Director must deny a certification application if the project owner or lessee pursuant to a sale or leaseback transaction (hereinafter "owner or lessee") fails to comply with the act's requirements. Upon certifying a project, the Director must notify the owner or lessee, the Tax Commissioner, and the county auditor of the county in which the project is located. Notice must be provided in a manner convenient to the Director.

The tangible personal property of an energy project using renewable energy resources that is certified as a qualified energy project is exempt from taxation for tax years 2011 and 2012 if all of the following circumstances exist: (1) on or before

December 31, 2011, the owner or lessee obtained a certificate from the Power Siting Board if required, or if Power Siting Board law does not apply to the project, obtained any approval, consent, permit, or certificate or satisfied any condition required by a public agency or political subdivision for the construction or initial operation of an energy project, (2) on or after January 1, 2009, and before January 1, 2012, project construction has begun where the beginning of construction means the earlier of the date of application for approval, permit, or certification, or the date the construction contract is entered into, and (3) for projects of five megawatts or greater, a board of county commissioners in which the project is located approves the exemption application.

If the tangible personal property of a qualified energy project using renewable energy resources was exempt for tax years 2011 and 2012, the tangible personal property of the project is tax-exempt for tax year 2013 and all ensuing tax years if the property was placed into service before January 1, 2013, and the owner or lessee satisfies other statutory criteria (see "**Criteria for qualified energy projects**" below). Tangible personal property not placed into service before 2013 is subject to taxation.

Tangible personal property of an energy project using clean coal, advanced nuclear, or cogeneration technology that is certified as a qualified energy project is exempt from taxation for the first tax year the property would be listed for taxation and all subsequent years if the property is placed into service before January 1, 2017, and, for projects of five megawatts or greater, a board of county commissioners of a county in which property of the qualified energy project is located approves the exemption application.

Real property tax exemption

(R.C. 5727.75(D))

The act exempts from taxation real property of a qualified energy project for any tax year for which the tangible personal property of the project is exempted.

Criteria for qualified energy projects

(R.C. 5727.75(F))

To retain property tax exemption, the owner or lessee of a qualified energy project also must do each of the following:

(1) Comply with all "applicable" regulations.

(2)(a) Certify to the Director of Development construction progress reports. The report must be submitted on or before March 1 of each year during the project facility's

construction or installation, and must state the percentage of the project completed and the project's nameplate capacity as of the preceding December 31. The owner or lessee must also file a report with the Director on or before March 1 of each year after completion of construction or installation indicating the project's nameplate capacity as of the preceding December 31, unless otherwise instructed by the Director.

(b) For facilities placed in service before the act's effective date, certify to the Director the project's nameplate capacity not later than 60 days after its effective date.

(3) Maintain in the construction or installation of the project a ratio of Ohio-domiciled full-time equivalent employees to total full-time equivalent employees of 80% for solar energy projects, and 50% for all other energy projects. Total full-time equivalent employees equals the greater of the actual number employed or the number estimated in the application submitted to the Power Siting Board or, if Power Siting Board approval is not required, as estimated by the Director of Development using a generally accepted job-estimating model in use for renewable energy projects.

(4) File with the Director of Development, at the time and in the manner prescribed by the Director, a report of the total number of full-time equivalent employees, and the total number of full-time equivalent Ohio-domiciled employees employed in the construction and installation of the facility.

(5) For projects of five megawatts or greater, repair all roads, bridges, and culverts affected by the construction as reasonably required to restore them to their preconstruction condition as estimated by the county engineer in consultation with the local jurisdiction responsible for them. If the county engineer determines that any road, bridge, or culvert is inadequate to support a facility's construction or decommissioning, the engineer may require the facility owner or lessee to reinforce or rebuild the road, bridge, or culvert to specifications. The facility owner or lessee is required to post two bonds, one to ensure funding for repairs after the facility's construction and the other to ensure funding for repairs after the facility's decommissioning. The first bond is to be held by the board of county commissioners and must be released not later than one year after repairs have been completed. The act does not specify who is to hold the second bond or when it must be released. The act authorizes the facility owner or lessee and the county engineer to enter into an agreement regarding transportation plants, reinforcements, modifications, use and repair of roads, financial security to be provided, and other relevant issues.

