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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 738  
133<sup>rd</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Skindell & O'Brien

Rocky Hernandez, Attorney

- Repeals H.B. 6 of the 133<sup>rd</sup> General Assembly, which does the following:
  - Requires an electric distribution utility (EDU) to collect a per-customer monthly charge on all rate payers in Ohio to subsidize credits for nuclear resources and certain solar energy facilities;
  - Reduces, and then eliminates beginning in 2027, renewable energy benchmark requirements and outright eliminates, beginning with 2020, the solar energy portion of the renewable benchmark requirements;
  - Eliminates energy efficiency savings requirements after 2020 and modifies energy efficiency and peak-demand reduction portfolio plans and provides a plan to obtain full deemed compliance with energy efficiency savings requirements;
  - Replaces any existing cost-recovery mechanism approved by the Public Utilities Commission (PUCO) associated with contractual commitments related to a legacy generation resource, with a nonbypassable rate mechanism applied to all rate payers in Ohio;
  - Subjects to local control wind farms of five or more, but less than 20, megawatts (MWs) that are primarily dedicated to providing electricity to a single customer at a single location;
  - Permits an EDU to enter into agreements with a mercantile customer or mercantile customer group for constructing a customer-sited renewable energy resource in Ohio that would provide the customer or group with a material portion of its electricity requirements;
  - Allows certain EDUs to file an application with PUCO to implement a decoupling mechanism;
  - Qualifies the definition of “net metering system” to specify that certain energy generation systems satisfy the definition if sized so as to not exceed 100% of the

- customer-generator's annual requirements for electric energy at the time of interconnection;
- Requires an EDU to file with PUCO a new rate schedule for county fairs and agricultural societies that includes a fixed monthly service fee or an energy charge on a kilowatt-hour basis;
  - Requires the Director of Development Services to annually submit a waiver request to spend 25% of federal low-income home energy assistance program funds for weatherization services;
  - Permits energy projects of up to 20 MWs to be exempted from property taxation without the formal approval of a board of county commissioners (the prior threshold was five MWs) and releases the projects from various other prerequisites for the tax exemption (such as repair of affected infrastructure, emergency responder training and equipment, and career training);
  - Disallows future reductions in the taxable value of tangible personal property of certain electric companies.
- Revives the laws regarding the following as they existed prior to the enactment of H.B. 6:
    - Power Sitting Board jurisdiction over wind farms of five or more, but less than 20, MWs that are primarily dedicated to providing electricity to a single customer at a single location;
    - Renewable energy benchmarks and renewable energy requirements, including solar energy resource requirements, and energy efficiency requirements;
    - Exemption of energy projects of up to five MWs from property taxation without the formal approval of a board of county commissioners.

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## **DETAILED ANALYSIS**

### **Repeal of H.B. 6 provisions**

The bill repeals H.B. 6 and either explicitly or implicitly returns the law to its pre-H.B. 6 state, with the likely effect of reviving the law as it was in many cases. Below is a summary discussion of the repealed provisions, and a link to LSC's analysis of H.B. 6, As Passed by the General Assembly, for a more detailed discussion of the provisions.

### **Payments for nuclear and renewable resource**

The bill repeals the in-state nuclear and renewable resource payment provisions of law enacted in H.B. 6. The repeal includes all provisions related to the per-customer monthly charges that an electric distribution utility (EDU) must collect starting January 1, 2021, and ending on December 31, 2027, to subsidize those resources. The bill, in turn, repeals the nuclear resource credit program, which dealt with the application for, the issuance of, and the payment for, nuclear resource credits administered primarily by the Ohio Air Quality

Development Authority (“the Authority”). It also repeals the similar provisions regarding the renewable energy resource credit program. A detailed discussion of the law being repealed is available on pages 11 to 18 of LSC’s analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

## Renewable energy requirements

The bill repeals the renewable energy requirement changes enacted in H.B. 6. First, the bill revives the benchmarks that were in effect prior to H.B. 6 that required 12.5% (including a 0.5% Solar energy portion) minimum by 2027 and each year thereafter (as opposed to H.B. 6, which made it 8.5 % with no Solar energy requirement after 2019, and no further requirements after 2026). Second, the bill eliminates the renewable energy compliance reduction that is based on in-state solar energy resources qualified to receive renewable energy credits (discussed above as being repealed) and mercantile customers who are self-assessing purchasers. Third, the bill eliminates the prohibition against an in-state solar energy resource getting both a renewable energy credit (described above as being repealed) and a renewable energy credit under continuing law. Finally, the bill revives prior law that allowed an electric distribution utility to recover costs through a bypassable charge for a renewable resource procurement contract executed before April 1, 2014, for as long as the costs are outstanding. H.B. 6 allowed recovery only to the end of 2032. A detailed discussion of the renewable energy requirements of H.B. 6 being repealed is available on pages 19 and 20 of LSC’s analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

## Energy efficiency

The bill repeals all of the energy efficiency changes enacted in H.B. 6. Those repealed provisions (and the effect of the repeal, as applicable) are as follows:

