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Bill Analysis

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SUMMARY

Ohio Clean Air Program

- Creates the Ohio Clean Air Program, to be administered by the Ohio Air Quality Development Authority (Authority).
- Allows a nuclear or solar clean air resource to apply to be a certified clean air resource to be eligible for participation in the Ohio Clean Air Program as long as the resource continues to meet the definition of clean air resource.
- Requires customers of an electric distribution utility to pay a per-account monthly charge to fund the Ohio Clean Air Program. Those charges are:
 - Residential
 - ❖ For the year 2020, 50¢;
 - ❖ For years 2021 through 2026, \$1.00.
 - Commercial
 - ❖ For the year 2020, generally \$10 as an average across customers;
 - ❖ For years 2021 through 2026, generally \$15 as an average across customers.
 - Industrial, generally \$250 as an average across customers.
 - Commercial or industrial customers that exceeded 45 million megawatt hours of electricity at one location in the preceding year, \$2,500.
- Creates the Ohio Clean Air Program Fund, where all the moneys collected via the Ohio Clean Air Program monthly charges are remitted.
- Requires the Authority to adopt rules for the implementation and administration of the Ohio Clean Air Program.

- Allows the Authority to decertify a clean air resource if it determines certification is not in the public interest, after allowing the resource to provide additional information in support of retaining certification and holding a public hearing and allowing public comment.
- Requires an owner of a clean air resource to report to the Authority the number of megawatt hours the resource produced in the preceding month.
- Specifies that certified clean air resources earn a clean air credit for each megawatt hour of electricity produced.
- Requires the Authority to direct the State Treasurer to remit money to owners of certified clean air resources from the Ohio Clean Air Program Fund based on the number of credits earned, at a credit price of \$9.00, subject to a credit price adjustment for nuclear clean air credits.
- Requires the Authority to apply the credit price adjustment for nuclear clean air credits for the upcoming program year, on April 1, if the market price index exceeds \$46 per megawatt hour, to ensure the purchase of clean air credits remains affordable.
- Establishes a payment priority structure of (1) previously unpaid clean air credits, (2) nuclear clean air credits, (3) solar clean air credits, and (4) reimbursement for renewable contract costs.
- Requires the Ohio Clean Air Program to be audited by an unaffiliated and independent third party from year 2021 to 2027.
- Terminates the Ohio Clean Air Program and customer charges on December 31, 2026.
- Allows the Authority to pledge moneys that may be accumulated to the Ohio Clean Air Program Fund for the benefit of a certified clean air resource, if the resource agrees to be bound by the conditions the Authority may attach to the pledge.
- Requires Public Utilities Commission of Ohio (PUCO) to facilitate and encourage the establishment of certain retail purchased power agreements.
- Allows certain electric distribution utilities to file an application for a decoupling mechanism with the PUCO.
- Requires PUCO to review and submit a report to the General Assembly if the Federal Energy Regulatory Commission authorizes a program that would allow Ohio to take action to satisfy any portion of the capacity resource obligation associated with the organized wholesale market that meets energy needs of Ohio consumers.
- Adds four legislative members to the Authority's board.
- Adds two members of the general public to the Authority's board.
- Expands the public policy of the state through the operation of the Authority to include the Ohio Clean Air Program priorities.

Repeal of renewable energy requirements

- Repeals the renewable energy requirements effective January 1, 2020, and makes conforming changes.

Renewable energy contract costs

- Requires an electric distribution submit an application to the Authority to be reimbursed from the Ohio Clean Air Program Fund for costs of existing renewable energy contractual obligations.
- Allows an electric distribution utility to recover the renewable energy contract costs from the utility's retail customers as a distribution expense if the money in the Ohio Clean Air Program Fund is insufficient to cover costs.
- Requires a cost recovery mechanism for certain renewable energy contract costs, permitted under continuing law, to be replaced with an accounting mechanism that is permitted by the bill.
- Requires the accounting mechanism to establish and adjust regulatory assets and liabilities.
- Allows the electric distribution utility to collect a carrying charge on regulatory assets beginning January 1, 2020.
- Requires the PUCO to permit the electric distribution utility, in a subsequent rate proceeding, to recover as a distribution expense the regulatory assets existing at that time until the utility's costs are fully recovered.
- Requires the PUCO to credit any revenue received by the electric distribution utility from the Ohio Clean Air Program Fund against net costs.

Energy efficiency and peak demand reduction

- Eliminates energy efficiency requirements for years 2021 through 2027 and terminates energy efficiency/peak demand reduction portfolio plans on December 31, 2020.
- Allows an electric distribution utility to apply to the PUCO for approval of programs to encourage energy efficiency/peak demand reduction, which programs may begin in 2021.
- Permits mercantile customers to opt out and later opt back into an electric distribution utility's energy efficiency/peak demand reduction plan, including the voluntary programs established by the utility.
- Repeals the requirement that customers that opt out of an electric distribution utility's energy efficiency/peak demand reduction portfolio plan submit initial and updated reports to PUCO staff regarding energy intensity reduction projects, actions, policies, and practices, and cumulative energy-intensity reductions achieved.

Recovery for a national security generation resource

- Permits an electric distribution utility to recover through 2030, its national security generation resource net impact, after the expiration of any PUCO-authorized mechanism to recover that impact.
- Requires an electric distribution utility, including all electric distribution utilities in the same holding company, to bid all output from the national security generation resource into the wholesale market.
- Prohibits an electric distribution utility from using the output to supply the utility's standard service offer.
- Requires the PUCO to conduct an inquiry in 2029 to determine whether it is in the public interest to continue recovery of a national security generation resource net impact after 2030 and report its findings to the General Assembly.

Certain wind farms of 5-20 megawatts under local control

- Places certain wind farms of 5-20 megawatts under local control.

Property tax exemption for energy projects

- Permits energy projects of up to 20 megawatts to be exempted from property taxation without the formal approval of a board of county commissioners (the current threshold is 5 megawatts).
- Releases such energy projects from other prerequisites for tax exemption, including repair of affected public infrastructure, training and equipping emergency responders, and career training.

Net metering system

- Qualifies the definition of "net metering system" by specifying that, for an industrial customer-generator with a net metering system that has a capacity of less than 20 megawatts and uses wind as energy, it satisfies the definition if it was sized so as to not exceed 100% of the customer-generator's annual requirements for electric energy at the time of interconnection.

