



# Ohio Legislative Service Commission

## Bill Analysis

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### **Am. Sub. H.B. 113** 128th General Assembly (As Passed by the House)

**Reps.** Foley and Blessing, Celeste, Skindell, Morgan, Harris, Evans, Snitchler, Pillich, Mecklenborg, Murray, Phillips, Combs, Grossman, Harwood, Newcomb, McGregor, Chandler, Oelslager, Yates, Ujvagi, Weddington, Stewart, Yuko, Stebelton, J. Adams, Bacon, Hagan, Baker, Batchelder, Belcher, Bolon, Boose, Boyd, Brown, Bubb, Carney, DeBose, Domenick, Driehaus, Dyer, Garland, Goodwin, Goyal, Hackett, Heard, Koziura, Lehner, Letson, Luckie, Lundy, Mallory, Patten, Pryor, Szollosi, Uecker, B. Williams, S. Williams, Winburn

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## **BILL SUMMARY**

- Permits a board of education to enter into an installment payment contract and issue notes for renewable energy generation measures in the same manner as for energy conservation measures, but only if the board determines the 30-year savings from the measures are greater than the costs.
- Sets at 30 years the time period by which the balance for installment contracts entered into by a board of education for renewable energy generation measures must be paid.
- Sets at 30 years the maximum maturity period for securities issued for school district renewable energy generation measures.
- Permits an installment payment contract to provide for the seller to retain title to renewable energy generation equipment for part or all of the term of the contract.
- Allows a board to determine by resolution that competitive bidding requirements do not apply to installment payment contracts for renewable energy generation measures, including renewable energy systems.
- Creates a Renewable Energy Schools Pilot Program for Ohio school districts with a student enrollment of 5,000 or more and requires those districts to install on, in, or proximate to district schools, buildings, or other facilities renewable energy systems (systems providing electricity from renewable energy resources).

- Requires the renewable energy systems to equal a minimum total of 250 kilowatts for districts with student enrollment of 5,000 to 10,000 and a minimum total of 500 kilowatts for districts with student enrollment over 10,000.
- Requires each district in which a renewable energy system is installed to set up in certain locations for curriculum purposes educational installations or demonstration modules.
- Establishes a request for proposals (RFP) process under which a board may obtain proposals for the installation of renewable energy systems under the pilot program and requires RFP respondents to be eligible renewable energy installers under Ohio's Advanced Energy Program administered by the Ohio Energy Office.
- Requires RFP respondents to show how they will meet the electricity requirements of the bill in an economic manner regarding the reasonably forecasted retail rate of electricity payable by the district over a 30-year period.
- Requires preference to be given to proposals having Ohio-manufactured system components.
- Permits a board, in the event no economic renewable energy system proposal is timely received, to either (1) withdraw its RFP and not participate in the pilot program or (2) comply with the pilot program requirements as closely as possible.
- Provides that a renewable energy system contracted for under the RFP may be directly owned by (1) the district and paid for pursuant to an installment payment contract or (2) a third-party provider that owns, operates, and maintains the system.
- Provides that a renewable energy system contract entered into with a third-party provider may include terms permitting the district to purchase the system.
- Provides that a renewable energy system contract must include certain contract termination provisions and prohibits such contract from having a term longer than the warranty period for the system to be installed.
- Requires each third-party provider that has contracted with a board under the bill to submit three annual pilot program status reports to the Ohio Energy Office no later than June 30 of 2010, 2011, and 2012.
- Requires the Office to submit three annual status reports to the Speaker and Minority Leader of the House, and the President and Minority Leader of the Senate no later than December 31 of 2010, 2011, and 2012.

- Permits the Office to include in its reports recommendations as to whether the pilot program should be expanded to permit more districts to participate in the program.
- Requires the General Assembly to conduct an evaluation of the pilot program at the end of the three-year period.
- Prohibits boards from purchasing renewable energy resource credits to meet the bill's electricity requirements.
- Adds assistance for renewable energy generation measures, including renewable energy systems, to the advanced energy projects for which districts may receive assistance without it being included as part of the district or state portion of the basic project cost of a school building project under Ohio's school facilities assistance programs.
- Changes, within the definition of energy conservation measures, the reference to cogeneration systems to include systems that produce or generate steam or forms of energy such as heat, as well as electricity, for use on the premises or in conjunction with a net metering system.