(6) Provide or facilitate training for fire and emergency responders for response to emergency situations related to the qualified energy project and, for projects of five megawatts or greater, at the person's expense, equip the fire and emergency responders

with proper equipment as reasonably required to enable them to respond to such emergency situations.

(7) Offer to sell power or renewable energy credits from the qualified energy project to electric distribution utilities or electric services companies that are subject to current law's renewable energy resource requirements[2] and that have issued requests for proposal for such power or renewable energy credits. If no electric distribution utility or electric services company has issued a request for proposal on or before December 31, 2010, or accepts an offer for power or renewable energy credits within 45 days after the offer is submitted, power or renewable energy credits from the qualified energy project may be sold to other persons. The requirements for selling power or credits do not apply if the owner or lessee (1) is a rural electric company or a municipal power agency,[3] (2) is a person that, before completion of the qualified energy project, contracted for the sale of power or credits with a rural electric company or a municipal power agency, or (3) contracts for the sale of power or credits from the project before the act's effective date.

(8) Make annual service payments to local taxing units in lieu of property taxes otherwise due (see "**Service payments in lieu of property taxes**" below).

Certificate revocation

(R.C. 5727.75(B)(2) and (C))

If the Director of Development determines that an owner or lessee of a qualified energy project has failed to meet any of the foregoing conditions that apply to the project, the Director may revoke the project's certification. Revocation terminates the tax exemption beginning with the tax year following the year in which revocation occurs, and the project is not eligible for further exemption. Revocation does not affect the tax-exempt status of a project for the year in which revocation occurs or prior years. Upon revocation, the Director must notify the owner or lessee, the Tax Commissioner, and the county auditor of the county in which the project is located. Notice may be provided in a manner convenient to the Director.

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[2] Am. Sub. S.B. 221 of the 127th General Assembly enacted benchmarks that electric distribution utilities and electric services companies must meet so that a certain portion of their electricity supply comes from alternative energy resources that include advanced energy resources and renewable energy resources. Electric distribution utilities and electric services companies may purchase renewable energy resource credits to meet the benchmarks.

[3] "Municipal power agency" means any Ohio nonprofit corporation, the members of which are municipal corporations that own and operate electric utility systems, that sells electricity to its members for resale. (R.C. 3734.058.)

Service payments in lieu of property taxes

(R.C. 5727.75(G))

The owner or lessee of a qualified energy project that is exempted from property taxation is required to make "service" payments in lieu of taxes. The amount of the payments is based on the project facility's nameplate megawatt capacity. In the case of energy projects other than solar energy projects, the amount of the payments also depends on the percentage of project construction and installation employees who are domiciled in Ohio. Payments are to be made to the county treasurer on or before the final dates for payment of taxes on public utility personal property for each tax year for which project property is exempt (i.e., December 31 and June 20, or as extended). Payments are to be distributed to taxing units on the basis of where the property is located.

For a solar energy project, the payment for tax years 2011 and 2012 each equals $7,000 per megawatt of nameplate capacity as of the preceding December 31. For tax years 2013 and thereafter the payment is based on the project's nameplate capacity as of December 31, 2012.

For all other energy projects, the payment for a tax year equals one of the following amounts, scaled according to Ohio-resident construction and installation employment ratios:

(1) $6,000 per megawatt of nameplate capacity as of the preceding December 31, if the Ohio-domiciled full-time equivalent employee to total full-time equivalent employee ratio is at least 75%;

(2) $7,000 per megawatt of nameplate capacity as of the preceding December 31, if the ratio is less than 75% but at least 60%;

(3) $8,000 per megawatt of nameplate capacity as of the preceding December 31, if the ratio is less than 60% but at least 50%.

Additional payments may be imposed by a board of county commissioners (see "**County approval of tax exemption**," above).

Rule adoption

(R.C. 5727.75(H))

The act requires the Director of Development, in consultation with the Tax Commissioner, to adopt rules to implement and enforce the exemption requirements.

