



Ohio Legislative Service Commission

Bill Analysis

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S.B. 232

128th General Assembly
(As Introduced)

Sens. Widener, Goodman, Jones, Wagoner

BILL SUMMARY

- Provides an exemption from real and tangible personal property taxes and assessments for an exempt energy air quality facility certified by the Ohio Air Quality Development Authority (OAQDA).
- Defines an "exempt energy air quality facility" as any renewable energy project under the OAQDA law for which an application is filed with the Ohio Power Siting Board, or upon which construction or installation is commenced, on or after January 1, 2010, but on or before December 31, 2011, and that is placed in service on or before December 31, 2012.
- Requires the OAQDA to certify that the construction and operation of an exempt energy air quality facility creates and maintains the number of jobs during construction and each year that the facility is in service that are projected by the Job and Economic Development Impact (JEDI model) defined in the bill.
- Requires an owner of an exempt energy air quality facility that is exempt from taxes and assessments under the bill to (1) pay annual service payments in lieu of taxes to the treasurer of the county where the facility is located in an amount equal to \$5,000 or \$6,000 per megawatt of name plate capacity depending on the number of owners, (2) offer to sell power or renewable energy credits first to electric distribution utilities and electric service companies subject to the alternative energy portfolio requirements of current law before offering the power and credits to others, (3) restore all roads affected by facility construction, and (4) provide for training and equipment to fire and emergency responders to enable them to respond to emergencies related to the facility.
- Includes a limited liability company among those entities that may be owners of air quality facilities or exempt energy air quality facilities under the OAQDA law.

CONTENT AND OPERATION

Current law

Ohio Air Quality Development Authority (OAQDA) air quality projects

(R.C. 3706.03, not in the bill)

One of the purposes of the Ohio Air Quality Development Authority (OAQDA) is to assist in the financing of air quality facilities for industry, commerce, distribution, and research, including public utility companies. The OAQDA may issue state air quality revenue bonds payable solely from revenues to pay the cost of air quality projects.

Tax exempt status of air quality projects

(R.C. 3706.041(B))

Current law exempts from taxes and assessments air quality projects that receive funding from bonds or notes issued by the OAQDA to finance the costs of the projects so long as the bonds or notes are outstanding. In addition, the transfer of title to or possession of such property to the person to whom a loan or installment sale or conditional sale with respect to the air quality projects is made is not subject to the state sales or use tax. OAQDA must certify the property comprising a project that is exempt and shall send, by certified mail, copies of the certification to (1) the owner of the exempt property, (2) the Tax Commissioner, and (3) the county auditor of the county or counties in which the exempt property is located.

Public utility real and tangible personal property tax

(R.C. 5727.06 and 5727.15, not in the bill)

Under current law, certain public utilities, including electric, rural electric, natural gas, pipe-line, water works, water transportation, heating, and telegraph utilities, are subject to local tangible personal property taxes as assessed by the Tax Commissioner under the Public Utility Property Tax Law.¹ Assessments on public utility property are made on all plants and equipment owned or leased by the utility that are not classified as real property or intangible property. Tangible personal property taxes collected from public utilities are apportioned to school districts, counties, townships, municipal corporations, and other taxing units generally according to where the property is located.

¹ Chapter 5727. of the Revised Code (not in the bill).

Public utilities also are assessed real property taxes on land and improvements. Real property values are assigned and taxes are distributed to local taxing districts according to the physical location of the property. County auditors make the assessments for public utility real property.

Operation of the bill

Definitions

(R.C. 3706.01(W) and (X))

Under the bill, an "exempt energy air quality facility" means any renewable energy project as defined by section 3706.25 of the Revised Code² for which an application is filed with the Ohio Power Siting Board (PSB), or upon which construction or installation is commenced, on or after January 1, 2010, but on or before December 31, 2011, and that is placed in service on or before December 31, 2012.³ Utility facilities required to apply for PSB certification and that may qualify as renewable energy projects under the bill include (1) electric generating plants and associated facilities designed for, or capable of, operation at a capacity of 50 megawatts or more and (2) economically significant wind farms, which are wind turbines and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of five or more megawatts but less than 50 megawatts.⁴

² R.C. 3706.25 (not in the bill) does not define the term "renewable energy project." However, the section includes a definition of "renewable energy resource" and refers to it in the definition of "advanced energy project." As used in that section, "advanced energy project" means any technologies, products, activities, or management practices or strategies that facilitate the generation or use of electricity or energy 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. "Renewable energy resources" under this section means 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, including bark, wood chips, sawdust, and lignin in spent pulping liquors and also includes, but is not limited to, any fuel cell used in the generation of electricity, wind turbine located in the state's territorial waters of Lake Erie; methane gas emitted from an abandoned coal mine; storage facility that will promote the better utilization of a renewable energy resource that primarily generates off peak; or distributed generation system used by a customer to generate electricity from any such energy.

³ The construction, installation, and service date qualifications within the definition of "exempt energy air quality facility" may be interpreted in more than one way and may require clarification.

⁴ R.C. 4906.06 and 4906.13 (not in the bill).