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## **CONTENT AND OPERATION**

### **Energy conservation and renewable energy generation installment payment contracts**

(R.C. 3313.372)

Under current law, boards of education of city, exempted village, local, or joint vocational school districts may enter into installment payment contracts for the purchase and installation of energy conservation measures. Such measures include, for example, energy recovery systems and cogeneration systems.<sup>1</sup> The bill expands the law to permit school district boards of education to enter into installment payment contracts for the purchase and installation of renewable energy generation measures. Under the bill, a "renewable energy generation measure" means an installation or modification of

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<sup>1</sup> An "energy conservation measure" is an installation or modification of an installation in, or remodeling of, a building, to reduce energy consumption and also includes insulation of the building structure and systems within the building; various types of window and door modifications that reduce energy consumption, including storm windows and doors; automatic energy control systems; heating, ventilating, or air conditioning system modifications or replacements; caulking and weatherstripping; replacement or modification of light fixtures to increase energy efficiency; and any other modification, installation, or remodeling approved by the Ohio School Facilities Commission (SFC) as an energy conservation measure (R.C. 3313.372(A)(1)).

an installation in, or remodeling of, a building, or installation of equipment on, in, or proximate to a building, to generate electricity from renewable energy resources.<sup>2</sup> The bill also changes the description of a cogeneration system within the definition of an energy conservation measure to include systems that produce or generate steam or forms of energy such as heat, as well as electricity, for use on the premises or in conjunction with a net metering system.<sup>3</sup>

### **Installment payment contract requirements**

(R.C. 133.06(G) and 3313.372(E))

Under current law applicable to energy conservation measures, before entering into an energy conservation installment contract, the district is required to do the following: (1) obtain a report estimating the costs of the energy conservation measures and the savings in energy costs, (2) make a finding that the amount spent on such measures is not likely to exceed the amount of money the district would save in energy costs and resultant operational and maintenance costs over the ensuing 15 years, and (3) submit to the School Facilities Commission (SFC) a copy of its findings and a request for approval to incur indebtedness to finance the energy conservation measures for the purpose of significantly reducing energy consumption. The SFC must approve the installment payment contract if it determines that the district board's findings are reasonable.

The bill establishes different requirements for installment contracts for renewable energy generation measures. Before entering into an installment payment contract for the purchase and installation of renewable energy generation measures, the district board must determine that the amount spent on renewable energy generation measures is not likely to exceed the amount of money the district would save in energy costs and

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<sup>2</sup> As used in the bill, renewable energy resources include, for example, solar photovoltaic or solar thermal energy, wind energy, power produced by certain hydroelectric facilities, geothermal energy, and biomass energy (R.C. 4928.01(A)(35)).

<sup>3</sup> R.C. 3313.372(A)(8) currently includes, as an energy conservation measure, "cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings."

Although the bill does not define "net metering system," such a system, as defined in R.C. Chapter 4928., is a system through which a customer-generator pays the difference in an applicable billing period between the electricity supplied by an electric utility and the electricity generated by the customer-generator that is fed back to the electric utility. It is a facility for the production of electricity that does all of the following: (1) uses as its fuel either solar, wind, biomass, landfill gas, or hydropower, or uses a microturbine or a fuel cell, (2) is located on the customer generator's premises, (3) operates in parallel with the electric utility's transmission and distribution facilities, and (4) is intended primarily to offset part or all of the customer-generator's requirements for electricity. (R.C. 4928.01(A)(30) and (31).)

resultant operational and maintenance costs over the ensuing 30 years. If the board determines the 30-year savings are greater than the costs, it may choose one of the following options: (1) elect not to incur indebtedness to finance renewable energy generation measures, or (2) submit to the SFC a request for approval to incur debt to finance renewable energy generation measures. If the SFC determines that the request is reasonable, it must approve the request. Upon receipt of approval, the district may issue securities to finance renewable energy generation measures through installations, modifications, or remodeling.

### **Duration of installment payment contracts**

(R.C. 133.20 and 3313.372(B))

Current law requires 1/15 of the costs of a school district installment payment contract for energy conservation measures to be paid within two years from the date of purchase and the remaining balance of the costs to be paid within 15 years from the date of purchase. The bill applies similar repayment requirements to renewable energy generation measures but, extends the repayment period for a contract. The bill requires 1/30 of the costs of a contract for renewable energy generation measures to be paid within two years from the date of purchase and sets at 30 years the period by which the remaining balance must be paid. In addition, a contract may provide for the seller to retain title to renewable energy generation equipment for part or all of the term of the contract.

Current law lists the maximum maturity period for securities issued for permanent improvements and other improvements for certain purposes. In the case of securities issued for school district energy conservation measures, the maximum maturity period must not exceed 15 years. In contrast, the bill establishes the maximum maturity period of 30 years for securities issued for renewable energy generation measures.