Township referendum for wind farms subject to Power Siting Board jurisdiction

- Establishes a procedure for electors in the unincorporated areas of a township to submit a referendum petition to approve or reject a certificate issued by the Power Siting Board for a wind farm that is to be located in whole or in part in the township.
- Provides that a wind farm's certificate from the Power Siting Board becomes valid on the 90th day after it is issued, unless a referendum petition is filed with the board of elections.

- Provides that the certificate is invalid if rejected at the referendum by electors from all participating townships.
- Requires the Power Siting Board to modify the certificate if not all participating townships' electors reject the certificate.

Renewable energy services purchase programs

- Allows an electric distribution utility to offer a customer the opportunity to purchase renewable energy services on nondiscriminatory basis for any purpose the customer elects through the establishment of a schedule or reasonable arrangement involving the production and supply of renewable energy.
- Prohibits the PUCO from establishing a schedule or reasonable arrangement unless it determines there is no negative impact on nonparticipating customers.

County fair and agricultural societies

- Requires an electric distribution utility to file a tariff with the PUCO that is applicable to county fairs and agricultural societies that includes a fixed monthly service fee or an energy charge on a kilowatt-hour basis.
- Prohibits the minimum monthly charge from exceeding the fixed monthly service fee.
- Requires an electric distribution utility to be eligible to recover any revenue loss associated with the migration of customers to the tariff.

Home energy assistance programs (HEAP)

- Requires the Director of the Development Services Agency to submit in each fiscal year, beginning in FY 2021, a completed waiver request to expend 25% of federal low-income HEAP funds from the home energy assistance block grants for weatherization services.

Tax devaluation

- Specifies that if an electric company with a nuclear clean air resource files a petition for reassessment seeking a reduction in taxable value, the company may not request and the Tax Commissioner may not grant a reduction in taxable value below the taxable values for the property as of the bill's 90-day effective date.

Reasonable arrangements

- Requires PUCO to attempt to minimize electric rates to the maximum amount possible on trade-exposed industrial manufacturers when ruling on a reasonable arrangement application.

E-Check

- Authorizes the Director of Environmental Protection to apply to the Administrator of the United States Environmental Protection Agency (USEPA) for an exemption from the decentralized motor vehicle inspection and maintenance program (E-Check) required under the federal Clean Air Act.

- Requires the Director to request in the application that the Administrator of USEPA authorize implementation of the Ohio Clean Air Program established by the bill as an alternative to E-Check.

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DETAILED ANALYSIS

Overview

The bill creates the Ohio Clean Air Program. The bill allows both (1) an electric generating facility fueled by nuclear power and (2) an electric generating facility that uses solar energy or will use solar energy and has obtained a certificate from the Power Siting Board prior to June 1, 2019, to apply for certification as a clean air resource in order to be eligible for participation in the Ohio Clean Air Program. The Ohio Clean Air Program is funded through a monthly per-account charge billed to all retail electric customers of Ohio electric distribution utilities.

The bill institutes a clean air credit for clean air resources. A clean air resource earns a clean air credit for each megawatt hour of electricity it produces. The Ohio Air Quality Development Authority directs the Treasurer of State to remit money from the collected charges to each owner of a certified clean air resource in the amount equivalent to the number

of credits earned by the resource during the previous month multiplied by the price of the credit.

The bill repeals the renewable energy requirements beginning January 1, 2020. The bill allows an electric distribution utility to recover costs associated with contractual obligations to meet the renewable energy requirements to be recovered through an accounting mechanism. The bill also terminates the energy efficiency and peak demand reduction requirements on December 31, 2020. The bill allows an electric distribution utility to establish voluntary programs to encourage energy efficiency and peak demand reduction that may begin on January 1, 2021.

Additionally, the bill allows a national security generation resource to recover the cost of the national security generation net impact through 2030.

Definition: clean air resource

“Clean air resource” means both of the following: (1) an electric generating facility in this state that is fueled by nuclear power and (2) an electric generating facility in this state that uses or will use solar energy as the primary energy source that has obtained a certificate from the Power Siting Board prior to June 1, 2019. Each type of resource must satisfy all of the following criteria to meet the definition:

1. The facility is not wholly or partially owned by a municipal or cooperative corporation or a group, association, or consortium of those corporations;
2. The facility is not used to supply customers of a wholly owned municipal or cooperative corporation or a group, association, or consortium of those corporations;
3. Either of the following:
 - a. The facility has made a significant historical contribution to the air quality of the state by minimizing emissions that result from electricity generated in this state;
 - b. The facility will make a significant contribution toward minimizing emissions that result from electric generation in this state.
4. The facility is interconnected with PJM interconnection, L.L.C., or its successor organization;
5. The facility is an electric generating plant in this state with associated facilities designed for, or capable of, operation at a capacity of 50 megawatts or more.

For a facility fueled by nuclear power, the facility owner must also maintain operations in Ohio.¹

¹ R.C. 3706.40(A), 4906.01(B)(1)(a), and 4906.13(A).

Ohio Clean Air Program

The bill creates the Ohio Clean Air Program, which is required to terminate on December 31, 2026. The bill permits any person that owns or controls an electric generating facility and meets the definition of clean air resource to submit a written application to the Ohio Air Quality Development Authority for certification as a clean air resource. Certification enables the resource to participate in the Ohio Clean Air Program. Applications for the program must be submitted by February 1 for any program year beginning in June of the same calendar year.² Under the bill, “program year” means the twelve-month period beginning June 1 and ending May 31 of the following year.³

Application process

An application for the Ohio Clean Air Program must include all of the following:

1. The in-service date and estimated remaining useful life of the resource;
2. For existing resources, the quantity of megawatt hours generated by the resource annually during each of the previous five calendar years during which the resource was generating and the “annual capacity factor” (defined as the actual energy produced in a year divided by the energy that would have been produced if the facility was operating continuously at the maximum rating⁴) for each of those calendar years;
3. A forecast estimate of the annual quantity of megawatt hours to be generated by the resource and the projected annual capacity factor over the remaining useful life of the resource;
4. A forecast estimate of the emissions that would occur in this state during the remaining useful life of the resource if the resource discontinued operations prior to the end of the resource’s useful life;
5. Verified documentation demonstrating all of the following:
 - a. That certification as a clean air resource and participation in the Ohio Clean Air Program will permit the resource to reduce future emissions per unit of electrical energy generated in this state;
 - b. That without certification as a clean air resource, the positive contributions to the air quality of this state that the resource has made and is capable of making in the future may be diminished or eliminated;
 - c. That the clean air resource meets the definition of a clean air resource;
 - d. That the person seeking certification owns or controls the resource.

