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S.B. 41*
135th General Assembly

Bill Analysis

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Version: As Reported by House Economic and Workforce Development

Primary Sponsor: Sen. Roegner

Carla Napolitano, Attorney and various other LSC staff

SUMMARY

Building appeals

- Allows for expedited appeals to the Ohio Board of Building Appeals and county and municipal boards of building appeals.

Battery-charged fences

- Eliminates state law requirements concerning the installation and operation of battery-charged fences on private nonresidential property.
- Prohibits local governments from adopting or enforcing battery-charged fence regulations that expressly, implicitly, or functionally prohibit the installation, operation, or use of battery-charged fences that meet certain criteria.

Governmental entity public way fees

- Permits a public utility subject to Public Utilities Commission (PUCO) jurisdiction to file an application with PUCO for the accounting authority to classify certain costs related to regulations regarding the use of a right of way as regulatory assets subject to recovery.
- Defines "right of way" as the surface of, and the space within, through, on, across, above, or below any land designated for public use that is owned or controlled by a governmental entity and includes a municipal corporation public way, but is not a private easement.

* This analysis was prepared before the report of the House Economic and Workforce Development Committee appeared in the House Journal. Note that the legislative history may be incomplete.

- Requires PUCO to authorize such accounting authority as may be reasonably necessary to classify the cost as a regulatory asset.
- Requires PUCO to establish a charge and collection mechanism permitting the utility's full recovery of a public way fee if its treatment as a regulatory asset is determined to be not practical or if deferred recovery would impose a hardship on the utility or its customers.
- Exempts cost recovery authorized as a regulatory asset as described above from any provision of law or agreement establishing price caps, rate freezes, or rate increase moratoria.
- Requires PUCO to process applications for classifying the above costs as regulatory assets in the same manner as applications for the recovery of certain other municipal public way fees as regulatory assets.
- Specifies that a final order regarding a recovery mechanism authorized under the bill must provide for retroactive adjustment as PUCO determines appropriate.
- Clarifies, for purposes of authorizing regulatory assets related to the use or occupancy of a municipal public way, costs incurred by a public utility because of municipal corporation regulation (instead of local regulation as in current law) of its use or occupancy.

Purchase agreements and workers' compensation experience transfers

- Specifies that an employer transferring a business to another employer is not required to provide a copy of a purchase agreement to the Administrator of Workers' Compensation for the Administrator to complete a transfer of experience if there is a family relationship or other similar connection between the predecessor and the successor.

Pay Stub Protection Act

- Requires an employer, on the employer's regular paydays, to provide each of the employer's employees with a statement or access to a statement of the employee's earnings and deductions for the pay period.
- Requires an employer who does not provide the statement or access to the statement at the time required under the bill to provide the statement not later than ten days after receiving an employee's request for the statement.
- Permits an employee who does not receive the requested statement within ten days of requesting it to report the violation to the Director of Commerce, who must notify the employer in writing of the violation.
- Requires, if an employer receives a notice from the Director, the employer to post the notice or a copy of the notice in a conspicuous place on the employer's premises for ten days.

Waste energy recovery systems

- Includes a facility that produces and uses steam, or transfers it, from recovered waste heat from a manufacturing process to another manufacturing process or to generate electricity as a "waste energy recovery system" for purposes of the renewable energy resource portfolio standards, renewable energy credits, advanced energy program, and energy efficiency program under the Competitive Retail Electric Service Law.

