OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research and Drafting

Legislative Budget Office

H.B. 798
133rd General Assembly

Fiscal Note & Local Impact Statement

Click here for H.B. 798's Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Hoops

Local Impact Statement Procedure Required: No

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Highlights

Fund	FY 2021	FY 2022	FY 2028-FY 2029
Nuclear Generation Fund and Renewable Generation Fund (custodial funds)			
Revenues	$85 million loss	$85 million loss	$170 million gain
Expenditures	$42.5 million decrease	$127.5 million decrease	$170 million increase

Note: The state or school district fiscal year runs from July 1 through June 30 and is designated by the calendar year in which it ends. For other local governments, the fiscal year is identical to the calendar year.

- The bill delays the beginning of a charge paid by electricity customers from January 1, 2021, to January 1, 2022. Similarly, the bill delays the expiration of that charge by one year, to December 31, 2028. The customer charge totals up to $170 million per year and is deposited into the Nuclear Generation Fund and the Renewable Generation Fund, which are used to compensate electric generating facilities fueled by nuclear energy and select facilities fueled by solar energy. As seen in the table above, the bill shifts $85 million per fiscal year in revenue from FY 2021 and FY 2022 to FY 2028 and FY 2029, and makes a similar shift of expenditures.
- Requiring the Public Utility Commission of Ohio (PUCO) to conduct an annual audit and financial need assessment could yield reduced payments from the Nuclear Generation Fund in FY 2022 through FY 2029.
- The Ohio Air Quality Development Authority (OAQDA) is limited to $150,000 per year from each fund, subject to Controlling Board approval.

- The bill declares itself to be an emergency measure; therefore, it goes into immediate effect upon its enactment.

Detailed Analysis

The bill contains various provisions affecting the state energy policy of Ohio. The following sections describe these provisions and estimate their fiscal effects on state agencies and local governments. The bill's principal fiscal impact is on two funds outside the state treasury – the Nuclear Generation Fund and the Renewable Generation Fund. Both are custodial funds to be administered by the Ohio Air Quality Development Authority (OAQDA).

Several of the provisions in the bill modify codified law enacted by H.B. 6 of the 133rd General Assembly. Among other things, H.B. 6 created a charge on customers of electric distribution utilities (EDUs) scheduled to begin January 1, 2021, the receipts from which will be deposited in the Nuclear Generation Fund and the Renewable Generation Fund. Continuing law authorizes those funds to pay the owner or operator of Ohio's nuclear power stations up to $150 million per year while separately dedicating up to $20 million per year for solar energy facilities approved by the Ohio Power Siting Board (OPSB) prior to June 1, 2019.

Clean Air Fund rider

The bill delays by one year the customer charge that would otherwise begin January 1, 2021, and terminate on December 31, 2027. The H.B. 6 charge, which is referred to as the "Clean Air Fund" rider in proceedings before the Public Utilities Commission of Ohio (PUCO), was designed to raise $170 million in calendar year (CY) 2021. The H.B. 798 delay extends the termination date to December 31, 2028, so the total amount of money raised for the two custodial funds administered by OAQDA will not change, but some of the receipts will be received in different state fiscal years.

Annual audit and financial need assessment

Existing law requires PUCO to conduct a retrospective management and financial "review" on the owner or operator of a qualifying nuclear resource and any such resource that receives payments for nuclear resource credits. The bill amends the existing provision to replace PUCO's "review" with a requirement that it complete an "audit, including a financial need assessment." In doing so, PUCO must retain independent consultants and auditors who are knowledgeable and experienced in the particular subject to perform all of the annual audits.