² R.C. 3706.42(A) and (B).

³ R.C. 3706.40(B).

⁴ R.C. 3706.40(D).

6. The resource's nameplate capacity;
7. Any other data or information that the Authority requests and determines is necessary to evaluate the application or to demonstrate that certification would be in the public interest.

The bill requires the Authority to post all applications and nonconfidential supporting materials on the Authority's website. The bill allows interested persons to file comments on the applications not later than 20 days after an application has been placed on the website. All comments must be posted on the website. The bill allows an applicant to respond to the comments not later than ten days after the comments are posted.⁵

The bill requires the Authority to review all timely submitted applications. The Authority must, on or before March 31, issue an order certifying a clean air resource if the clean air resource meets the definition of a clean air resource. A certified clean air resource must remain certified as long as the resource continues to meet the definition of a clean air resource.

If the Authority fails to issue an order on or before March 31, the bill requires that each electric generating facility included in a timely and properly filed application be deemed a clean air resource.⁶

Decertification

The bill allows the Authority to decertify a clean air resource at any time if the Authority determines that certification is not in the public interest. Before decertifying a resource, the Authority must do both of the following: (1) allow the resource to provide additional information in support of remaining certified and (2) hold a public hearing and allow for public comment.⁷

Reporting Requirement

Every owner of a certified clean air resource must report the number of megawatt hours the resource produced in the preceding month to the Authority not later than seven days after the close of each month.⁸

Rulemaking

The bill requires the Authority to adopt rules necessary for the initial implementation of the Ohio Clean Air Program not later than 90 days after the effective date of the program. The rules adopted must include provisions for tracking the number of clean air credits earned by each certified clean air resource during each month of a program year, based on the information required to be reported under the bill.

⁵ R.C. 3706.42(C), (D), and (E).

⁶ R.C. 3706.44(A) and (B).

⁷ R.C. 3706.44(C).

⁸ R.C. 3706.48.

Additionally, the bill requires the Authority to adopt additional rules necessary for the further implementation and administration of the Ohio Clean Air Program not later than 275 days after the effective date of the bill.⁹

Ohio Clean Air Program audit

The bill requires an unaffiliated and independent third party to audit the Ohio Clean Air Program in years 2021, 2022, 2023, 2024, 2025, 2026, and 2027. The audit must be conducted according to the rules the Authority is required to adopt no later than 90 days after the bill's effective date.¹⁰

Funding under the Ohio Clean Air Program

Customer charges

The bill requires, beginning January 1, 2020, and ending on December 31, 2026, each retail electric customer of an electric distribution utility in this state to pay a per-account monthly charge that is billed and collected by each electric distribution utility. The charges are to be remitted to the State Treasurer for deposit in the Ohio Clean Air Program Fund, which the bill creates. Under continuing law, "electric distribution utility" means an electric utility that supplies at least retail electric distribution service. The monthly charges are as follows:

- For customers classified by the utility as residential:
 - For the year 2020: 50¢/month;
 - For the years 2021 through 2026: \$1.00/month.
- Most customers classified by the utility as commercial are subject to a charge determined by a structure and design that the PUCO must, not later than October 1, 2019, establish. The Commission must establish the structure and design of the charge such that the average charge across all customers subject to the charge is:
 - For the year 2020, \$10/month;
 - For the years 2021 through 2026, \$15/month.
- Most customers classified by the utility as industrial are subject to a charge determined by a structure and design that the PUCO must, not later than October 1, 2019, establish. The Commission must establish the structure and design of the charge such that the average charge across all customers subject to the charge is \$250/month.

⁹ R.C. 3706.50.

¹⁰ R.C. 3706.50.

Customers that are classified by the utility as commercial or industrial that exceeded 45 million kilowatt hours of electricity at a single location in the preceding year are subject to a per-account charge of \$2,500/month.¹¹

The bill requires the PUCO to establish the charge structure and design for customers classified as commercial or industrial that do not exceed 45 million kilowatt hours of electricity in a manner that avoids abrupt or excessive total electric bill impacts for typical customers with a classification of commercial or industrial.¹²

The bill requires that the classification of customers as residential, commercial, and industrial be consistent with the utility's reporting under its approved rate schedules.¹³

Clean air credits for clean air resources

A certified clean air resource earns a clean air credit for each megawatt hour of electricity it produces. The price of a clean air credit is to be \$9.00, except as otherwise provided by the bill.¹⁴

The bill requires the Authority to direct the Treasurer to remit the money from the Ohio Clean Air Program Fund to each owner of a certified clean air resource in the amount equivalent to the number of credits earned by the resource in the previous month multiplied by the credit price. The remittance is to occur not later than 14 days after the close of each month in a program year. If the money in the fund is insufficient to pay for all of the credits earned by a resource, the resources shall be paid in accordance with the payment priority structure created by the bill.¹⁵

Payment priority for clean air credits

The bill provides that if the money in the Ohio Clean Air Program Fund is insufficient in a particular month to make the remittances in the amount required for clean air credits, the Authority must, not later than 14 days after the close of that month, direct the Treasurer to remit money from the Ohio Clean Air Program Fund to pay for the unpaid credits before any other remittances are made. Remittances for unpaid credits must be made in the following order of priority:

1. To the owners of clean air resources fueled by nuclear power;
2. To the owners of clean air resources that use or will use solar energy.¹⁶

¹¹ R.C. 3706.40(D), 3706.46(A), 3706.47(A) and (B), and 4928.01(A)(6).

¹² R.C. 3706.47(C).

¹³ R.C. 3706.47(D).

¹⁴ R.C. 3706.40(E), 3706.481, and 3706.482.

¹⁵ R.C. 3706.482.

¹⁶ R.C. 3706.486(A).