The rulemaking procedure is to be governed by the Administrative Procedure Act (R.C. Chapter 119.).

Energy companies

(R.C. 5727.01 and 5727.02)

Continuing law subjects public utilities to property and excise taxation assessed under Chapter 5727. of the Revised Code. Public utilities include three types of electric companies: (1) an "ordinary" electric company, defined as a company engaged in the business of generating, transmitting, or distributing electricity within Ohio for use by others, (2) a rural electric company, defined as a nonprofit company that supplies electricity to its members, the majority of which are located in rural areas, and (3) a combined company, which is an electric or rural electric company that also engages in heating or natural gas business.

The act creates an "energy company" as a new type of electricity-related public utility. An energy company is defined to be a person engaged in the business of generating, transmitting, or distributing electricity in Ohio for use by others from an energy facility with an aggregate nameplate capacity in excess of 250 kilowatts.[4] (See "**Energy facilities**," above.)

Continuing law subjects a company that engages in the "supplying of electricity" (i.e., generating, transmitting, or distributing electricity) to public utility taxation as an electric company or a rural electric company with respect to that activity, if supplying electricity is incidental to the company's primary business.

The act states that a company is not considered to be "supplying electricity"--and therefore is not to be taxed as a public utility--if it owns or leases as a lessor or lessee energy facilities with an aggregate nameplate capacity in Ohio of 250 kilowatts or less, even if the company engages in "net metering."[5] The act also states that an Ohio county, township, municipal corporation, or other local body responsible for government activities that owns an energy facility is not considered to be "supplying electricity" regardless of the facility's nameplate capacity if the primary purpose of the facility is to supply electricity for its own use.

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[4] "Nameplate capacity" is defined as the original interconnected maximum rated alternating current output of a generator or other electric production equipment under specific conditions designated by the manufacturer, expressed in the number of kilowatts or megawatts.

[5] "Net metering" means measuring the difference between the electricity supplied by an electric service provider and the electricity generated by a customer-generator that is fed back to the electric service provider. (R.C. 4928.01(A)(30).)

Taxation of energy company and energy facility property

Taxation of public utility personal property involves defining what constitutes taxable property, establishing its "true" value, deriving from true value its taxable value (i.e., applying an assessment percentage as specified by law), and allocating the taxable value among taxing jurisdictions.

Taxable property

(R.C. 5727.06(A)(6))

Continuing law defines the taxable personal property of an electric company for a tax year as the property that, on December 31 of the preceding year, was both located in Ohio and was owned by the electric company or leased by it through a sale and leaseback transaction.

The act defines the taxable personal property of an energy company in the same manner but states that, if the property qualifies as part of a qualified energy project, it is not taxable.

Valuation

(R.C. 5727.01(O) and 5727.11(D))

Generally, under ongoing law the true value of electric company tangible personal property equals the cost as capitalized on the company's books and records less composite annual allowances as prescribed by the Tax Commissioner.[6] If the electric company leases the property under a sale and leaseback transaction, the true value of the property is the property's cost as capitalized on the company's books and records immediately before the sale-leaseback transaction.

Under the act, the same valuation methods apply to tangible personal property of an energy company and also to energy conversion equipment of an electric company. The act defines "energy conversion equipment" as tangible personal property connected to a wind turbine tower, connected to and behind solar radiation collector areas and designed to convert the radiant energy of the sun into electricity or heat, or connected to any other property used to generate electricity from an energy resource, through which electricity is transferred to controls, transformers, or power electronics and to the

[6] The true value of electric company production equipment and all taxable property of a rural electric company placed into service before October 6, 1999, equals 50% of the property's cost as capitalized on the electric company's or rural electric company's books and records. Production equipment is, generally, production plant equipment used to generate electricity. (R.C. 5727.01(J).)

transmission interconnection point. It includes inverters, batteries, switch gears, wiring, collection lines, substations, ancillary tangible personal property or any lines and associated tangible personal property located between substations and the transmission interconnection point.

The act also expands the definition of "production equipment" to include "renewable resources" and "clean coal technology" (see "**Definitions**" at end of analysis).