Broadband Pole Replacement and Undergrounding Program

- Modifies the reimbursement formula under the Broadband Pole Replacement and Undergrounding Program as follows:
  - For actual and reasonable costs to perform a pole replacement or mid-span pole installation, reimbursements are equal to the lesser of $7,500 multiplied by the number of pole replacements and mid-pole installations in an application, or 75% of the total eligible costs therein.
  - For actual and reasonable undergrounding costs, reimbursements must not exceed 75% of the total eligible costs, except that the reimbursements cannot exceed the amount that would be available if the applicant did a pole replacement or mid-span pole installation instead.
- Adds undergrounding costs needed because the process for obtaining access to poles is causing, or is reasonably anticipated to cause, a delay that impacts the applicant's ability to meet required deadlines to those costs that are eligible for reimbursement under the Program.
- Securities Law Revises a provision of the Ohio Securities Law that allows a corporation to recover profit derived from the sale of securities by a person who proposes to, or publicly discloses the intention of, acquiring control of a corporation.
- Limits application of that remedy to situations in which the person selling the securities engages in "manipulative practices," by staging a hostile takeover bid to manipulate a corporation or committing any other act that the Ohio Division of Securities defines as manipulative.
- Specifies that the General Assembly's intent in amending the statute is to clarify, and not alter, the scope of conduct or practices that may give rise to the remedy.

Sales tax exemption

- Allows a purchaser to provide three years of filed federal farm profit and loss forms to the Tax Commissioner to verify that certain vehicles and trailers are primarily used in agriculture, and thus exempt from sales and use tax.
- Allows the Tax Commissioner to issue certificates, which may be provided to a vendor, verifying that a consumer has filed three years of those forms with the Commissioner.

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DETAILED ANALYSIS

Building appeals

The Ohio Board of Building Appeals hears appeals to orders enforcing the Ohio Building Code, the Residential Code of Ohio (the building code for residential structures), the Ohio Fire Code, the Ohio Elevator Code, and the Ohio Boiler Pressure and Vessel Code. The Board of Building Appeals may also certify county and municipal boards of building appeals to hear

appeals to orders enforcing the Ohio Building Code and the Residential Code of Ohio.[1] The bill provides for expedited appeals to these boards.

Requests and scheduling for expedited appeals

Under current law, when a party appeals an order, the Board of Building Appeals, or the relevant county or municipal board, is required to schedule the appeal hearing, no sooner than seven days and no later than 15 days after the appeal is requested.[2] The bill allows appellants to request expedited appeals. If an expedited appeal is requested when the appeal itself is made, the bill requires the board to both:

- Commence the appeal within one day after the request is made, excluding Saturdays, Sundays, and legal holidays;
- Hold a hearing within five days after the request is made, excluding Saturdays, Sundays, and legal holidays.

If an expedited appeal is not requested at the outset, the person who requested the appeal may later request that the remainder of the appeal be expedited if certain conditions are present. Those conditions are that, during the course of the appeal, the board issues a continuance of the hearing, such that no decision is made and additional evidence is requested in order to continue the proceeding. In those circumstances, the person may request that any follow-up hearing be expedited within five days of the issue of the continuance, excluding Saturdays, Sundays, and legal holidays. The follow-up hearing then must be held within five days of the request.

Generally, under continuing law, the Board of Building Appeals, and a county or municipal board, must issue its decision within 30 days of an appeal hearing. The bill states that this deadline does not apply to expedited appeals, but does not provide an alternative deadline.[3]

Under the bill, the board conducting an expedited hearing must provide all parties a notice before conducting the hearing. The board may hold the hearing electronically.[4]

Fees for expedited appeals

Under continuing law, the Board of Building Appeals is permitted to establish reasonable fees for appeals, based on actual costs for administration of filing and processing and not exceeding $200 (the current fee is $200). County and municipal boards of building appeals are also permitted to establish reasonable, cost-based, fees for appeals that do not exceed $100. The bill allows the Board of Building Appeals, and county and municipal boards, to

[1] R.C. 3781.19 and 3781.20; Ohio Administrative Code (O.A.C.) 4101:13-1-04, not in the bill.

[2] R.C. 119.07, not in the bill.

[3] R.C. 3781.19.

[4] R.C. 3781.21(A) and (C).

establish additional fees for expedited appeals. Those fees cannot exceed $500 for each day the appeal is pending or $1,000 in total.[5]

Rules

The Board of Building Standards is authorized to adopt rules implementing the bill's expedited appeal process.[6]

Battery-charged fences

Current law includes numerous safety standards concerning the installation and use of battery-charged fences on private nonresidential property. Furthermore, the law expressly authorizes counties, townships, and municipal corporations to (1) impose additional regulations that do not conflict with state law, (2) require a permit or fee for the use of a battery-charged fence, and (3) prohibit battery-charged fences that do not meet state law requirements. The bill eliminates the state safety standards and limits the authority of local governments to impose safety standards of their own.