After the clean air resources that were not compensated due to insufficient funds in the previous month are compensated, remittances are to be made in the following order of priority:

1. To the owners of clean air resources fueled by nuclear power, for their clean air credits;
2. To the owners of clean air resources that use or will use solar energy, for their clean air credits;
3. To electric distribution utilities as reimbursement for costs of contractual obligations related to the renewable energy requirements.¹⁷

Purchase of clean air credits

To ensure that the purchase of clean air credits produced by a nuclear clean air resource remains affordable to retail customers if electricity prices increase, the Authority must apply a credit price adjustment on an annual basis. Specifically, if the “market price index” exceeds \$46 per megawatt hour on April 1, then the Authority must reduce the credit price for a nuclear clean air resource by the difference between the market price index and \$46. The bill defines “market price index” as the sum, expressed in dollars per megawatt hour, of both of the following: (1) projected energy prices, determined using future contracts for the PJM AEP-Dayton hub and (2) projected capacity prices, determined using PJM’s rest-of-RTO market clearing price. The first credit price adjustment is to take place on April 1, 2021 for the upcoming program year. The adjustment is to be applied annually thereafter.¹⁸

Registry for clean air credits

The bill requires the Authority to adopt rules to provide for Ohio a system of registering clean air credits by specifying that the generation attribute tracking system may be used for that purpose and not creating a registry.¹⁹

Capital formation and investment for clean air resources

To facilitate air quality development related capital formation and investment by or in a certified clean air resource, the bill permits the Authority to pledge a portion of moneys that may, in the future, be accumulated in the Ohio Clean Air Program Fund for the benefit of any certified clean air resource. The resource must agree to be bound by the conditions the Authority may attach to the pledge.

The Authority is not required to direct distribution of moneys in the Ohio Clean Air Program Fund unless or until there are adequate moneys available in the fund. Nothing in the

¹⁷ R.C. 3706.486(B).

¹⁸ R.C. 3706.40 and 3706.482(C).

¹⁹ R.C. 3706.483.

bill is to be construed or applied to create, directly or indirectly, a general obligation of or for the state.²⁰

Administration of the Ohio Clean Air Program Fund

The bill requires the Ohio Clean Air Program Fund to be in the custody of the State Treasurer but not a part of the State Treasury. The fund is to consist of charges collected under the bill. All interest generated by the fund is to be retained in the fund and used for funding the Ohio Clean Air Program. The bill requires the Treasurer to distribute the moneys in the fund in accordance with the directions provided by the Authority.²¹

Renewable energy requirements

The bill repeals the renewable energy requirements, effective January 1, 2020.²²

Reimbursement of renewable energy contract costs

The bill requires an electric distribution utility to submit an application to the Authority for reimbursement from the Ohio Clean Air Program Fund of net costs related to renewable energy contracts.²³ The bill defines “net cost” as a charge or a credit that constitutes both of the following:

- Ongoing costs including the charges incurred by the utility under each contract, including the annual renewable energy credit (REC) inventory amortization charge under the bill;
- Carrying charges, less the revenue received by the utility as a result of liquidating into competitive markets the electrical and renewable products provided to the utility under each contract, including capacity, ancillary services, and RECs.²⁴

The PUCO is required to annually certify the utility’s net costs to be recovered. Not later than 90 days after the application is received by the Authority, the Authority must direct the Treasurer to remit money from The Ohio Clean Air Program Fund to the electric distribution utility as reimbursement for those costs.²⁵ (See **COMMENT 1.**)

²⁰ R.C. 3706.49.

²¹ R.C. 3706.46.

²² R.C. 4928.01, 4928.142, 4928.143, 4928.20, 4928.61, 4928.62, 4928.645, 5501.311, and Section 10; conforming changes in R.C. 1710.06, 4928.66, and 5727.75.

²³ R.C. 3706.485 and 4928.641(G).

²⁴ R.C. 4928.641(A).

²⁵ R.C. 3706.485 and 4928.641(G).

Recovery if funds in the Ohio Clean Air Program Fund are insufficient

Beginning January 1, 2020, the bill requires all prudently incurred costs by an electric distribution utility associated with contractual obligations that existed prior to 2020 to be recoverable from the utility's retail customers as a distribution expense if the money in the Ohio Clean Air Program Fund is insufficient to offset these costs. The bill specifies that such costs are ongoing and must include costs incurred to discontinue existing programs that were implemented by the utility to meet the renewable energy requirements.²⁶

Replacement with an accounting mechanism

Starting January 1, 2020, the bill requires an electric distribution utility that executed a renewable energy contract prior to April 1, 2014, and has ongoing costs that are being recovered from customers through a bypassable charge on January 1, 2020, to replace that cost recovery, upon final reconciliation, with an accounting mechanism permitted by the bill. The accounting mechanism must be effective for the remainder of the contract and a subsequent reconciliation period until all prudently incurred costs are fully recovered. The bill removes the requirement that this recovery be bypassable going forward.²⁷

Contract extensions and amendments

Effective January 1, 2020, the bill removes the requirement that the cost recovery permitted under current law for a renewable energy contract executed before April 1, 2014, applies only to costs associated with the original term of the contract and not contract extensions or amendments made on or after April 1, 2014.²⁸

Accounting mechanism approval

The bill requires the PUCO, subject to the requirements for recovery of ongoing costs under current law governing the renewable energy requirements (see **COMMENT 2**), to approve an "appropriate accounting mechanism that is reasonable and appropriate" for each electric distribution utility that has demonstrated that it has incurred or will incur ongoing costs for renewable energy contractual obligations that existed prior to 2020.²⁹

Accounting mechanism requirements

The bill outlines all of the following requirements for an accounting mechanism:

²⁶ R.C. 4928.641(B).

²⁷ R.C. 4928.641(C).

²⁸ R.C. 4928.641(B), under current law.

²⁹ R.C. 4928.641(D) and (F).

- Permit a full recovery of the electric distribution utility's net costs, including the accounting authority for the utility to establish and adjust regulatory assets and regulatory liabilities;³⁰
- Reflect the forecasted annual net costs to be incurred by the electric distribution utility under each renewable energy contract executed before April 1, 2014, subject to subsequent reconciliation to actual net costs;³¹
- Reflect the book value of the electric distribution utility's inventory of RECs as of January 1, 2020, over an amortization period substantially similar to the remaining term of any renewable energy contracts executed before April 1, 2014.³²

Liquidation of RECs

Effective January 1, 2020, the bill requires an electric distribution utility subject to an accounting mechanism under the bill, in a timely manner, to liquidate its inventory of RECs and apply the resulting revenue against the recovery under the accounting mechanism.³³

Regulatory assets, regulatory liabilities, and carrying charge

The bill requires the accounting mechanism to include accounting authority for the electric distribution utility to establish and adjust regulatory assets and regulatory liabilities. Additionally, the bill entitles the electric distribution utility to collect a carrying charge on those regulatory assets beginning January 1, 2020, and continuing until the regulatory asset is completely recovered. The bill requires the carrying charge to be applied to any regulatory liability created as a result of the cost recovery mechanism. The carrying charge must also include the electric distribution utility's cost of capital including the most recent authorized rate of return on equity.³⁴

Subsequent rate proceedings

The bill requires the PUCO, in each subsequent distribution-rate or electric-security-plan proceeding involving the electric distribution utility, to permit recovery as a distribution expense of the regulatory assets existing at that time until the electric distribution utility's net costs are fully recovered. These costs must be assigned to each customer class using the base distribution revenue allocation.³⁵

³⁰ R.C. 4928.641(F).

