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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

S.B. 44
134th General Assembly

Fiscal Note & Local Impact Statement

[Click here for S.B. 44's Bill Analysis](#)

Version: As Introduced

Primary Sponsors: Sens. Rulli and Cirino

Local Impact Statement Procedure Required: No

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Highlights

Fund	FY 2021	FY 2022	FY 2023-FY 2028
Nuclear Generation Fund (custodial fund)			
Revenues	\$75 million loss	\$150 million loss	Up to \$825 million loss
Expenditures	\$37.5 million decrease	\$150 million decrease	Up to \$862.5 million decrease

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.

- Repealing one of the two purposes of a charge paid by electricity customers that was scheduled to begin January 1, 2021, would reduce customer charges from up to \$170 million per year to no more than \$20 million per year. This would reduce costs for ratepayers statewide, including the state and political subdivisions. The bill eliminates the Nuclear Generation Fund, which would under current law receive up to \$150 million per year in revenue and subsequently disburse receipts to the owners or operators of Ohio's nuclear power stations.
- The Renewable Generation Fund (renamed Solar Generation Fund by the bill) will continue to receive up to \$20 million per year from the residual electric charge. The bill permits eligible solar facilities in two counties to receive distributions from the fund by delaying an application deadline that facility owners missed by one month during calendar year 2020.

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).

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. The bill repeals the Revised Code provision that authorizes the Nuclear Generation Fund to pay the owner or operator of Ohio's nuclear power stations up to \$150 million per year while leaving intact continuing law authorizing up to \$20 million per year for solar energy facilities approved by the Ohio Power Siting Board (OPSB) prior to June 1, 2019.

Nuclear Generation Fund

S.B. 44 partially repeals the legal basis for a new customer charge that was originally scheduled to begin in January 2021.¹ The prospective charge, which is referred to as the "Clean Air Fund rider" in the Public Utilities Commission of Ohio (PUCO) proceedings, would financially support two Ohio-based nuclear power plants and certain utility-scale, solar energy electric generating facilities.

On December 21, 2020, the Franklin County Court of Common Pleas issued a preliminary injunction in *State of Ohio v. FirstEnergy Corp., et al.*, Case Nos. 20CV-06281, et al. Among other provisions in the preliminary injunction, the court ordered PUCO to revoke "authorization for electric distribution utilities to collect the H.B. 6 Rider."

The OAQDA subsequently informed PUCO that any payments to be made to Energy Harbor Corp. (Energy Harbor) and its affiliates and subsidiaries pursuant to Chapter 3706 will temporarily cease and that no further nuclear generation credits will be issued to Energy Harbor while the preliminary injunction issued by the Franklin County Court of Common Pleas remains in effect.

Under S.B. 44, customers would not be charged up to \$150 million per year, from 2021 through 2027. Proceeds of this rider were to be deposited into the Nuclear Generation Fund, a custodial fund established by H.B. 6. The fund is eliminated by S.B. 44. The intended recipients of the Nuclear Generation Fund, which would have been dedicated to the nuclear power plants, do not receive any funding under S.B. 44. The bill reduces the caps on monthly charges to various customers. For example, the residential customers' cap is revised to 10¢ per month, less than the H.B. 6 cap of 85¢ per month.

¹ The Clean Air Fund rider was imposed only on customers of Ohio's six EDUs. The charge is not applicable to customers of rural electric cooperatives and municipal electric utilities.

Solar Generation Fund (Renewable Generation Fund)

Whereas H.B. 6 imposed an application deadline for a qualifying solar-powered electric generation facility, S.B. 44 extends that deadline by one month. Only three of the eligible solar facilities applied to OAQDA by the original deadline on February 1, 2020.² 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. The bill also renames the Renewable Generation Fund to the Solar Generation Fund.

The bill declares that the Solar Generation Fund is administered by OAQDA, and it must request the Treasurer of State to create the account for the fund. The clarification in the bill will enable the fund to function as intended by H.B. 6.

Other provisions

The bill repeals other provisions enacted by H.B. 6 related to payments from the Nuclear Generation Fund. By repealing authorization for payments from the fund, these provisions would lose any effect, so the bill repeals them.

S.B. 44 repeals certain public utility tangible personal property (PUTPP) tax valuation procedures related to the payments. H.B. 6 prohibited an owner from valuing PUTPP at less than its taxable value as of October 22, 2019, if the owner received such payments. Similarly, if the owner of such a facility petitioned for a reassessment of its taxable value below its value as of October 22, 2019, the Tax Commissioner was prohibited from granting such a reduction.

The amount of taxes (and their related PUTPP values) paid by these nuclear power station owners is privileged information, but an analysis of PUTPP values reported for relevant taxing jurisdictions suggests the nuclear plants' PUTPP has already declined by 65% to 85% from tax year (TY) 2016 to TY 2018. Although further devaluation is possible, it is unlikely to decline to a value of \$0, even if the nuclear power plants cease operations.

Similarly, the bill repeals a provision that required PUCO to conduct annual retrospective management and financial reviews of the owner or operator of a nuclear generation resource receiving payments from the Nuclear Generation Fund. Repealing this provision would reduce administrative costs for PUCO, which were to be paid from the Nuclear Generation Fund.

² <https://ohioairquality.ohio.gov/Our-Services/Nuclear-and-Renewable-Generation-Programs>.