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H.B. 246
(1_133_2873)
133rd General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 246's Bill Analysis](#)

Version: In House Public Utilities

Primary Sponsor: Rep. Vitale

Local Impact Statement Procedure Required: No

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Highlights

- The bill creates the Natural Gas Supply Access Investment Program, which would receive excess money from the Ohio Department of Natural Resources' Oil and Gas Well Fund (Fund 5180).
- The Public Works Commission would operate the program, and use more than \$100 million of available funding to facilitate investment in natural gas infrastructure in areas of Ohio where there is insufficient natural gas supply access.
- The bill provides a potential increase in GRF revenue from an increase in the maximum forfeitures for violations of pipeline safety requirements. Maximum forfeiture amounts are increased from \$100,000 per day to \$200,000 per day, and from a maximum of \$1 million for a series of related violations to a maximum of \$2 million.
- A decrease in the capacity threshold of electric transmission lines subject to the authority of the Power Siting Board will likely increase expenditures from and revenue to the Power Siting Board Fund (Fund 5610).
- Allowing the Power Siting Board chairperson to hire private experts to make studies and allowing a supplemental assessment for that purpose may increase expenditures from and revenue to Fund 5610.
- The bill also makes multiple changes to the operation and governance of the Public Utilities Commission, the Ohio Power Siting Board, and the Office of the Consumers' Counsel, which likely have minimal fiscal effects.

Detailed Analysis

H.B. 246 makes numerous changes to several state agencies. The largest fiscal impact would be for a new natural gas program operated by the Public Works Commission (PWC). The

fiscal note is grouped into the following major headings: (1) **Natural Gas Supply Access Investment Program**, (2) **Public Utilities Commission**, (3) **Ohio Power Siting Board**, (4) **Office of the Consumers' Counsel**, and (5) **Local jurisdictions**.

Natural Gas Supply Access Investment Program

The bill creates the Natural Gas Supply Access Investment Program to be operated by the PWC. The purpose of the program is to facilitate investment in planning, developing, designing, acquiring, constructing, operating, and maintaining physical facilities useful in meeting the natural gas supply needs in areas of the state where there is insufficient natural gas supply access. Under the program, PWC may, in coordination with the Public Utilities Commission of Ohio (PUCO), make grants and loans to businesses, nonprofits, and local governments.

The program is to be funded through the Natural Gas Infrastructure Supply Access Development (NGISAD) Fund, which the bill creates under section 164.31 of the Revised Code. The NGISAD Fund is to be a fiduciary fund, in the custody of the Ohio Treasurer of State but not part of the state treasury; because the fund would not be in the state treasury, expenditures from the fund would not require appropriation by the General Assembly. Under the bill, the NGISAD Fund would receive excess money available in the Oil and Gas Well Fund (Fund 5180), at the end of each fiscal year. Although the excess amounts will vary from year to year based on revenues and expenses of Fund 5180 and excess revenue between FY 2016 and FY 2020, it appears that the NGISAD Fund would likely receive tens of millions of dollars annually. As shown in the table below, excess revenue in Fund 5180 over the most recent five fiscal years ranged between \$26.3 million and \$55.1 million. Additionally, the NGISAD Fund would likely see an initial transfer of money from Fund 5180 in excess of \$100 million. As of July 1, 2020, Fund 5180 had a cash balance of \$141.6 million.

Oil and Gas Well Fund Revenue and Expenditures FY 2016-FY 2020 (in millions)					
Revenue/Expenditures	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenue (all sources)*	\$40.8	\$52.2	\$75.7	\$80.5	\$75.2
Expenditures	\$14.4	\$21.6	\$36.5	\$25.4	\$33.9
Surplus revenue	\$26.4	\$30.6	\$39.2	\$55.1	\$41.3

*Fund 5180 receives revenue from taxes on the severance of oil and natural gas, and permits and licenses issued by the Department of Natural Resources. Amounts shown also include various cash transfers into Fund 5180.

Operating costs to PWC

Presumably, the operating costs PWC incurs to administer the new program will be paid from the NGISAD Fund. However, the bill does not specify procedures by which the PWC would withdraw money from the NGISAD Fund. PWC could potentially use another operating fund in the state treasury to pay for administrative expenses.