³¹ R.C. 4928.641(E)(1).

³² R.C. 4928.641(E)(2).

³³ R.C. 4928.641(E)(3).

³⁴ R.C. 4928.641(F).

³⁵ R.C. 4928.641(F).

Crediting revenue received from the Ohio Clean Air Program Fund

Beginning January 1, 2020, the bill requires the PUCO to credit any revenue received by the electric distribution utility from the Ohio Clean Air Program Fund against the net costs that would otherwise be recovered through the electric distribution utility's rates.³⁶

Energy efficiency and peak demand reduction requirements

The bill terminates the energy efficiency requirements (which continue through 2027 under current law) at the end of 2020. The peak demand reduction requirements are currently set to terminate in 2020 as well. Likewise, the bill requires that all terms and conditions of an electric distribution utility's energy efficiency/peak demand reduction portfolio plan in effect as of the bill's 90-day effective date remain in place through December 31, 2020, and terminate on that date. If a portfolio plan is extended beyond its PUCO-approved term by the bill, the existing plan's budget must be increased for the extended term to include an amount equal to the annual average of the approved budget for all years of the portfolio plan in effect as of the bill's 90-day effective date. All other terms and conditions of a portfolio plan extended beyond its PUCO-approved term must remain the same unless changes are authorized by the PUCO upon the electric distribution utility's request.³⁷ The bill allows an electric distribution utility to recover all remaining program costs from contractual obligations and any costs to discontinue portfolio plan programs through tariffs or riders in effect on the bill's 90-day effective date.³⁸

Annual energy efficiency savings clarification

The bill clarifies that the energy efficiency annual savings requirement for years 2017, 2018, 2019, and 2020 is an *additional* 1% of the baseline.³⁹

Voluntary programs to encourage energy efficiency and peak demand reduction programs

The bill allows an electric distribution utility to submit an application not earlier than January 1, 2020, to the PUCO for approval of programs to encourage energy efficiency/peak demand reduction. The bill requires PUCO to approve or modify and approve an application if the programs will be cost-effective, in the public interest, and consistent with state policy. Approved applications are prohibited from taking effect prior to January 1, 2021.⁴⁰

³⁶ R.C. 4928.641(G).

³⁷ R.C. 4928.66(A)(1) and (F).

³⁸ R.C. 4928.66(G).

³⁹ R.C. 4928.66(A)(1)(a).

⁴⁰ R.C. 4928.661.

Opt out and opt in under energy efficiency/peak demand reduction portfolio plans

Beginning January 1, 2020, the bill permits mercantile customers to opt out and later opt back in to an electric distribution utility's energy efficiency/peak demand reduction portfolio plan. The bill expands the portfolio plans subject to opt-out and opt-in to include voluntary programs to encourage energy efficiency/peak demand reduction.⁴¹

Repeal of customer report on reducing energy intensity

The bill repeals the current law requirement that customers that opt out of an electric distribution utility's energy efficiency/peak demand reduction portfolio plan submit initial and updated reports to PUCO staff regarding energy intensity reduction projects, actions, policies, and practices, and cumulative energy-intensity reductions achieved.⁴²

Recovery for a national security generation resource

The bill permits an electric distribution utility to continue recovering, through 2030, its "national security generation resource net impact" (retail recovery of prudently incurred costs related to a national security generation resource, less any revenues realized from offering the contractual commitment related to a national security generation resource into the wholesale markets, provided that where the net revenues exceed net costs, those excess revenues must be credited to customers⁴³) after the expiration of any mechanism authorized by the PUCO to recover that impact.⁴⁴

The bill also requires an electric distribution utility, including all electric distribution utilities in the same holding company, to bid all output from the national security generation resource, as defined by the bill, into the wholesale market. Additionally, the bill prohibits the electric distribution utility from using the output to supply the utility's standard service offer provided under continuing law.⁴⁵ The bill defines a "national security generation resource" as all generating facilities owned directly or indirectly by a corporation that was formed prior to 1960 by investor-owned utilities for the original purpose of providing capacity and electricity to the federal government for use in the nation's defense or in furtherance of national interests. The term includes the Ohio Valley Electric Corporation.⁴⁶

⁴¹ R.C. 4928.6610.

⁴² R.C. 4928.6616 (repealed).

⁴³ R.C. 4928.01(A)(43).

⁴⁴ R.C. 4928.147(A) and 4928.148.

⁴⁵ R.C. 4928.147(B).

⁴⁶ R.C. 4928.01(A)(41).

Nonbypassable rate mechanism

The bill requires the PUCO to do all of the following as it relates to the nonbypassable rate mechanism for recovery of a national security generation resource:

- Determine every three years the prudence and reasonableness of the electric distribution utility's actions related to the national security generation resource, including the utility's decisions related to offering the contractual commitment into the wholesale markets, and exclude from recovery those costs determined to be imprudent and unreasonable;
- Determine the proper rate design for remitting or recovering national security generation resource net impact, capping the recovery at \$2.50 per month for residential customers and \$2,500 per month for other customer classes. The recovery is subject to audit, reconciliation, and a prudence review.
 - If the monthly limit is exceeded by the national security generation resource net impact, the electric distribution utility must defer the remaining net impact as a regulatory asset or liability to be recovered as determined by the PUCO subject to the monthly rate caps.
- Provides for discontinuation, subject to final reconciliation, of the nonbypassable rate mechanism unless the mechanism is extended by the General Assembly.⁴⁷

The PUCO is required to conduct an inquiry in 2029 to determine whether it is in the public interest to continue recovery of a national security generation resource net impact after 2030 and report its findings to the General Assembly.⁴⁸

The bill also adds that it is state policy to provide clarity in cost recovery for Ohio-based electric distribution utilities in conjunction with national security generation resources and support electric distribution utilities and affiliate divestiture of ownership interests in any national security generation resource if divestiture efforts result in no adverse consequences to the electric distribution utility.⁴⁹

Retail purchased power agreements

The bill requires the PUCO, through its general supervision, ratemaking, cost assignment, allocation, rate schedule approval, and rulemaking authority, as well as its authority under continuing law governing reasonable arrangements, to facilitate and encourage the establishment of retail purchased power agreements having a term of three years or more through which mercantile customers of an electric distribution utility commit to satisfy a material portion of their electricity requirements from the output of a clean air resource. For

⁴⁷ R.C. 4928.148(A).

