



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 439

128th General Assembly  
(As Introduced)

**Reps.** Phillips and Stewart, Garland, Okey, Domenick, Yuko

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## BILL SUMMARY

- Exempts a portion of the assessed value of business real property from taxation upon the incorporation of a qualifying improvement (which means renewable energy property and resource conservation improvements).
- Grants an income tax deduction to individuals, estates, and trusts that incorporate a qualifying improvement into business real property and recognize a capital gain from the sale of that property.
- Requires the Director of Development to establish guidelines for identifying a renewable energy property or resource conservation improvement.
- Requires the Director of Development, upon request, to determine whether a renewable energy property or resource conservation improvement complies with established guidelines.

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## CONTENT AND OPERATION

### Definitions

(R.C. 1551.20, 5709.53, and 5747.01)

The bill establishes an exemption from real property taxes and in income tax deduction related to certain property and improvements addressing renewable energy and energy use conservation and reduction. The following defined terms are integral to the exemption and deduction discussed below.

The bill defines "business real property" as real property classified as to use by the Tax Commissioner as commercial or industrial land and improvements, excluding any real property owned by or leased to a public utility.

"Qualifying improvements" are resource conservation improvements and renewable energy property.

"Resource conservation improvements" are improvements to real property that are designed to reduce or conserve the use of energy, including the installation of heating, ventilating, and cooling equipment, thermal cooling or heating storage components designed to create, store, and supply off-peak or renewable electrical distributed thermal energy or reduce peak electrical demand from conventional mechanical cooling or heating equipment, hot water systems, interior lighting, insulating materials, energy-efficient exterior windows, doors, and other building envelope improvements, and that satisfy the Energy Star energy efficiency guidelines or qualify as "energy efficient commercial building property" under the Internal Revenue Code and related regulations, without regard to limitations on the date by which such property is placed into service or whether the deduction authorized by the Internal Revenue Code is claimed; and improvements to real property that are designed to reduce or conserve the use of water.

The Internal Revenue Code defines "energy efficient commercial building property" as property installed as part of the interior lighting systems; the heating, cooling, ventilation, and hot water systems; or the building envelope of certain buildings in the United States and certified as provided by the U.S. Secretary of Energy as part of a plan designed to reduce the total annual energy and power costs with respect to those systems by 50% or more. Under federal law, energy efficient commercial building property qualifies for a tax deduction not exceeding the excess of \$1.80 multiplied by the square footage of the building, divided by the aggregate amount of the tax deductions allowed for energy efficient commercial property for all prior taxable years.

The bill specifies that "renewable energy property" includes all of the following that, upon incorporation into real property, constitute real property for the purposes of property taxation:

(1) Equipment that uses solar radiation in lieu of traditional energy sources to heat water; actively heat or cool spaces; passively heat spaces; illuminate; generate electricity; distill liquids; desalinate; detoxify; or produce industrial or commercial heat, including related devices used to collect, store, exchange, or condition solar energy, or convert solar energy to other useful forms of energy.

(2) Equipment used to capture and convert wind energy into electricity or mechanical power, including related devices used to convert, condition, and store the electricity produced.

(3) Hydroelectric generators that produce electricity by water power or by the friction of water or steam that are located at existing dams or in free-flowing waterways, including related devices used for water supply or control and devices used to convert, condition, or store the electricity generated.

(4) Equipment forming part of a hydrothermal energy system or part of any other geothermal energy system not employing water.

## **Business real property tax exemption**

(R.C. 5709.53)

The bill exempts a portion of the assessed value of business real property from taxation once a qualifying improvement is made. The exemption equals the lesser of (1) 35% of the cost of the qualifying improvement or (2) the increase, if any, in the assessed value of the parcel constituting the business real property from the tax year preceding the incorporation of the improvement to the tax year in which the parcel is next reassessed after the improvement was incorporated.<sup>1</sup> If the percentage of true value in money used in the determination of the taxable value is established at a percentage less than 35% for any tax year, that percentage shall be substituted. The exemption begins with the first tax year in which the qualifying improvement is incorporated into the real property, not earlier than 2010, and ends with and includes the year in which title to the real property is conveyed to another person. Conveyance to a company related through stock or other ownership is not considered conveyance to another person.

The bill specifies that renewable energy property qualifies for the exemption only if none of the electricity or other energy produced or derived from the property is sold to, exchanged with, or otherwise provided to another person for consideration.