Nevertheless, the duties to PWC under the new program appear to differ from PWC's current infrastructure programs. Consequently, PWC would likely need to hire more staff and

potentially pay consultants to handle the new responsibilities. Currently there are nine staff at PWC, and operating costs are approximately \$1.2 million per fiscal year.

Public Utilities Commission

Pipeline operator forfeitures

The bill increases the amount of operator forfeitures PUCO may assess to not more than \$200,000 (from \$100,000 under current law) for each day of each violation or noncompliance with laws governing pipeline safety, and increases the limit on the aggregate of the forfeitures to not more than \$2 million (from \$1 million under current law) for any related series of violations or noncompliance. Continuing law requires PUCO to deposit these forfeitures in the state treasury to the credit of the GRF.

Alternative rate plans for utilities

The bill enables an electric distribution utility, a heating or cooling company, a sewage disposal system company, and waterworks company to request an alternative rate plan from PUCO by filing an application. PUCO must approve the plan if it finds the proposed rate plan is just and reasonable, as long as the applicant meets that and other criteria specified in H.B. 246.

The Revised Code already permits alternative rate plans for natural gas companies. Consequently, PUCO defines¹ alternative rate plans in administrative law as alternative methods for establishing rates and charges that “may include, but are not limited to, methods that provide adequate and reliable natural gas services and goods in this state; minimize the costs and time expended in the regulatory process; tend to assess the costs of any natural gas service or goods to the entity, service, or goods that cause such costs to be incurred; afford rate stability; promote and reward efficiency, quality of service, or cost containment by a natural gas company; provide sufficient flexibility and incentives to the natural gas industry to achieve high quality, technologically advanced, and readily available natural gas services and goods at just and reasonable rates and charges; or establish revenue decoupling mechanisms. Alternative rate plans also may include, but are not limited to, automatic adjustments based on a specified index or changes in a specified cost or costs.”

The National Regulatory Research Institute (NRRI) published a report² in April 2014, which identified and reviewed alternative rate mechanisms that have come to the forefront in state utility regulation over the past several years. The NRRI paper did not endorse specific rate mechanisms, since it instead argues “that their efficacy is case-specific and depends essentially on the weights commissioners place on the different objectives ascribed to ratemaking.”

NRRI regards “traditional ratemaking” or rate-of-return ratemaking, as “a mainstay of state public utility regulation since its inception. It has allowed utilities to be financially healthy and invest in needed new capital, while at the same time protecting customers from the natural-monopoly power of utilities. The rationale for regulation is the need to assure adequate, reliable electric service at rates that are just and reasonable.”

¹ Ohio Administrative Code (O.A.C.) 4901:1-19-01(A).

² <https://pubs.naruc.org/pub.cfm?id=FA86C519-AF31-D926-BE12-2AC7AE0CD8D6>.

According to NRRI, three reasons explain the recent interest in alternative rate mechanisms. “First, traditional ratemaking gives inadequate attention to new regulatory objectives (e.g., energy efficiency). Second, declining sales growth and declining sales per customer have caused revenue erosion. Large capital expenditures, some of which are nonrevenue producing, are a third reason for interest in alternative rate mechanisms. Many utilities, as well as an increasing number of commissions, feel that waiting for the utility to recover these costs until the completion of a new project or the next rate case could lead to serious cash-flow problems and, ultimately, ‘rate shock.’”

PUCO approves electric rate mechanisms that accomplish state public policy objectives explicitly stated in R.C. 4928.02. In general, alternative rate plans could lead to higher prices paid by ratepayers, including the state and political subdivisions, but presumably, PUCO would only approve those higher costs after examining aggregate effects in accomplishing its policy objectives.

Revenue neutral revision of public utility assessments

The bill revises the methodology for assessing a railroad, public utility, or a competitive retail supplier beginning with calendar year 2021. As a regulatory agency, PUCO is largely funded by assessments paid by the companies it oversees. The companies collectively pay an amount that equals the total appropriations from the Public Utilities Fund (Fund 5F60), including for line item 870622, Utility and Railroad Regulation. This line item covers the broadest set of PUCO’s responsibilities and represents the largest source for agency payroll.