⁴⁸ R.C. 4928.148(B).

⁴⁹ R.C. 4928.02.

retail purchase power agreements, the bill provides a special definition for clean air resource, specifically, any of the following:

- A clean air resource as defined by the bill;
- A customer-sited renewable energy resource;
- A renewable energy resource that is a self-generator.

Under continuing law, “renewable energy resource” means any of the following:

- Solar photovoltaic or solar thermal energy;
- Wind energy;
- Power produced by certain hydroelectric facilities;
- Geothermal energy;
- Fuel derived from solid wastes through certain processes;
- Biomass energy;
- Energy produced by certain types of cogeneration technology;
- Biologically derived methane gas;
- Heat captured from a generator of electricity, boiler, or heat exchanger fueled by biologically derived methane gas;
- Energy derived from nontreated by-products of the pulping process or wood manufacturing process;
- Certain fuel cells;
- Methane gas emitted from an abandoned coal mine;
- Certain waste energy recovery systems;
- Storage facilities that promote better utilization of renewable energy resources;
- Distributed generation systems used by a customer to generate electricity from any such energy.

Under continuing law, a “self-generator” is an entity in this state that owns or hosts on its premises an electric generation facility that produces electricity primarily for the owner’s consumption and that may provide any such excess electricity to another entity, whether the facility is installed or operated by the owner or by an agent under a contract.⁵⁰

The bill requires the PUCO’s application and administration of the facilitation and encouragement of the purchased power agreements to be the same for all clean air resources

⁵⁰ R.C. 3706.40, 3706.47(B)(1), and 4928.01.

regardless of whether the resource is certified or eligible for certification under the Ohio Clean Air Program.

In addition to any other benefits that may be available as a result of the PUCO's application of its authority under the bill, on the effective date of a retail purchased power agreement, the PUCO may exempt a purchasing mercantile customer from the Ohio Clean Air Program charge.

The bill requires PUCO to promulgate rules not later than 90 days after the effective date of the bill to begin facilitating and encouraging the retail purchased power agreements. Not later than 275 days after the effective date of the bill, the PUCO is required to promulgate rules for the further implementation and administration.⁵¹

Decoupling

The bill permits, no earlier than 30 days after the effective date of the bill, an electric distribution utility, except as provided in the bill, to file an application at the PUCO to implement a decoupling mechanism for the 2019 calendar year and each calendar year thereafter. An electric distribution utility that has base distribution rates that became effective between December 31, 2018, and the bill's 90-day effective date pursuant to an application for an increase in base distribution rates may not apply for the decoupling mechanism.

For an electric distribution utility that applies for a decoupling mechanism under the bill, the base distribution rates for residential and commercial customers must be decoupled to the base distribution revenue and revenue resulting from implementation of the energy efficiency and peak demand reduction provisions under continuing law, excluding program costs and shared savings, and recovered pursuant to an approved electric security plan, as of the 12-month period ending December 31, 2018. The bill specifies that an application made under the bill must not be considered an application to establish or change a rate.

The PUCO is required to issue an order approving an application for a decoupling mechanism not later than 60 days after the application is filed. In determining that an application is not unjust and unreasonable, the PUCO must verify that the rate schedule or schedules are designed to recover the electric distribution utility's 2018 annual revenues and that the decoupling rate design is aligned with the rate design of the electric distribution utility's existing base distribution rates. The decoupling mechanism must recover an amount equal to the base distribution revenue and revenue resulting from the implementation of the energy efficiency and peak demand reduction provisions under continuing law, excluding program costs and shared savings, and recovered pursuant to an approved electric security plan, as of the 12-month period ending December 31, 2018. The decoupling mechanism must be adjusted annually thereafter to reconcile any over recovery or under recovery from the prior year and to enable an electric distribution utility to recover the same level of revenues in each year.

⁵¹ R.C. 4928.47.

The PUCO's approval of a decoupling mechanism must not affect any other rates, riders, charges, schedules, classifications, or services previously approved by the PUCO. The bill requires the decoupling mechanism to remain in effect until the next time the electric distribution utility applies for and the PUCO approves base distribution rates for the utility under continuing law.

The bill prohibits the PUCO from approving an application for a decoupling mechanism under the bill if it determines that approval will result in double recovery by the electric distribution utility, unless the utility cures the double recovery.⁵²

Federal Energy Regulatory Commission program

If the Federal Energy Regulatory Commission authorizes a program by which Ohio may take action to satisfy any portion of the capacity resource obligation associated with the organized wholesale market that functions to meet the capacity, energy services, and ancillary services needs of consumers in this state, the bill requires the PUCO to promptly review the program and submit a report of its findings to the General Assembly. The report must include any recommendations for:

- Legislation that may be necessary to permit the state to beneficially participate in the program;
- How to maintain participation by end-use customers in this state in the demand response program offered by PJM or its successor organization, including how the state may consider structuring procurement for demand response that would allow demand response to satisfy a portion of the state's capacity resource obligation.

Additionally, the bill requires the report to incorporate the policy of facilitating the state's effectiveness in the global economy by minimizing any adverse impact on trade-exposed industrial manufacturers.⁵³

Certain wind farms of 5-20 megawatts placed under local control

The bill makes wind farms of at least 5 but less than 20 megawatts subject to local control if they meet certain requirements. The wind turbines and associate facilities must be (1) primarily dedicated to providing electricity to a single customer at a single location and (2) designed for, or capable of, operation at an aggregate capacity of less than 20 megawatts, as measured at the customer's point of interconnection to the electrical grid. Under current law, all wind farms of at least 5 megawatts are subject to the jurisdiction of the Power Siting Board, and all wind farms under 5 megawatts are subject to local control.⁵⁴

⁵² R.C. 4928.471.