Assessment rates

(R.C. 5727.111)

Under continuing law, an electric company's taxable transmission and distribution property is assessed at 85% of true value, and all other taxable property is assessed at 24% of true value. A rural electric company's taxable transmission and distribution property is assessed at 50% of true value, and all other taxable property is assessed at 25% of true value.

The act establishes assessment rates for taxable energy conversion equipment at 50% of true value for rural electric companies and 85% for electric companies or energy companies. The act establishes assessment rates for taxable production equipment of an energy company at 24% of true value, and all other taxable energy company property at 85% of true value.

Apportionment of taxable value among taxing districts

(R.C. 5727.15)

Continuing law apportions the taxable value of electric company production equipment to the taxing district where the property is physically located. All other taxable property of an electric company is apportioned according to the percentage of the total cost of such property (in Ohio) that is located in the taxing district. The taxable property of a rural electric company is apportioned in the same manner as the "other" property (i.e., nonproduction equipment) of an electric company.

The act apportions the taxable value of energy conversion equipment of an electric company in the same manner as the electric company's nonproduction equipment. The act apportions the taxable value of property of an energy company in the same manner as that of an electric company.

Real property tax exemption for facilities of 250 kW or less

(R.C. 5709.53)

The act exempts from property taxation any fixture or real property included in an energy facility that has an aggregate nameplate capacity of 250 kilowatts or less if construction or installation of the property is completed on or after January 1, 2010.

Energy facilities located on agricultural land

(R.C. 5713.30 and 5713.34)

Continuing law allows an owner of land devoted to agricultural use to have the land valued for property tax purposes at the current value such land has for agricultural use (CAUV). If the land is converted to a non-agricultural use, a portion of the tax savings authorized for the land is recouped by levying a charge in an amount equal to the tax savings on the converted land during the three tax years immediately preceding the year in which the conversion occurs.

The act specifies that if an energy facility is constructed or installed on a portion of a tract, lot, or parcel of CAUV land, the remaining part of the land will not be considered a conversion of agricultural land if it continues to qualify as CAUV land. The act also prohibits levying a recoupment charge for conversion of a portion of a CAUV land if the conversion is incident to the construction or installation of an energy facility and the remaining portion of the land continues to qualify as CAUV land.

Application of public utilities excise tax and commercial activities tax

(R.C. 5727.30(B))

Continuing law exempts an electric company and a rural electric company from the annual public utilities excise tax. Such companies are subject to the commercial activity tax.

The act exempts energy companies from the public utilities excise tax and subjects them to the commercial activity tax.

Sales and use tax exemption

(R.C. 5739.02(B)(40))

Continuing law exempts from sales and use taxation sales of goods or services to a company that supplies electricity if the goods or services are consumed in the process of supplying electricity.

The act specifies that sales or use of energy conversion equipment is also exempt under the same circumstances.

Renewable portfolio standard cost of compliance

(R.C. 4928.64(C)(3))

Continuing law states that electric distribution utilities or electric services companies need not comply with the alternative energy resource portfolio standards requiring them to provide a specified portion of their electricity supply from alternative energy resources to the extent that the reasonably expected cost of compliance exceeds, by 3% or more, their reasonably expected cost of otherwise producing or acquiring the requisite energy.

The act specifies that the cost of compliance must be calculated as though the property tax exemptions granted under the act for qualified energy projects had not been granted.

Low-cost alternative energy revolving loan program

(R.C. 717.25)

Program parameters

Current law authorizes municipal corporations to establish a low-cost solar panel revolving loan program to assist residents of the municipal corporation to install solar panels at their residences and to pay the loan through special assessments on the property.

The act expands the authority to permit such loans for all owners of real property within the municipal corporation (instead of just residents) and for a variety of alternative energy technologies (instead of just solar panels) or energy efficiency technologies, products, and activities.