Under the bill, no county, township, or municipal corporation may adopt or enforce an ordinance, order, resolution, or regulation that "expressly, implicitly, or functionally" prohibits the installation, operation or use of a battery-charged fence that meets certain conditions. The bill does not require battery-charged fences to comply with those conditions. It eliminates all state-level safety standards. Instead, the bill establishes a safe harbor in which certain battery-charged fences are not subject to local regulation. The table below compares the safe harbor conditions established by the bill to the safety standards prescribed by current law.

Comparison of Safety Standards to Safe Harbor	
Safety standards (current law)	**Safe harbor (under the bill)**
The fence must be connected to a monitored alarm system.	Same.
The fence must have a battery-operated energizer that is powered by a commercial storage battery that is not more than 12 volts of direct current, and that meets the standards set forth by the International Electrotechnical Commission.	Similar, but does not need to meet the standards from the International Electrotechnical Commission.

[5] R.C. 3781.19, 3781.20(B), 3781.21(B); O.A.C. 4101:13-1-13, not in the bill.

[6] R.C. 3781.21(D).

Comparison of Safety Standards to Safe Harbor	
Safety standards (current law)	**Safe harbor (under the bill)**
The fence must be completely surrounded by a nonelectric perimeter fence or wall at least five feet tall.	The fence must be four to twelve inches behind a nonbattery charged perimeter fence, all, or structure that is not less than five feet in height.
The fence must be no taller than the higher of either ten feet, or two feet higher than the height of the nonelectric perimeter fence or wall.	The fence must be exactly ten feet in height, or two feet higher than the perimeter fence, whichever is higher.
Be marked with conspicuous warning signs, no more than 40 feet apart, that read "WARNING—ELECTRIC FENCE."	Similar, but is marked with conspicuous warning signs that are located on the battery-charged fence at not more than 30-foot intervals and that read: "WARNING – SHOCK HAZARD" or a similar warning message.

The bill retains the authority of a county, township, or municipal corporation to require a permit or fee for the installation or use of a battery-charged fence or to prohibit or impose requirements on the installation, operation, or use of a fence that does not meet the safe harbor standards described above.[7]

Governmental entity public way fees

Accounting authority for cost-recovery purposes

The bill allows any public utility subject to the rate-making jurisdiction of the Public Utilities Commission (PUCO) to file an application for the accounting authority to classify a cost meeting the following requirements as a regulatory asset for cost-recovery purposes:

- The cost is directly incurred by the utility as a result of a governmental entity's regulation of the utility's occupancy or use of a right of way;
- The cost is incurred by the utility after the test year of the utility's most recent rate proceeding or the initial effective date of rates in effect but not established through a proceeding for an increase in rates.

PUCO, by order, shall authorize reasonably necessary accounting authority to classify the cost as a regulatory asset.

[7] R.C. 3781.1011.

For purposes of the bill, a "public utility" means, for example, an electric light company, telephone company, a gas or natural gas company, and sewage disposal company that is not, for example, a not-for-profit electric light company, electric or natural gas cooperative, or municipal utility. A "governmental entity" means a state agency or a political subdivision of the state, excluding a municipal corporation. A "right of way" means the surface of, and the space within, through, on, across, above, or below any land designated for public use that is owned or controlled by a governmental entity, and includes a municipal corporation public way, but is not a private easement.[8]

Cost recovery as a regulatory asset not possible

The bill allows PUCO, upon an application or its own initiative, to make a determination that the classification of the costs as described in the above section as a regulatory asset is not practical or that deferred recovery of that cost would impose a hardship on the public utility or its customers. If so, then PUCO must establish a charge and collection mechanism to allow the utility full recovery of that cost.[9]

Cost recovery not subject to regulation

The bill states that cost recovery authorized as a regulatory asset is not subject to any provision of law or any agreement establishing price caps, rate freezes, or rate increase moratoria (cost recovery mechanisms as described immediately above is not exempted).[10]