⁵³ R.C. 4928.46.

⁵⁴ R.C. 303.213, 519.213, 713.081, and 4906.13.

Net metering system using wind under 20 megawatts

The bill adds a specification to the current requirement that a net metering system be “intended primarily to offset part or all of the customer-generator requirements for electricity.” Specifically, the bill adds that “[f]or an industrial customer-generator with a net metering system that has a capacity of less than [20] megawatts and uses wind as energy, this means the net metering system was sized so as to not exceed [100%] of the customer-generator’s annual requirements for electric energy at the time of interconnection.”⁵⁵

Property tax exemption for energy projects

The bill permits larger-scale energy generation projects to be exempted from property taxation without the approval of the board of commissioners of the county where the project would be located. Currently, an energy project may be exempted from property taxation if its nameplate generation capacity is less than 5 megawatts or, for higher capacity projects, if the board of county commissioners affirmatively approves the exemption. The bill increases this threshold to 20 megawatts, permitting projects under that threshold to be exempted from taxation without the approval of county commissioners.

This higher threshold also affects the potential for boards of county commissioners to obtain payments in lieu of taxes (“PILOTS”) from projects they approve for tax exemption. Currently, if a board of commissioners approves tax exemption for a project with nameplate capacity of 5 or more megawatts, the board may condition the exemption on an annual PILOT of at least \$2,000 per megawatts; the PILOT is credited to the county general fund. (The actual amount of the PILOT a county may obtain varies depending on the source of the energy—i.e., solar, other renewable, and others—and the number of Ohio resident employees involved in the project’s building or installation.) Under the bill, a board of county commissioners may condition tax exemption on PILOTS only if a project has a capacity of at least 20 megawatts.

The higher capacity threshold also releases energy projects within the 5-to-20 megawatts range from three prerequisites for tax exemption that currently apply to any project with 5 or more megawatts capacity: (1) repairing all roads, bridges, and culverts affected by the project to restore them to their prior condition, and posting a bond in some circumstances, (2) provide for training of fire and emergency responders and for adequate emergency equipment related to the project, and (3) providing training and education in the wind and solar power industries through universities or apprenticeship programs. These prerequisites would apply only to projects with a capacity of 20 or more megawatts.

The bill’s changes to the property tax exemption law apply to energy projects certified by the Development Services Agency on or after the bill’s effective date and to projects that currently have nameplate capacity of fewer than 5 megawatts (but that might exceed 20 megawatts after the effective date).

⁵⁵ R.C. 4928.01(A)(31)(d).

Township referendum Power Siting Board wind farms

The bill establishes a procedure for electors in the unincorporated areas of a township to submit a referendum petition to approve or reject a certificate issued by the Power Siting Board for a large wind farm or economically significant wind farm that is to be located in whole or in part in the township.

Referendum petition procedure

Submitting the petition

Under the bill, if the Power Siting Board issues a certificate to a wind farm subject to its jurisdiction, to be located in whole or in part in the unincorporated area of a township, the certificate must become effective on the 90th day after it is issued, unless a referendum petition is filed with the board of elections to require the certificate to be submitted to a vote beforehand.⁵⁶ A referendum petition must be signed by a number of qualified electors equal to at least 8% of the total votes cast for all candidates for governor in the last gubernatorial election in the township.⁵⁷ Each petition must contain a brief description of the wind farm the certificate authorizes that is sufficient to identify the certificate. Existing Ohio law governing petitions applies.⁵⁸ The bill prescribes the form for the petition.⁵⁹

Responsibilities of the board of elections upon receiving petition

Upon receiving the referendum petition, the board of elections must notify the board of township trustees that the petition has been filed. Then, upon determining that the referendum petition is sufficient and valid, the board must notify the board of township trustees of that fact and submit the certificate to the electors for approval or rejection at a special election. The election must be held at the next primary or general election occurring at least 90 days after the board receives the petition.⁶⁰

If the certificate is approved

A certificate that is submitted to the electors for approval must not take effect until it is approved by a majority of the electors voting on it. If the certificate is approved, it must take immediate effect.⁶¹

⁵⁶ R.C. 519.214(A).

⁵⁷ R.C. 519.214(B)(1).

⁵⁸ R.C. 519.214(B)(2) and 3501.38, not in the bill.

⁵⁹ R.C. 519.214(B)(3).

⁶⁰ R.C. 519.214(C).

⁶¹ R.C. 519.214(D).

If the certificate is rejected

If the wind farm is to be located in the unincorporated area of a single township and the certificate is rejected in a referendum, then the certificate is invalid.⁶² If the wind farm is to be located in the unincorporated area of more than one township and less than all of the townships with electors voting on the referendum reject the certificate, then the Power Siting Board must modify the certificate to exclude the area of each township whose electors rejected the certificate.⁶³ If all the townships with electors voting on the referendum reject the certificate, then the certificate is invalid.⁶⁴

Renewable energy service purchase programs

The bill allows an electric distribution utility, subject to approval by the PUCO and regardless of any limitations set forth in continuing law governing electric service, to offer a customer the opportunity to purchase renewable energy services on a nondiscriminatory basis by offering the customer either of the following:

- The opportunity to purchase RECs for any purpose the customer elects through the establishment of a schedule or schedules;
- A nondiscriminatory schedule or reasonable arrangement involving the production and supply of renewable energy.

The bill prohibits the PUCO from approving a schedule or reasonable arrangement unless it determines both of the following:

- An undue burden or unreasonable preference or disadvantage to nonparticipating customers is not created;
- The electric distribution utility commits to comply with any conditions the PUCO may impose to ensure that the utility and any participating customers are solely responsible for the risks, costs, and benefits of any schedule or reasonable arrangement.⁶⁵

Tariff applicable to county fairs and agricultural societies

The bill requires an electric distribution utility to file a tariff with the PUCO that is applicable to county fairs and agricultural societies that includes either (1) a fixed monthly service fee or (2) an energy charge on a kilowatt-hour basis. The bill prohibits the “minimum monthly charge” from exceeding the fixed monthly service fee. It also prohibits the customer

⁶² R.C. 4906.101(B)(1) and 4906.203(B)(1).

⁶³ R.C. 4906.101(B)(2)(a) and 4906.203(B)(2)(a).

⁶⁴ R.C. 4906.101(B)(2)(b) and 4906.203(B)(2)(b).