Under the act, alternative energy technologies include solar photovoltaic and solar thermal energy projects, geothermal energy projects, and customer-generated energy projects. A "customer-generated energy project" means a wind, biomass, or gasification facility for the generation of electricity that satisfies either of the following:

(1) It is designed to have a generating capacity of 250 kilowatts of electricity or less;

(2) It is designed to have a generating capacity of more than 250 kilowatts of electricity and is operated in parallel with electric transmission and distribution

facilities, is intended primarily to offset requirements for electricity at the site, is located on the facility owner's real property, and is not producing energy for direct sale to the public.

Energy efficiency technologies, products, and activities are those that reduce or support the reduction of energy consumption, allow for the reduction in demand, or support the production of clean, renewable energy.

Under the act "reduction in demand" is a change in customer behavior or a change in customer-owned or -operated assets that reduces or has the capability to reduce the demand for electricity as a result of price signals or other incentives.

Special improvement districts

Continuing law authorizes the creation of "special improvement districts" to provide for the development and financing of public improvements or services or "special energy improvements." The districts are created by petition of property owners, who must obtain approval of the petition by the local government. Improvements and services are funded by special assessments levied against property in the district.

Expansion of special energy improvement projects definition

(R.C. 1710.01(I) and (K))

Under prior law, a "special energy improvement project" included any property, device, structure, or equipment necessary for the acquisition, installation, equipping, and improvement of any real or personal property used for the purpose of creating a solar photovoltaic project or a solar thermal energy project, whether such real or personal property is publicly or privately owned.

The act expands the definition of such projects to include: (1) a geothermal energy project, (2) a customer-generated energy project, or (3) an energy efficiency improvement. The definitions of "customer-generated energy project" and "energy efficiency improvement" are substantively identical to similar terms used in municipal revolving loan program described above.

Special energy improvement project assessment period

(R.C. 1710.02(F))

Under prior law, after an initial plan for a special improvement district is approved and the district is created, each participating municipal corporation or township must levy a special assessment to pay for the costs of the plan. If the levy

proceeds are to be used for a special energy improvement project, the levy for the assessment may not be more than 25 years on any property.

The act extends the maximum period for which special assessments may be levied for such projects to 30 years.

District plans for public improvements or public services

(R.C. 1710.06 and 1710.07)

Under continuing law, the board of directors of a special improvement district may develop and adopt one or more plans for public improvements or public services that benefit all or part of the district. The plans for public improvements may include the planning, design, construction, reconstruction, enlargement, or alteration of any public improvements and the acquisition of land for the improvements. Plans for public improvements or services may also include, among other things, a provision permitting the planning, designing, and implementing of the public improvements or public services plan, including hiring architectural, engineering, legal, appraisal, insurance and planning services, and, for public services, managing, protecting, and maintaining public and private facilities, including public improvements.

The act adds hiring consulting and energy auditing services as part of the plan and adds the payment of their fees and expenses to the allowable costs. It also permits a plan to include a provision for aggregating the renewable energy credits generated by one or more special energy improvement projects within a district upon consent of the owners of the credits and for the purpose of negotiating and completing the sale of the credits.

Energy efficiency and peak demand reduction savings counted toward benchmarks

(R.C. 717.25(D) and (E), 1710.01, and 1710.061(A) and (B))

Continuing law requires electric distribution utilities to implement energy efficiency and peak demand reduction programs to meet increasing energy efficiency savings and peak demand reduction benchmarks.[7] The energy efficiency programs must achieve a cumulative annual energy savings in excess of 22% by the end of 2025,

[7] An "electric distribution utility" provides electric service in Ohio and at least retail electric distribution service. (R.C. 4928.01.)

and the peak demand reduction programs must achieve a reduction in peak demand beginning at 1% for 2009 increasing by a reduction of .75% for each year through 2018.[8]

Savings under the low-cost alternative energy revolving loan program

The act permits an electric distribution utility to count toward meeting the benchmarks any energy efficiency savings or any reduction in demand that is produced by projects utilizing alternative energy technologies or energy efficiency technologies, products and activities that are located in its certified territory and for which an alternative energy revolving loan has been made.