- *Limitation to 8.2% the annual energy savings for each EDU by the end of 2020, with no future requirements.* The repeal reinserts, and thus revives, the pre-H.B. 6 requirements that (1) the annual energy savings requirement be an additional 2% increase each year after 2020 until 2027 and (2) the cumulative energy savings requirement be in excess of 22% as of 2027.
- *Modification of portfolio plans to extend to and then terminate, or simply terminate, on December 31, 2020.* The repeal eliminates these provisions with unknown effect regarding portfolio plans that were set to terminate under pre-H.B. 6 law before December 31, 2020. There may be uncertainty how they would be treated. Administration and regulation of other portfolio plans presumably would be governed by continuing law and pre-H.B. 6 law.
- *Determining cumulative energy savings using the cumulative threshold of 17.5% for all EDUs collectively, with the result that: (1) meeting or exceeding the threshold leads to full compliance with the energy efficiency requirements, and (2) failing to meet the threshold requires PUCO to determine how and when full compliance will be achieved.*

- *Discontinuing existing energy efficiency cost recovery mechanisms if full compliance with energy efficiency savings is deemed achieved (be meeting the 17.5% threshold or PUCO determination of full compliance).*
- *Repeal of energy intensity reduction reports by certain high-volume electric customers that opt out of an EDU's energy efficiency/peak demand reduction portfolio plan. The re-enactment of this provision revives the report requirement.*
- *Permitting mercantile customers to opt out and later opt back in to an EDU's energy efficiency/peak-demand reduction portfolio plan. The repeal of this provision prohibits mercantile customers from opting out or in regarding an EDU's portfolio plan.*

A detailed discussion of all the H.B. 6 energy efficiency changes being repealed can be found on pages 20 to 22 of LSC's analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

## **Legacy generation resource cost recovery**

The bill repeals H.B. 6 provisions related to cost recovery of a legacy generation resource (which are generating facilities owned directly or indirectly by a corporation formed prior to 1960 by investor-owned utilities for the original purpose of providing power to the federal government for use in the nation's defense or in furtherance of national interests, including the Ohio Valley Electric Corporation). H.B. 6 requires that any preexisting PUCO-authorized mechanism for retail recovery of prudently incurred costs related to a legacy generation resource must be replaced with a nonbypassable rate mechanism approved by PUCO for recovery of those costs from all customers of Ohio EDUs. But, the bill does not address if reversion back to the preexisting cost recovery mechanism approved by PUCO prior to the effective date of H.B. 6 occurs as a result of the repeal.

A detailed discussion of the law being repealed can be found on pages 22 to 23 of LSC's analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

## **Agreements for customer-sited renewable energy resources**

The bill repeals the agreements for customer-sited renewable energy resources provision of law enacted by H.B. 6. Generally, this provision gives an EDU the ability to enter into an agreement with a mercantile customer, or group of mercantile customers, to construct a customer-sited renewable energy resource in Ohio that would provide the mercantile customer or group with a material portion of their electricity requirements. A detailed discussion of the law being repealed can be found on page 23 of LSC's analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

## **Decoupling**

The bill repeals the decoupling provisions of law enacted in H.B. 6. Generally, these provisions give an EDU the ability to file an application to implement a decoupling mechanism for calendar year 2019 and each calendar year thereafter. Under a decoupling mechanism, the

base distribution rates for residential and commercial customers is decoupled to the base distribution revenue and revenue resulting from implementation of the energy efficiency and peak demand reduction requirements, 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.

A detailed discussion of the law being repealed can be found on page 24 of LSC's analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

### **Wind farms of 5-20 megawatts**

The bill repeals the amendment regarding wind farms of five, but less than 20, MWs enacted in H.B. 6. These provisions deal with subjecting such wind farms to local control if they meet certain conditions. The repeal has the effect that all wind farms of at least five MWs or more are again subject to the jurisdiction of Power Siting Board. A detailed discussion of the law being repealed, as well as prior law, can be found on pages 24 to 25 of LSC's analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

### **Net metering system using wind under 20 megawatts**

The bill repeals the change to the definition of "net metering system" by H.B. 6. That change allows an industrial customer-generator's net metering system to meet the requirement that the system was intended primarily to offset the customer-generator's electricity requirements if the system: (1) has a capacity of less than 20 MWs, (2) uses wind as energy, and (3) it was sized so as to not exceed 100% of the customer-generator's annual requirements for electric energy at the time of interconnection.

A detailed discussion of the law being repealed can be found on page 25 of LSC's analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

### **Rate schedule for county fairs and agricultural societies**

The bill repeals the H.B. 6 rate schedule requirement for county fairs and agricultural societies. Under H.B. 6, an EDU must file a new rate schedule with PUCO for county fairs and agricultural societies that includes either (1) a fixed monthly service fee or (2) an energy charge on a kilowatt-hour basis. A detailed discussion of the law being repealed can be found on page 25 of LSC's analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

### **Home energy assistance programs (HEAP)**

The bill repeals the HEAP provisions enacted in H.B. 6 that require the Director of Development Services to annually (starting in FY 2021) submit a federal waiver request for the state to spend 25% of HEAP funds for weatherization services allowed under federal law. A detailed discussion of the law being repealed can be found on page 25 of LSC's analysis of

H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

## Property tax exemption for energy projects

The bill repeals the property tax exemption provisions of law enacted in H.B. 6 that address the ability of larger-scale energy generation projects to be exempted from property taxation without the approval of the board of county commissioners and the ability of a board to condition a tax exemption on payments in lieu of taxes only if a project has a capacity of at least 20 MWs. A detailed discussion of the law being repealed, and prior law, can be found on pages 25 and 26 of LSC’s analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

## Tangible Personal Property (TPP)

The bill repeals the provision of H.B. 6 that disallows any future reduction in the taxable value of TPP of an electric company that receives payments for nuclear resource credits. A detailed discussion of the law being repealed can be found on page 26 of LSC’s analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

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## HISTORY

Action	Date
Introduced	07-29-20

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