Under continuing law, each company must file an annual report with PUCO, which identifies their intrastate gross receipts. These Ohio-specific revenues are the basis for the annual assessment. Under current law, the minimum assessment is \$100 per year, but the bill replaces the minimum annual assessment applicable to a competitive retail supplier, which must instead make a prepayment of \$200 to PUCO at the time of its application for certification or biennial certification renewal. The provision does not have a fiscal impact because the annual assessment on these regulated entities remains \$100 per year, albeit collected by PUCO at different intervals due to H.B. 246. All utility assessments are deposited into Fund 5F60.

Railroad right-of-way crossings

The bill establishes two different regulatory regimes governing the crossing of railroad rights-of-way: one applying to public utilities and the other applying to telephone companies and video service providers. The law gives PUCO authority to resolve disputes between railroads and those companies intending to construct a crossing. This regulatory provision will have an indeterminate effect on PUCO expenditures, depending on the number of disputes arising over the construction and placement of railroad crossings.

Inspections

The bill makes other changes to PUCO’s existing duties related to railroad bridge inspections while creating new authority to inspect a cargo tank facility. Neither inspection responsibility is likely to yield anything more than a minimal fiscal effect on agency expenditures.

Proceedings before PUCO

The bill grants PUCO discretion as to whether it may require all parties and intervenors to a proceeding to be consolidated when the parties and intervenors have sufficiently common interests and it will expedite the proceeding. The provision could reduce agency expenditures by an indeterminate amount, depending on the magnitude of consolidation.

Gas company meter-proving

The bill alters testing requirements for a meter-prover. Continuing law requires all gas companies supplying the public with artificial or natural gas to provide a meter-prover, which must be tested in the place where it is to be used, stamped, and sealed. Whereas existing law requires this testing to be done by PUCO, H.B. 246 instead designates “a qualified meter-proving company, contractor, or manufacturer in accordance with manufacturer recommendations.” The bill further requires gas companies to maintain records of tests and make those records available to PUCO staff on request. The provision may reduce agency expenditures by minimal amounts.

Office hours

The bill removes requirements that PUCO must be open “between eight-thirty a.m. and five-thirty p.m. throughout the year, Saturdays, Sundays, and legal holidays excepted.” The provision may reduce agency expenditures by minimal amounts.

Rulemaking

The bill exempts PUCO from a new provision enacted by the recent operating budget, H.B. 166 of the 133rd General Assembly. The budget bill required certain agencies – including PUCO – to identify which of their rules contain regulatory restrictions and to produce an inventory of regulatory restrictions before December 31, 2019. Agencies must post the inventory on their websites and transmit copies to the Joint Committee on Agency Rule Review (JCARR). JCARR was required to review the inventory and transmit it to the House Speaker and the Senate President. The budget prohibits these agencies during fiscal years 2020, 2021, 2022, and 2023, from adopting a new regulatory restriction unless they simultaneously remove two or more existing regulatory restrictions.

Ohio Power Siting Board

Scope of regulation

The bill expands the number of electric transmission lines subject to Ohio Power Siting Board (OPSB) authority by lowering the capacity threshold from 100 kilovolts to 69 kilovolts. The provision would substantially increase the number of transmission lines under the jurisdiction of the Board. The Power Siting Board Fund (Fund 5610) would receive additional revenue in the form of application fees from owners of prospective electric transmission lines that are planned for construction.

Temporary staff

The bill gives the OPSB chairperson discretionary authority to hire, temporarily, any other expert or analyst for the purpose of making studies, conducting hearings, investigating applications, or preparing any report required. Any such expert or analyst must be compensated at the direction of the chairperson from a supplemental application fee assessed

in accordance continuing law. All contracts for services under the bill's provision are subject to the approval of the chairperson. Resulting expenditures would be incurred by line item 870606, Power Siting Board, which draws on Fund 5610. Revenues in support of this line item are received from application fees or from amounts billed to applicants for OPSB expenses incurred during the course of their evaluation.