The bill defines a "job and economic development impact model" (JEDI model) as the model published by the National Renewable Energy Laboratory (NREL) of the United States Department of Energy (USDOE).⁵ The bill also includes within the definition of JEDI model economic models that project job creation for technologies for which NREL has not developed an applicable model if those other models are approved by the OAQDA in consultation with the Department of Development.

Tax exemption for exempt energy air quality facilities

(R.C. 3706.041(C))

The bill establishes an exemption from taxes and assessments on real and tangible personal property for exempt energy air quality facilities. The exemption from these taxes or assessments is contingent upon receiving certification from the OAQDA that the construction and operation of the facility creates and maintains the number of jobs as projected by the JEDI model during construction and each year the facility is in service.

OAQDA tax exemption certification procedure

(R.C. 3706.041(C)(1))

Under the bill, the owner of an exempt energy air quality facility must apply to OAQDA for certification in the manner it prescribes. The bill requires the application to include the facility's job and maintenance projection as estimated by the JEDI model. Within 60 days after receiving an application, OAQDA must determine whether the facility qualifies for the tax exemption under the bill. OAQDA must make this determination in consultation with the Department of Development. If the facility qualifies for the exemption, OAQDA must certify the qualification in writing and send copies of the certification by certified mail to (1) the owner of the facility, (2) the tax commissioner, and (3) the county auditor of the county or counties in which any exempt property is located.

⁵ According to the description of the JEDI model on the USDOE's National Renewable Energy Laboratory (NREL) web site, available at <http://www.nrel.gov/analysis/jedi/>, JEDI models developed by the NREL provide a methodology to estimate the economic impacts of constructing and operating power generation and biofuel plants at the local and state levels, including solar power, biofuels, and coal and natural gas power plants. The tools are used to estimate the number of jobs and economic impacts to a local area that could reasonably be supported by the construction and operation of power plants.

Prohibition against more than one tax exemption

(R.C. 3706.041(B) and (C)(1))

The bill prohibits any exempt energy air quality facility from receiving the exemption under the bill if the facility receives an exemption under the tax exemption for air quality facilities under current law (see "**Tax exempt status of air quality projects**," above) and vice-versa.

Annual service payments made by exempt energy air quality facilities

(R.C. 3706.041(C)(2))

The bill requires the owner of an exempt energy air quality facility exempted from taxes and assessments by the bill to make annual service payments in lieu of taxes to the county treasurer of any county in which the exempt property is located. Service payments are required for each tax year for which the property is exempt. Service payments are charged, collected, and distributed at the same time and in the same manner as the taxes imposed on taxable property that is subject to assessment under the Public Utility Property Tax Law.

Service payment totals

(R.C. 3706.041(C)(2))

Under the bill, annual service payments made in lieu of taxes are equal to the following:

- (1) \$6,000 for each megawatt of name plate capacity⁶ of the exempted property, if the facility is not owned by one or more public utility companies;⁷
- (2) \$5,000 for each megawatt of name plate capacity, if the facility is owned by one or more public utility companies.

⁶ The statistical agency of the USDOE, the Energy Information Administration, defines "generator name plate capacity" as the maximum rated output of a generator under specific conditions designated by the manufacturer. The Energy Information Administration Glossary may be accessed at the following web site: http://www.eia.doe.gov/glossary/glossary_g.htm.

⁷ The term "public utility company" is not defined in the bill or in existing Revised Code Chapter 3706. In addition, in the situation in which the facility is not owned by one or more public utility companies, an "owner" as that term is amended by the bill, would apply. (R.C. 3706.01(J).)

Facility owners' requirements

(R.C. 3706.041(C)(3))

The bill sets three requirements for owners of an exempt energy air quality facility that is exempted from taxation under the bill.

Power or renewable energy credit sales

Under the bill, an owner must offer to sell power or renewable energy credits from the exempted facility to electric distribution utilities or electric service companies subject to current law renewable energy resource requirements⁸ that have issued requests for proposal (RFP) for such power or renewable energy credits. The owner may sell the power or renewable energy credits to other persons if no electric distribution utility or electric service company (1) issues an RFP on or before December 31, 2010, or (2) accepts an offer for power or renewable energy credits within 45 days after an offer is submitted. Under the bill, contracts made for the sale of power or renewable energy credits before the bill's effective date are not subject to this requirement.

Road repair

The bill requires an owner to repair all roads affected by construction as reasonably required to restore them to their preconstruction condition.

Training for fire and emergency responders

The bill requires an owner to provide or facilitate training for fire and emergency responders to respond to emergency situations related to the facility and, at the owner's expense, equip the responders with proper equipment as reasonably required to enable them to respond to such emergency situations.

Limited liability company

(R.C. 3706.01(J))

The bill adds limited liability companies to the definition of "owner" in the OAQDA law allowing them to own air quality projects and exempt energy air quality projects.

⁸ Electric distribution companies and electric service companies are required to provide a certain portion of their electricity supply from alternative energy resources that include renewable energy resources (R.C. 4928.64 (not in the bill)).

HISTORY

ACTION

DATE

Introduced

02-24-10

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