However, the following are not considered a sale, exchange, or provision:

(1) Charging tenants of the business real property for use of the electricity or energy;

(2) Net metering, which means measuring the difference in an applicable billing period 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.

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<sup>1</sup> A corrective amendment may be needed to clarify that 35% applies to only the cost of the qualifying improvement and not to the increase in the parcel's assessed value.

## Income tax deduction

(R.C 1551.20, 5709.53, and 5747.01; Section 3)

The bill grants an income tax deduction to individuals, estates, and trusts for any taxable year beginning on or after the effective date of the bill when a capital gain is recognized from the sale of business real property in Ohio to which a qualifying improvement was made while the property was owned by the taxpayer or a pass-through entity of which the taxpayer is an equity owner. The deduction is an amount equal to the following percentages of the cost of the qualifying improvement to the extent that amount does not exceed the capital gain:

(1) 100% for a qualifying improvement placed into service not more than five years before the end of the taxable year;

(2) 75% for a qualifying improvement placed into service more than five years but not more than ten years before the end of the taxable year;

(3) 50% for a qualifying improvement placed into service more than ten years before the end of the taxable year.

The bill allows pass-through treatment of the deduction so that each owner can take a proportionate share of the total deduction available to the entity. No deduction is permitted on the basis of a qualifying improvement that is no longer incorporated into the business real property at the time of the sale.

Solar, wind, or hydrothermal energy systems installed between 1979 and 1985 that are exempt from real property taxation under current law would qualify for the 50% deduction authorized by the bill if the systems are part of business real property.<sup>2</sup> Current law defines "solar or wind energy system" as any method used directly to provide space heating or cooling, hot water, industrial process heat, or mechanical or electric power by the collection, conversion, or storage of solar or wind energy including, but not limited to, active or passive solar systems. "Solar or wind energy system" does not include any equipment that is part of a conventional system for such purposes, that is, a system that does not use solar or wind energy; nor does it include a roof or any windows or walls that would be contained in a similar structure not designed or modified to use solar energy for space heating or cooling, except for those modifications to the design or construction of such roof, windows, or walls that are necessary to their improved use to capture solar energy for space heating or cooling. Under current law a "hydrothermal energy system" means any method used directly to

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<sup>2</sup> A corrective amendment may be needed to clarify that the solar, wind, or hydrothermal energy systems qualify for the deduction.

provide a heating or cooling effect by causing a thermal exchange with the earth utilizing any water source, including ground or surface water by use of appropriate heat exchange equipment.

## **Director of Development's guidelines for qualifying renewable energy property and resource conservation improvements**

(R.C. 1551.20)

### **Establishment of guidelines**

The bill requires the Director of Development to establish, and revise as necessary, guidelines for identifying renewable energy property and resource conservation improvements. The guidelines are to be sufficiently descriptive to enable the Tax Commissioner to identify renewable energy property and resource conservation improvements to determine eligibility for the tax exemption and deduction granted under the bill. The Director must publish the guidelines on the Department of Development's web site and transmit the guidelines to the Tax Commissioner.

### **Review of plans**

The bill specifies that at the request of a person who designs, manufactures, installs, or constructs renewable energy property or resource conservation improvements, the Director is to review construction plans for the property and determine if the property satisfies the Director's established guidelines. If the guidelines are satisfied, the Director must enter the name on a list of properties eligible for the tax exemption.<sup>3</sup> Upon the request of a person who desires to design or install a renewable energy property or resource conservation improvement for the person's own use, the Director must review plans for, or a narrative description of, the system to determine whether it complies with the established guidelines. The Director must issue a compliance certificate if the system does comply.<sup>4</sup>

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<sup>3</sup> A corrective amendment may be needed to specify that renewable energy property and resource conservation improvements on the list also qualify for the income tax deduction authorized by the bill. The corrective amendment would also clarify that solar, wind, or hydrothermal energy systems eligible for a current law tax exemption and the bill's deduction would be on the eligibility list.

<sup>4</sup> A corrective amendment may be needed to add renewable energy property or resource conservation improvements where the bill discusses the Director's duty to do the following in respect to the property or improvements: (1) enter the name on the qualifying list, (2) review its plans or narrative description, (3) determine compliance with guidelines, and (4) issue a certificate.

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## HISTORY

ACTION

DATE

Introduced

02-08-10

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