Landowner notification of major solar projects

The bill defines a "major solar project" as "solar electric generating plant that is a major utility facility." Continuing law uses capacity of at least 50 megawatts as the threshold for a "major" electric generating plant and associated facilities.

The bill requires OPSB to adopt rules no later than December 1, 2020, for notifying neighboring landowners of a major solar project site and prescribing a minimum setback for major solar projects. A major solar project that has submitted an application for a certificate for construction of a major utility facility or a change or amendment of a certificate for an existing certificate from the Board prior to December 1, 2020, is exempt from these prospective notification rules.

Office of the Consumers' Counsel

Representation and proceedings before PUCO

The bill explicitly limits the Office of the Consumers' Counsel (OCC) to representation of "residential consumers" rather than whenever "the public interest is served."

The bill grants PUCO discretion to subject OCC's participation "to any reasonable conditions that the commission deems necessary to avoid duplication, repetition, and delay." These limitations would occur "to the extent that a municipal corporation, the consumers' counsel, and any other party or intervenor seek to participate in the same proceeding, and do so on behalf of residential consumers." Both of these changes could potentially reduce expenditures by OCC from line item 053601, Operating Expenses.

Revenue neutral revision of public utility assessments

The bill excludes wireless service providers from the assessment on public utilities. OCC is entirely funded through an assessment on the intrastate gross receipts of state-regulated public utilities. The total revenues from these assessments is dependent on the amount appropriated for line item 053601, Operating Expenses.

The level of the annual assessment for each public utility company will vary based upon the number of public utilities, the amount of their intrastate gross revenues, and the amount of lapsed funds that are credited back to the utility companies. By excluding wireless service providers from the assessment, the bill effectively increases the amount paid by other public utilities. All assessments are deposited into the Consumers' Counsel Operating Fund (Fund 5F50).

Nine-member Consumers' Counsel governing board

The bill changes the appointment process for all nine members of the OCC governing board after the effective date of the bill.

Whereas current law requires the Ohio Attorney General (AGO) to appoint all nine members from organized groups representing labor, residential consumers, and family farmers,

subject to Senate confirmation, the bill reduces OAG's allotment to three members, and does not require Senate confirmation of the appointments. The reduction in number of AGO appointees enables six appointments from the Ohio legislature. Under the bill, three members would be appointed by the Speaker of the House of Representatives, and another three members would be appointed by the President of the Senate. The bill retains the existing interests of OCC, as the AGO, Speaker, and President must appoint one person from each of the organized groups representing labor, residential consumers, and family farmers.

Local jurisdictions

Solar collector systems

The bill prohibits homeowners, neighborhood, civic, and other associations ("associations"), as well as condominium properties, from imposing unreasonable limitations on the installation of solar collector systems in certain locations.

Railroad right-of-way

Public utility use of railroad right-of-way

The bill permits a public utility to cross a railroad right-of-way, unless the crossing exceeds one mile in length. The bill defines "cross" (or "crossing") to mean the placement and use of public utility facilities over, under, across, or parallel to a right-of-way.

Under the bill, the notice must be accompanied by a one-time crossing fee to the railroad for \$1,250. The fee compensates the railroad for the acquisition of crossing rights, construction of the crossing, and all other expenses incurred by the railroad due to the crossing. H.B. 246 does not require a public utility to pay this fee if crossing a public right-of-way. Moreover, a public utility cannot be subjected to any other railroad-imposed fee or charge regarding a crossing or construction of a crossing.

Telecommunication provider use of railroad right-of-way

The bill permits a telephone company or video service provider (provider) to construct a crossing. A provider seeking to construct a crossing must submit a written notice to the railroad whose railroad right-of-way is subject to the crossing, and the notice must include details about the crossing, as enumerated in H.B. 246.

Under the bill, a provider must pay a one-time fee of \$750 for each crossing notice to the railroad whose railroad right-of-way is to be subject to the crossing. The provider must pay the fee at the same time it submits the crossing notice. The fee completely compensates the railroad for the crossing described in a crossing notice.