Application processing

The bill requires PUCO to process applications in the same manner as applications for the recovery under current law of certain municipal public way fees and for authorization of accounting authority to classify certain municipal public way fees as regulatory assets. The bill further specifies that a final order regarding a recovery mechanism authorized under the amendment must provide for retroactive adjustment as PUCO determines appropriate.[11]

Municipal corporation public way regulation costs

The bill clarifies, for purposes of authorizing regulatory assets related to the use or occupancy of a municipal public way, costs incurred by a public utility because of *municipal corporation* regulation (instead of *local* regulation as in current law) of its use or occupancy.[12]

[8] R.C. 4905.301(A) to (C); R.C. 9.23, 4905.02, 4905.03, and 4939.01, not in the bill.

[9] R.C. 4905.301(D).

[10] R.C. 4905.301(E).

[11] R.C. 4905.301(F).

[12] R.C. 4939.07(D)(2).

Purchase agreements and workers' compensation experience transfers

The bill specifies that an employer is not required to provide the Administrator of Workers' Compensation with a copy of a purchase agreement for the Administrator to complete a transfer of experience when the employer transfers a business to another employer if there is a family relationship or other similar connection between the predecessor and the successor.[13] The Administrator has adopted rules under current law that require the Bureau of Workers' Compensation (BWC) to provide the parties to a transfer of experience the necessary forms and instructions to complete the transfer. BWC may request a copy of a purchase agreement from an employer as part of the application to complete the transfer of experience from the predecessor to the successor.[14]

Pay Stub Protection Act

The bill enacts the "Pay Stub Protection Act."[15] Under the bill, an employer must provide each of the employer's employees with a written or electronic statement or access to a statement of the employee's earnings and deductions for each pay period on the employer's regular paydays. An employer must include all of the following information in the statement:

1. The employee's name and address;
2. The employer's name;
3. The total gross wages earned by the employee during the pay period;
4. The total net wages paid to the employee for the pay period;
5. A listing of the amount and purpose of each addition to or deduction from the wages paid to the employee during the pay period;
6. The date the employee was paid and the pay period covered by that payment;
7. For an employee who is paid on an hourly basis, all of the following information:
    a. The total number of hours the employee worked in the pay period;
    b. The hourly rate at which the employee was paid;
    c. The number of hours the employee worked in excess of 40 in one workweek.[16]

[13] R.C. 4123.325.

[14] R.C. 4123.32, not in the bill, and Ohio Administrative Code 4123-17-02. See also Form U-118, Notification of Business Acquisition/Merger or Purchase/Sale (PDF), which is available on the Ohio Bureau of Workers' Compensation website: info.bwc.ohio.gov, by clicking on the "Forms & Publications" tab and searching for "U-118."

[15] Section 4.

[16] R.C. 4113.14(B).

Request for statement and notice of violation

An employee who does not receive the statement or access to the statement at the time required under the bill must make a written request to the employee's employer to receive the statement. The employer must provide the employee with the statement not later than ten days after receiving the request. If an employee does not receive the requested statement within the ten-day period, the employee may submit a report of the violation to the Director of Commerce. If, on receiving the report, the Director determines that there are reasonable grounds to believe that an employer violated the bill, the Director must issue a written notice to the employer. On receiving the notice, the employer must immediately post the notice or a copy in a conspicuous place on the employer's premises. The employer must keep the notice posted for ten days.[17]

Waste energy recovery systems

The bill includes "[a] facility that produces steam from recovered waste heat from a manufacturing process and uses that steam, or transfers that steam to another facility, to provide heat to another manufacturing process or to generate electricity" under the current law definition of a "waste energy recovery system (WERS)."[18]

Renewable energy

The bill's inclusion of that type of facility as a WERS makes it a "renewable energy resource" if the facility was placed into service or retrofitted on or after September 10, 2012, and was not included in an electric distribution utility's (EDU's) energy efficiency (EE) program on or after January 1, 2012. This change lets the facility qualify, if certain other conditions are met, as a "qualifying renewable energy resource" for purposes of complying with the renewable energy portfolio standards and earning renewable energy credits under the Competitive Retail Electric Service Law.