PUCO's annual audit must be completed by May 1 of a given year. The first audit is required to be completed by May 1, 2021, meaning it should be completed prior to any payments to nuclear plant owners or operators. The findings of the audit will determine whether quarterly payments from the Nuclear Generation Fund should be reduced or eliminated over the following year. Specifically, the bill will limit payments "to the amount necessary to increase the net income or profit margin of the resource from a negative amount to not more than zero for the annual audit period." When OAQDA evaluates these profit margins, it must consider all revenue received from all sources while excluding expenses for "lobbying costs, political or charitable donations, share buybacks, management bonuses, or incentive compensation." Amounts left in the Nuclear Generation Fund and the Renewable Generation Fund as of December 31 each year that were not needed to make required payments must be refunded to ratepayers.

The two nuclear plants are operated by Energy Harbor Nuclear Corp. (formerly known as FirstEnergy Nuclear Operating Company) and owned by Energy Harbor Nuclear Generation LLC (formerly known as FirstEnergy Nuclear Generation, LLC). Both companies are subsidiaries of Energy Harbor Corp. (formerly known as FirstEnergy Solutions Corp.). LBO staff cannot predict the fiscal impact from the prospective audits because equivalent information about the financial status of Ohio's two nuclear plants is not publicly available.

General information about the plants' owner and operator were disclosed during the recently concluded Chapter 11 bankruptcy proceeding of its parent company. Monthly operating statements for the nuclear plants' owner reported positive net income over the 23-month bankruptcy period while the nuclear plants' operator and parent company both reported net losses over that same duration.[1] Those operating statements were not solely reflective of Ohio's nuclear plants, as they also included the Beaver Valley Nuclear Power Station in Shippingport, Pennsylvania.

Prior to the bankruptcy restructuring, an independent market monitor (Monitoring Analytics, LLC) for PJM Interconnection, L.L.C. (PJM) conducted a "nuclear net revenue analysis" for each power station within the 13-state PJM region. Based on assumptions used for that 2019 study, PJM's market monitor estimated that the Perry and Davis-Besse power stations would both operate at a deficit in calendar years 2019 through 2021.[2] Nevertheless, it is unclear how the bill's audit will impact future receipts and expenditures from the Nuclear Generation Fund.

Renewable Generation Fund

Whereas H.B. 6 imposed an application deadline for a qualifying solar-powered electric generation facility, H.B. 798 extends that deadline by one month. Only three of the eligible solar facilities applied to OAQDA by the original deadline on February 1, 2020.[3] By extending this application deadline, solar facilities in Hardin and Vinton counties could qualify for payments from the Renewable Generation Fund. Those solar projects comprised 445 Megawatts (MW) of the 1,095 MW nameplate capacity among eligible solar farms originally anticipated to receive payments. Therefore, the provision could increase annual expenditures from the Renewable Generation Fund from $12 million to the $20 million limit in codified law.

Ohio Air Quality Development Authority

The bill provides guidance language regarding the Authority's use of money from the Nuclear Generation Fund and the Renewable Generation Fund. The bill directs OAQDA to spend no more than $150,000 from each fund for a total of $300,000 annually to pay for its administrative costs. The bill requires OAQDA to seek approval from the Controlling Board before using the money. The annual limit applies to FY 2020 through FY 2029, but Controlling Board

[1] Refer to Docket #3902, "Debtor-In-Possession Monthly Operating Report for Filing Period Ended February 26, 2020 Filed by Debtor FirstEnergy Solutions Corp." https://cases.primeclerk.com/fes/Home-DocketInfo.

[2] Refer to Table 7-41 and Table 7-42 in 2018 State of the Market Report for PJM, https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2018/2018-som-pjm-volume2.pdf.

[3] https://ohioairquality.ohio.gov/Our-Services/Nuclear-and-Renewable-Generation-Programs.

approval will not be granted prior to FY 2023. The Authority's annual costs incurred in FY 2020 through FY 2022 can be included alongside the FY 2023 amounts when OAQDA seeks Controlling Board approval at that later date.[4]

Ohio Power Siting Board

The bill requires OPSB to submit a report to the General Assembly, not later than December 1, 2021, on "whether the current requirements for the planning of the power transmission system and associated facilities investment in this state are cost effective and in the interest of consumers." The report must include any recommendations for legislative changes to ensure transmission planning is cost effective and in the interest of the public. The bill enumerates nine topics that OPSB must address when making its recommendations. OPSB must hold at least one public meeting before completing the report and must complete the report in consultation with JobsOhio.