The act also allows a mercantile customer[9] that realizes energy efficiency savings or reduction in demand produced from these technologies, products, or activities that it owns and through which an alternative energy revolving loan has been made to elect to commit to the electric distribution utility the savings or reduction. In exchange for committing the savings or reduction, the mercantile customer may receive an exemption from an energy efficiency cost recovery mechanism permitted under the energy efficiency and peak demand reduction law.

Savings from a special energy improvement project

Similarly, the act permits an electric distribution utility to count toward meeting the benchmarks any energy efficiency savings or any reduction in demand that is produced by a special energy improvement project located in a SID its certified territory. The act allows a mercantile customer that realizes energy efficiency savings or reduction in demand produced by a special energy improvement project that it owns to elect to commit the savings or reduction to the electric distribution utility. In exchange for committing the savings or reduction, the mercantile customer may receive the same benefits described above.

Reports to electric distribution utilities

(R.C. 717.25(F) and 1710.061(C))

The act requires each municipal corporation that makes low-cost alternative energy loans and each special improvement district with a special energy improvement project to submit quarterly reports to the appropriate electric distribution utility. In the case of a municipal corporation, the report must include the total number and a

[8] R.C. 4928.66.

[9] "Mercantile customer" means an industrial or commercial customer if the electricity is consumed for nonresidential use and the customer consumes more than 700,000 kwh per year or is part of a national account involving multiple facilities in one or more states. (R.C. 4928.01.)

description of each new and ongoing project utilizing alternative energy technologies or energy efficiency technologies, products, or activities located in the utility's certified territory that produces energy efficiency savings or reduction in demand and for which a loan has been made from the alternative energy revolving loan fund. With respect to a SID, the report must include the total number and a description of each new and ongoing special energy improvement project located in the district that produces energy efficiency savings or reduction in demand. In both cases, the reports must include any additional information that the electric distribution utility needs to obtain credit for the energy efficiency savings and reduction in demand from the project.

Reactive power study

(R.C. 4935.10)

The act requires the Public Utilities Commission to conduct a study to review the condition of reactive power[10] in Ohio. Not later than one year after the act's effective date, the Commission must issue a report of its findings to the General Assembly.

Emergency

(Section 3)

The act declares an emergency, causing the act to have an immediate effective date and exempting it from the 90-day referendum period.

Definitions

The act employs the following terms, which are defined by existing law (R.C. 4928.01).

"Renewable energy resource" includes solar photovoltaic or solar thermal energy, wind energy, power produced by a hydroelectric facility, geothermal energy, fuel derived from solid wastes, biomass energy, biologically derived methane gas, or energy derived from nontreated by-products of the pulping process or wood manufacturing process, and also includes any fuel cell used in the generation of electricity, a storage facility that will promote the better utilization of a renewable energy resource that primarily generates off peak; or a distributed generation system used by a customer to generate electricity from any such energy.

[10] Reactive power is necessary for the operation of motors and other devices and is necessary to maintain voltage levels in power lines. A shortage of reactive power can cause a brownout or blackout during peak power use periods.

"Clean coal technology" includes a carbon-based product that is chemically altered before combustion to demonstrate a reduction, as expressed as ash, in emissions of nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or sulfur trioxide in accordance with the American Society of Testing and Materials standard D1757A or a reduction of metal oxide emissions in accordance with standard D5142 of that society, or clean coal technology that includes the design capability to control or prevent the emission of carbon dioxide, which design capability the commission must adopt by rule and must be based on economically feasible best available technology or, in the absence of a determined best available technology, shall be of the highest level of economically feasible design capability for which there exists generally accepted scientific opinion.

"Advanced nuclear technology" includes technology consisting of generation III technology as defined by the federal Nuclear Regulatory Commission; other, later technology; or significant improvements to existing facilities.

"Cogeneration technology" includes any distributed generation system consisting of customer cogeneration of electricity and thermal output simultaneously, primarily to meet the energy needs of the customer's facilities.

HISTORY

ACTION	DATE
Introduced	02-24-10
Reported, S. Energy & Public Utilities	05-13-10
Passed Senate (28-4)	05-18-10
Reported, H. Ways & Means	06-03-10
Passed House (91-7)	06-03-10
Senate concurred in House amendments (27-5)	06-03-10

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