It would also allow the facility to be the subject of an agreement by an EDU and a mercantile customer, or group of mercantile customers, for the construction of a customer-sited renewable energy resource that would provide power to the mercantile customer(s) facilities.[19]

Advanced energy

The facility added as a WERS also becomes an "advanced energy resource" under the condition that it has not been included in an EE program by an EDU. The resource, therefore, may be an "advanced energy project" that qualifies for financial, technical, and other types of

[17] R.C. 4113.14(C).

[18] R.C. 4928.01(A)(38)(c).

[19] R.C. 4928.01(A)(37)(a); R.C. 4928.47 and 4928.64 to 4928.65, not in the bill.

assistance under the advanced energy program and from an advanced energy manufacturing center.[20]

Energy efficiency

The facility also can be included in an EDU's EE program under the EE portfolio provisions in the Competitive Retail Electric Service Law if, as a WERS, it was placed into service or retrofitted on or after September 10, 2012. However, it is not clear what effect this will have as the EE portfolio requirements have since terminated.[21]

Broadband Pole Replacement and Undergrounding Program

Reimbursement formula

Existing law establishes a formula for reimbursements under the Broadband Pole Replacement and Undergrounding Program. For both the actual and reasonable costs to perform a pole replacement or a mid-span pole installation, and actual and reasonable undergrounding costs, the Program reimbursement amount is equal to the lesser of: (1) $7,500, or (2) 75% of the total amount paid by each applicant for each pole replacement or mid-span pole installation. For undergrounding costs, the reimbursements cannot exceed the amount that would be available if the applicant had attached broadband infrastructure to utility poles instead of undergrounding that infrastructure.

The bill modifies the reimbursement formula to be the following:

- For actual and reasonable costs to perform a pole replacement or mid-span pole installation, the reimbursement amount is equal to the lesser of: (1) $7,500 multiplied by the number of pole replacements and mid-span pole installations in the application, or (2) 75% of the total eligible costs therein.
- For actual and reasonable undergrounding costs, the reimbursement amount is not to exceed 75% of the total eligible costs therein, but cannot exceed the reimbursement amount that would be available if the applicant did a pole replacement or mid-span pole installation instead of undergrounding that infrastructure.

Continuing law, unchanged by the bill, defines all of the following terms:

- "Pole replacement" as the removal of an existing utility pole and replacement of that pole with a new utility pole to which a provider attaches broadband infrastructure.
- "Mid-span pole installation" as the installation of, and attachment of broadband infrastructure to, a new utility pole that is installed between or adjacent to one or more

[20] R.C. 4928.01(A)(25) and (34); R.C. 4928.62 and 4928.621, not in the bill.

[21] R.C. 4928.66(A), (F), and (G), not in the bill. *In the Matter of the Application of Ohio Power Company for approval of its EE/PDR Program Portfolio Plan for 2017 through 2020*, *Case No. 16-0574-EL-POR, February 24, 2021*.

existing utility poles or replaced utility poles to which poles broadband infrastructure is attached.

- "Undergrounding" as the placement of broadband infrastructure underground, including by directly burying the infrastructure or through the underground placement of new ducts or conduits and installation of the infrastructure in them.[22]

Eligible undergrounding costs

Existing law conditions eligibility for Program reimbursement for actual and reasonable undergrounding costs on the undergrounding being either of the following: (1) required by law, regulation, or local ordinance, or (2) more economical than the cost of performing a pole replacement.

The bill adds that undergrounding costs are eligible for reimbursement if the undergrounding is needed because the process for obtaining access to poles is causing, or is reasonably anticipated to cause, a delay that will impact the ability of the applicant to meet deadlines required by agreement or terms of support to provide qualifying broadband service to an address within an underserved area.