The Board does not have a funding source or appropriation for general purpose operating activities. All of its spending is billable to various utilities that submit applications for OPSB's consideration of specific projects. This fee-based system does not appear to offer a funding source for preparing the required report, unless another existing appropriation in the PUCO budget could be used.

Revenue decoupling mechanism

The bill terminates an existing decoupling mechanism authorized by H.B. 6. Revenue decoupling mechanisms preceded that legislation, and several EDUs gained PUCO approval for similar mechanisms in prior years. As of this writing, the H.B. 6 decoupling mechanism (or "Conservation Support rider") only applies to the three FirstEnergy EDUs. The Conservation Support rider could raise tens of millions of dollars annually for an indefinite number of years. The repeal of this legal authority reduces electricity costs of those served by the FirstEnergy EDUs, inclusive of state and local government entities.

Significantly excessive earnings test (SEET)

The bill repeals a provision enacted in H.B. 166 of the 133rd General Assembly that affected EDUs and how PUCO administers the significantly excessive earnings test. H.B. 798 restores the previous law that requires affiliated EDUs to separately calculate their return on equity for their annual SEET proceeding. Beginning with the 2019 SEET, the three FirstEnergy-affiliated EDUs combined their reporting so a singular return on equity, representative of the three EDUs, was submitted to PUCO.

The other EDUs in Ohio are not affiliated, so the bill affects only the three FirstEnergy EDUs that operate under a joint electric security plan (ESP) – Cleveland Electric Illuminating Company, Ohio Edison Company, and Toledo Edison Company. The provision may yield utility refunds for customers, including state agencies and political subdivisions, served by the Ohio Edison Company, but the outcome depends on numerous other circumstances that are not influenced by the bill. For a more detailed description of this provision and related background

[4] The bill does not include any appropriations for the use of these funds, but both funds are custodial funds and not in the state treasury. If the money is not transferred to a fund in the state treasury before expenditures are made, no appropriation would be needed.

information, refer to the fiscal note for H.B. 740 of the 133rd General Assembly (H.B. 740 contains the same provision).

Ohio Valley Electric Corporation (OVEC)

The bill requires an EDU with an ownership interest in a legacy generation resource to "make a good faith effort to divest from its legacy generation resource obligations." Such an effort must be made every year beginning in 2022 and ending after 2030, coinciding with the duration for which EDUs' ratepayers can incur costs for OVEC's potential operating deficit. Customers pay for these costs through a rider on their monthly electric bill. In theory, the customers would receive a credit on their bill if PJM's wholesale electricity market rates were higher than OVEC's costs of the power, but this circumstance will not occur under current market conditions.

Prior to H.B. 6, the three EDUs with an ownership interest in OVEC separately levied an electric bill rider that recovered costs from their customers. Beginning in 2020, those riders were replaced by a singular, "legacy generation rider" that applied to every EDU customer in Ohio. The prior OVEC riders were authorized under ESPs approved by PUCO, and one condition for implementing the OVEC rider was that EDUs annually report on their continued reasonable efforts to explore divestiture of their OVEC asset. If the EDUs were successful in discharging their OVEC obligations, the riders paid by customers would terminate. The EDUs' ensuing reports filed with PUCO show that they did not receive any offers in response to their continued efforts.

Solar collection system

The bill defines "solar collector system" and prohibits unreasonable limitations on the installation of a solar collector system on the roof or exterior walls of buildings by the property owner. The prohibition applies to the "agreement of a homeowners, neighborhood, civic, or other association." A similar prohibition applies to associations of condominium unit owners. The provision does not have a direct fiscal effect on state or local government jurisdictions.

Emergency provision

The bill declares itself an emergency measure; therefore, it goes into immediate effect upon its enactment.

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