⁶⁵ R.C. 4928.647.

from being subject to any demand-based riders. The electric distribution utility must be eligible to recover any revenue loss associated with the migration of customers to this new tariff.⁶⁶

Home energy assistance programs (HEAP)

The bill requires the Director of the Development Services Agency, beginning in FY 2021 and each fiscal year thereafter, to submit a completed waiver request in accordance with federal law to the U.S. Department of Health and Human Services and any other applicable federal agencies for the state to expend 25% of federal low-income HEAP funds from the home energy assistance block grants for weatherization services allowed under federal law.⁶⁷

Tax devaluation

The bill prohibits a petition by an electric company with taxable property that is or is a part of a certified clean air resource fueled by nuclear power from seeking, and prohibits the Tax Commissioner from granting, a reduction in taxable value below the taxable values as of the bill's 90-day effective date.⁶⁸

Reasonable arrangements

The bill requires the PUCO, in order to promote job growth and retention in Ohio, to attempt to minimize electric rates to the maximum amount possible on trade-exposed manufactures when ruling on a reasonable arrangement application.⁶⁹

Air Quality Development Authority board

The bill expands the Authority's board. The bill adds four legislative members who are nonvoting, ex officio members without compensation. The Speaker of the House of Representatives, the President of the Senate, and the minority leader of each house must each appoint one member. The bill also adds two members of the general public as voting members without compensation and terms of four years. The Speaker of the House of Representatives and the President of the Senate must each appoint one member. The bill allows the legislative members and members of the general public to fully participate in all the board's deliberations and activities. The bill exempts both the legislative members and the members of the general public from the requirement that appointed members give a surety bond of \$25,000 before the issuance of air quality revenue bonds.⁷⁰

⁶⁶ R.C. 4928.80.

⁶⁷ R.C. 4928.75.

⁶⁸ R.C. 5727.47(G).

⁶⁹ R.C. 4905.311.

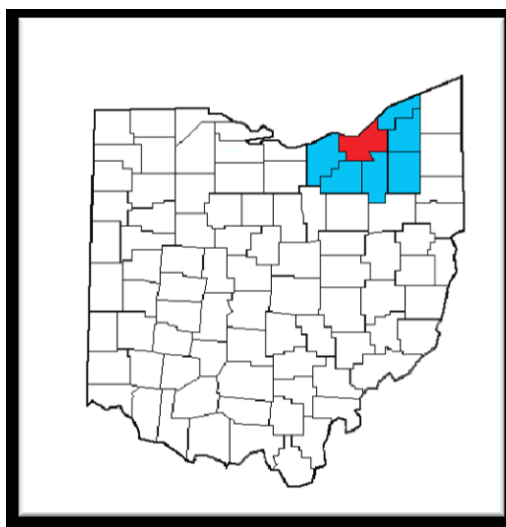
⁷⁰ R.C. 3706.02.

Air Quality Development Authority public policy

The bill expands on the public policy of the state through the operation of the Authority. The bill adds that it is the policy of the state to maintain operations of certified clean air resources, as defined by the bill, that, through continued operation, are expected to provide the greatest quantity of carbon-dioxide-free electric energy generation.⁷¹

E-Check

Under current law, seven counties (Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit) in the Cleveland-Akron area are required to implement a decentralized motor vehicle inspection and maintenance program known as E-Check.



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These counties are required to do so because the Ohio Environmental Protection Agency (OEPA) measured violations in the Cleveland-Akron area of the federal Clean Air Act ozone standards, which were established in 2015. Due to the ozone standard violations, the United States Environmental Protection Agency (USEPA) designated the Cleveland-Akron area in a category known as “nonattainment” for ozone. An area must not only reach attainment status by reducing its emissions to comply with ozone standards, it must also demonstrate that it can continue to maintain that status for ten consecutive years. E-Check is one program that a state may implement to achieve compliance with the Clean Air Act’s air pollution standards.⁷³ Ohio law requires implementation of the E-Check program through June 30, 2019.⁷⁴

⁷¹ R.C. 3706.03.

⁷² See https://www.epa.ohio.gov/dapc/echeck/whycheck/seven_cos.

⁷³ See Ohio EPA E-Check Annual Report, 2017 p.3-4, available at: https://epa.ohio.gov/dapc/echeck/whycheck/annual_reports and USEPA 8-Hour Ozone (2015) Designated Area State/Area/County Report, available at: <https://www3.epa.gov/airquality/greenbook/jbcs.html#OH>.

⁷⁴ R.C. 3704.14, not in the bill.

The bill authorizes the Director of OEPA to apply to the Administrator of the USEPA for an exemption from the requirement of the federal Clean Air Act to implement E-Check. The Director may make the application no earlier than two years from the bill's effective date. In making the application, the Director must request the Administrator to authorize implementation of the Ohio Clean Air Program established by the bill as an alternative to E-Check.⁷⁵

It is unclear whether the implementation of the Ohio Clean Air Program established by the bill would be sufficient to enable the Cleveland-Akron area to eliminate E-Check and comply with the federal Clean Air Act. If Ohio fails to comply with the Clean Air Act requirements, the federal government can withhold federal highway dollars.⁷⁶

Severability clause

The bill provides that if any provision of the act or the application of any provision is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and the provisions are severable.⁷⁷

COMMENT

1. The bill is unclear as to how often an electric distribution utility is to be reimbursed from the Ohio Clean Air Program Fund for net costs related to renewable energy contracts. One provision of the bill requires the PUCO to certify the net costs annually,⁷⁸ while a nearly identical provision does not say "annually."⁷⁹ Another provision refers to the reimbursement of net costs in the context of other disbursements from the fund that must be made on a monthly basis.⁸⁰

2. The bill refers to the requirements for recovery of ongoing costs under current law governing the renewable energy requirements. It is not clear what requirements for recovery of ongoing costs this refers to.⁸¹

⁷⁵ Section 3.

⁷⁶ 42 U.S.C. § 7509 (2019).

⁷⁷ Section 11.

⁷⁸ R.C. 4928.641(G).

⁷⁹ R.C. 3706.485(A).

⁸⁰ R.C. 3706.486(B).

⁸¹ R.C. 4928.641(D).

HISTORY

Action	Date
Introduced	04-12-19
Reported, H. Energy and Natural Resources	05-23-19
Reported, H. Rules and Reference	05-29-19

H0006-RH-133/ec