### **Possible exemption from competitive bidding requirements**

(R.C. 3313.372(B) and 3313.46(B)(3))

Current law exempts school district boards from competitive bidding requirements such as the requirements regarding advertising for bids if the board declares by resolution in a two thirds vote of all its members that these requirements do not apply to any installation, modification, or remodeling of an energy conservation measure undertaken through an installment payment contract or the issuance of debt. The bill applies this provision to a renewable energy generation measure, including a renewable energy system, and thus allows a board to adopt a resolution declaring that

the bidding requirements do not apply to their installation, modification, or remodeling undertaken through an installment payment contract or the issuance of debt.

### **School district debt for renewable energy generation measures**

(R.C. 133.06(G) and 3313.372(C) and (D))

Generally current law states that a school district's unvoted net indebtedness (debt that may be incurred without approval of the district's voters) is limited to not more than 1/10 of 1% of the district's tax valuation. However, continuing law provides for a few exceptions. Among them is the authority of a district to incur unvoted debt of up to an additional 9/10 of 1% of its tax valuation for the purchase and installation of energy conservation measures approved by the SFC. The bill expands that authority to permit school district boards of education to incur unvoted debt for the installation of renewable energy generation measures. Unchanged is the current law requirement that total indebtedness of the district without a vote of the electors incurred under this provision and all others under the Revised Code (except for classroom facilities projects under Revised Code section 3318.052) must not exceed 1% of the district's total tax valuation.

Current law also permits a school district board to issue notes specifying the terms of purchase and securing the deferred payments under an installment contract for energy conservation measures. In the resolution authorizing the notes, the board may provide for the levy and collection of taxes to pay interest on and retire the notes without a vote of the electors, except that the total net indebtedness limitation (as described immediately above) may not be exceeded. In addition, any revenues derived from local taxes or otherwise for purposes of energy conservation measures may be used to pay the interest on, and retire the notes. Any debt incurred pursuant to an installment payment contract for energy conservation measures is not includable in the net indebtedness limitation imposed on school districts. The bill makes all these provisions applicable regarding renewable energy generation measures.

### **Renewable Energy Schools Pilot Program**

(R.C. 3313.377(A) and (B)(1))

The bill creates a Renewable Energy Schools Pilot Program for school districts in the state with student enrollment of 5,000 or more. The pilot program requires these districts, within three years after the bill's effective date, to install one or more renewable energy systems on district property. Under the bill, a "renewable energy system" means a system providing electricity produced from renewable energy resources.

The pilot program establishes a two-tiered requirement. Districts with student enrollment of 5,000 to 10,000 must install a renewable energy system equal to a minimum total of 250 kilowatts for the district. Districts with student enrollment over 10,000 must install a renewable energy system equal to a minimum total of 500 kilowatts for the district. The bill specifies that districts may meet this requirement by installing a renewable energy system on, in, or proximate to schools or other buildings or facilities belonging to the district. The bill also requires the board of education of each district participating in the pilot program to designate the particular schools, buildings, or other facilities that must install renewable energy systems.

### **Request for proposals**

(R.C. 3313.377(B)(3)(a))

A district board of education, in order to meet the electricity requirement of the bill, must submit a request for proposals (RFP) to be published in a newspaper of general circulation in the district once each week for at least two consecutive weeks prior to the deadline set by the board for receiving proposals. The RFP must include a general description of the proposed contract to install one or more renewable energy systems.

Under the bill, respondents to the RFP must be among those listed as eligible renewable energy installers by the Ohio Energy Office within the Department of Development for the Advanced Energy Program. They must describe how their proposals meet the bill's electricity requirements in a manner that would be economic for the district regarding the reasonably forecasted retail rate of electricity payable over a 30-year period.

### **Preference for systems with Ohio manufactured components**

(R.C. 3313.377(B)(3)(b))

When a board selects a proposal for its pilot program contract, it must take into consideration the amount of the system components that would be manufactured in Ohio. In addition, the district must give preference to the proposal that includes the most components manufactured in Ohio.

### **Compliance exception**

(R.C. 3313.377(B)(3)(c))

If, within 90 days, the board determines that no proposals have been received that allow the board to enter into a contract for electricity that would be economic as described above, with the result that the district is not able to comply with the



electricity requirements of the pilot program, the district may follow one of two options. The district may comply with the requirement as closely as possible, or it may withdraw the RFP and elect not to participate in the pilot program.