Continuing law, unchanged by the bill, defines "qualifying broadband service" as a retail wireline broadband service that is capable of delivering symmetrical internet access at download and upload speeds of at least 100 Megabits per second (Mbps) with a latency level sufficient to permit real-time, interactive applications. "Unserved area" is defined as an area in the state that is without access to fixed, terrestrial broadband service capable of delivering internet access at download speeds of at least 25 Mbps and upload speeds of at least three Mbps.[23]

Securities Law

Ohio corporations and their shareholders are permitted, under continuing law, to recover any profits realized from the "disposition of equity securities" by a person from the sale of the corporation's shares when the shares are sold within 18 months after such person either (1) proposed to acquire control of the corporation, or (2) publicly disclosed the intention or possibility of making such proposal. Current law provides that such remedy is available for the purpose of "preventing manipulative practices."

The bill specifies that such remedy is not available unless the person who proposed acquiring control of the corporation actually engaged in manipulative practices. Furthermore, the bill defines "manipulative practices" as the act of staging a hostile takeover bid to manipulate a corporation into repurchasing its own common stock at a premium above the current market price (i.e., greenmail), or any other act that the Ohio Division of Securities defines as a "manipulative practice" pursuant to existing law authority.

[22] R.C. 191.17; R.C. 191.01, not in the bill.

[23] R.C. 191.21; R.C. 191.01, not in the bill.

Current law defines the "disposition of equity securities of a corporation" as any sale exchange, transfer, or other disposition of any kind of the equity securities or any contract to sell, exchange, transfer, or otherwise dispose of the equity securities to any other person, including the corporation for valuable consideration. The bill revises the definition by including only the sale, exchange, transfer, or other dispositions made to the corporation qualify under the statute. The bill also specifies that "to acquire control of the corporation" does not include attempts by shareholders to influence a corporation's policies or actions, including the nomination of candidates for director of the corporation.

The bill includes that the General Assembly's intent in amending the statute is to clarify, and not alter, the scope of conduct or practices under the current statute.[24]

Agricultural use sales tax exemption qualifications

Continuing law exempts from sales and use tax items used or consumed primarily to produce property for sale through farming, agriculture, horticulture, or floriculture. Under current law, this "agricultural use" exemption does not apply to any specific list of property; how each item purchased will be used is the key as to whether the exemption applies.[25]

To obtain the exemption under current law, a purchaser must provide the seller with an exemption certificate, prescribed by the Tax Commissioner, stating the reason the sale is not subject to the sales tax. The certificate relieves the seller of the obligation to collect the sales tax on behalf of the state. But, if the Department of Taxation (TAX) later determines that the purchase does not qualify for the exemption, the purchaser is liable for the tax due.[26]

The bill allows a purchaser to verify eligibility for the agricultural use exemption for certain vehicles and trailers by providing TAX with copies of the purchaser's Schedule F – the federal income tax profit or loss from farming form – for the three most recent years for which federal returns were due. Qualifying items are:

- Trailers, excluding watercraft trailers;
- Utility vehicles, i.e., vehicles with a bed, principally for the purpose of transporting material or cargo in connection with construction, agricultural, forestry, grounds maintenance, land and garden, materials handling, or similar activities;
- All-purpose vehicles, i.e., vehicles designed primarily for cross-country travel on land and water, or on multiple types of terrain, but excluding golf carts;
- Garden tractors, small utility tractors, and riding mowers.[27]

[24] R.C. 1707.043.

[25] R.C. 5729.02(B)(42)(n), not in the bill.

[26] R.C. 5739.03(B)(1)(a) and (b).

[27] R.C. 1353.01, 4501.01, and 4519.01, not in the bill.

The bill also allows the Commissioner to prescribe and issue certificates verifying that a consumer has filed a Schedule F for the required three years. A certificate holder may submit this certificate to a vendor, seemingly in lieu of the standard exemption certificate. The bill restricts the vendor and TAX from requiring the purchaser to provide any additional documentation or explanation, regardless of whether the Schedule Fs are filed directly with TAX or a certificate verifying their filing is filed with the vendor.[28]

The bill's modifications apply to sales made on or after the first day of the first month after the bill's 90-day effective date.[29]

HISTORY

Action	Date
Introduced	01-31-23
Reported, S. Small Business and Economic Opportunity	03-28-2023
Passed Senate (31-0)	03-29-2023
Reported, H. Economic and Workforce Development	---

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[28] R.C. 5739.03(B)(7).

[29] Section 3.