### **Pilot program contracts**

(R.C. 3313.377(C))

After completing the RFP process and selecting a proposal, the board of education of a district participating in the pilot program must provide for the installation of a renewable energy system on the property of each designated school, building, or other facility in the district (see "**Request for proposals**"). The board may provide for a renewable energy system in one of two ways: by direct ownership of the system or by hosting the system pursuant to a contract with a third-party provider (other than the board). In the case of direct ownership of the system, the board may enter into an installment payment contract for renewable energy generation measures as described above (see "**Installment payment contract requirements**"). In the case of a board hosting a system, the third-party provider owns the system and installs, operates, and maintains it. In addition, the board must enter into a power purchase agreement with the third-party provider to supply the designated school, building, or other facility with the electricity generated by the system installed at the school, building, or other facility.

A contract for renewable energy systems that a district board enters into to meet the electricity requirements of the bill is subject to certain conditions. The bill prohibits a board from entering into a contract that is in force for a period that is longer than the period for which a renewable energy system installed in the district is under written warranty of the manufacturer or the distributor of the system. In addition, contracts must include the following:

(1) A provision for the termination of the contract, including terms under which the board may terminate the contract without being charged any termination fee if the board determines that the cost the district pays for the electricity generated by the renewable energy system is substantially greater than the retail rate of electricity that the district would have paid if the system had not been installed.

(2) In the case of a contract with a third-party provider, a provision describing the terms under which the board may purchase the renewable energy system from the third-party provider.

(3) A provision requiring educational installation or demonstration modules (see "**Educational requirement**").



## **Educational requirement**

(R.C. 3313.377(B)(2))

The bill includes an educational requirement within the pilot program. Each district in the pilot program must set up, for use in the schools' curriculum, a renewable energy educational installation or demonstration module at every school at which a renewable energy system is installed. If a renewable energy system is installed on, in, or proximate to a district building or facility other than a school, then the board must determine the location for the educational installation or demonstration module.

## **Reports and evaluation**

(R.C. 3313.377(E))

The bill requires each third-party provider that has contracted with a board and entered into a power purchase agreement to submit annual status reports of the provider's participation in the pilot program. The reports must be submitted to the Ohio Energy Office not later than June 30 of 2010, 2011, and 2012. The bill further requires the Office to submit pilot program status reports to the Speaker of the House of Representatives, the Minority Leader of the House, the President of the Senate, and the Minority Leader of the Senate not later than December 31 of 2010, 2011, and 2012. At a minimum, the Office's reports must include: (1) the number of school districts in the state that are participating in the pilot program, (2) the number of renewable energy systems installed within each district, (3) the total nameplate generating capacity of the renewable energy systems installed within each district, and (4) each district's estimated savings for the report year. The Office's reports may include recommendations regarding the pilot program, including recommendations as to whether the pilot program should be expanded to permit more districts to participate.

At the end of the three-year period, the General Assembly must conduct an evaluation of the pilot program. When conducting the evaluation, the General Assembly must consider the Office's annual reports including the recommendations, if any, made by the Office.

## **Renewable energy resource credits**

(R.C. 3313.377(D))

The bill prohibits a board from purchasing renewable energy resource credits to meet the requirements for electricity provided from renewable energy resources.

## Advanced energy project assistance

(R.C. 4928.62(F))

Assistance school districts receive, under current law, for advanced energy projects<sup>4</sup> is in addition to any assistance for school building projects provided by the SFC and is not included as part of the district or state portion of the basic project cost of a school building project under Ohio's school facilities assistance programs.<sup>5</sup> Under current law, these projects include geothermal heating, ventilating, and air conditioning systems. The bill adds renewable energy generation measures, including renewable energy systems, as projects for which a district may receive assistance in addition to any assistance provided by SFC to the district. As with other advanced energy projects, this assistance may not be included as part of the district or state portion of the basic project cost of the school building project.

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### HISTORY

ACTION	DATE
Introduced	03-31-09
Reported, H. Alternative Energy	06-17-09
Passed House (91-5)	12-17-09

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<sup>4</sup> An advanced energy project means any technologies, products, activities, or management practices or strategies that facilitate the generation or use of electricity and that reduce or support the reduction of energy consumption or support the production of clean, renewable energy for industrial, distribution, commercial, institutional, governmental, research, not-for-profit, or residential energy users, including, but not limited to, advanced energy resources and renewable energy resources (R.C. 4928.01(A)(25)).

<sup>5</sup> Ohio law provides several programs to help school districts and community schools obtain adequate classroom facilities through the help of state funds in combination with local funding (R.C. Chapter 3318.).

