



Ohio Legislative Service Commission

Bill Analysis

Maura McClelland

Sub. S.B. 185*

131st General Assembly

(As Reported by S. Energy & Natural Resources)

Sens. Seitz, Balderson, Patton

BILL SUMMARY

Special energy improvement projects

- Permits property owners to petition municipal corporations or townships for special assessments to pay for the costs of the development and implementation of special energy improvement projects (SEIPs) for energy efficiency improvements without creating a special improvement district.
- Requires the projected cost of an SEIP to be no more than \$1 million in order for the SEIP to qualify for the bill's petition process, and excludes SEIPs that involve the generation of electricity.
- Requires the petition to be signed by 100% of the property owners of the parcels to be assessed.
- Limits the special assessment to 30 years from the first day of the year in which it is first imposed.
- Permits a municipal corporation or township levying a special assessment for an SEIP to develop, finance, manage, or implement part or all of the SEIP.
- Permits a municipal corporation or township levying a special assessment for an SEIP to contract with any person, community improvement corporation, political subdivision, state agency, or port authority to develop, finance, manage, or implement part or all of the SEIP.

* This analysis was prepared before the report of the Senate Energy & Natural Resources Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Permits a municipal corporation or township levying a special assessment for an SEIP to sell, transfer, lease, or convey any SEIP owned by the municipal corporation or township if the SEIP is not required to be owned exclusively by the municipal corporation or township or required for certain purposes.
- Allows that a sale, transfer, lease, or conveyance of an SEIP may be made without advertising, receipt of bids, or other competitive bidding procedures.

Special improvement districts

- Provides a special voting process for each of the following regarding a general special improvement district that includes condominium property: (1) inclusion of the property in the district, (2) approval of the district plan, (3) repealing an improvements or services plan of the district, and (4) dissolution of the district.

CONTENT AND OPERATION

Special energy improvement projects

Overview

Essentially, the bill is creating a new process that permits property owners to implement energy-efficiency special improvement projects (SEIPs) on their property, and to pay for those energy-efficiency SEIPs through special assessments. SEIPs may be financed through special assessments under current law – though only if the property owners first create a special improvement district. The bill does not require the creation of a special improvement district for an SEIP. The district SEIPs that are permitted under continuing law, however, are not restricted to energy-efficiency improvements.¹ Some of the bill's provisions governing energy-efficiency SEIPs are similar to provisions of current law governing district SEIPs. This analysis does not compare the district SEIP provisions with the energy-efficiency SEIP provisions. It simply analyzes all of the bill's provisions governing the new energy-efficiency SEIPs.

Petition process

When petitions are allowed

The bill permits a property owner or owners to petition the legislative authority of any municipal corporation or township in which their property is located for authorization to develop and implement one or more SEIPs *that consist only of energy efficiency improvements*. To qualify for the bill's petition process, the projected cost of

¹ R.C. 1710.01 and 1710.02.



each SEIP must not exceed \$1 million, and the SEIP may not involve the generation of electricity.²

Under continuing law, an SEIP is defined as any property, device, structure, or equipment necessary for the acquisition, installation, equipping, and improvement of any real or personal property used for the purpose of creating a number of different types of projects, including an energy-efficiency improvement, whether that real or personal property is publicly or privately owned. An energy-efficiency improvement is defined under continuing law as energy-efficiency technologies, products, and activities that reduce or support the reduction of energy consumption, allow for the reduction in demand, or support the production of clean, renewable energy and that are or will be permanently fixed to real property. However, the bill specifies that for purposes of the bill's petition process, the term excludes energy efficiency technologies, products, and activities that support the production of clean, renewable energy.³

The bill specifies that property is located in a municipal corporation or township if the property is located wholly within the boundaries of the municipal corporation or township.⁴

Petition contents

The petition must be signed by 100% of the property owners of the parcels to be assessed. Ownership of each parcel must be shown by reference to records that were available from each county recorder's office not more than 60 days prior to the submission of the petition.⁵ The petition must include all of the following:

- A description of the proposed SEIP or SEIPs, including the proposed cost and a statement of which property or properties each SEIP will benefit;
- A designation of at least one SEIP for each parcel of real property;
- The method of assessment to be used and the time period during which the assessment will be levied;

² R.C. 1710.20.

³ R.C. 1710.01(I) and (K).

⁴ R.C. 1710.20.

⁵ R.C. 1710.21.



- A statement that the development and implementation of the SEIP or SEIPs is being requested under the bill's provisions applicable to energy-efficiency SEIPs;
- If the SEIP or SEIPs will be located in a certified territory of an electric distribution utility, proof that a copy of the petition was submitted to that electric distribution utility.⁶ Continuing law that is unchanged by the bill permits an electric distribution utility to count toward its compliance with Ohio's energy efficiency and peak demand reduction requirements any efficiency savings or reduction in demand produced by an SEIP located in its certified territory.⁷

The petition *may* include provisions for the following:

- Planning, designing, and implementing the SEIP or SEIPs, and paying the cost of any action taken in furtherance of the SEIP or SEIPs, including hiring architectural, engineering, legal, financial, appraisal, insurance, consulting, energy auditing, and planning services;
- Paying the costs of issuing, paying interest on, and redeeming or refunding notes and bonds issued for the purpose of paying costs of the SEIP or SEIPs, reimbursing costs of the SEIP or SEIPs that were previously incurred, and cooperating with any person, any public or private lender, or any port authority having jurisdiction over the parcels to provide financing to pay or reimburse the costs of the SEIP or SEIPs;
- Sale, lease, lease with an option to purchase, conveyance of other interests in, or other contracts for the acquisition, construction, maintenance, repair, furnishing, equipping, operation, or improvement of the SEIP or SEIPs between a municipal corporation or township and any owner of real property on which one of the SEIPs is acquired, installed, equipped, or improved;
- Any other actions necessary to develop and implement the SEIP or SEIPs.⁸

⁶ R.C. 1710.22(A).

⁷ R.C. 1710.061, not in the bill.

⁸ R.C. 1710.22(B).



Petition approval or disapproval

A municipal corporation or township with which a petition is filed has 60 days to approve or disapprove the petition for SEIPs, by way of legislation.⁹

Assessment process

If the municipal corporation or township approves the petition, the municipal corporation or township must levy a special assessment on all real property subject to the petition to pay for the costs of the development and implementation of the SEIP or SEIPs. The assessment is limited to 30 years from the first day of the year in which the assessment is first imposed.

The special assessment must be levied in accordance with continuing law governing special assessments for municipal corporations, except that:

- The municipal corporation or township may levy the assessment for each SEIP by any one or any combination of the methods of assessment allowed under the continuing law, provided that the assessment is uniformly applied; and
- The municipal corporation or township may combine one or more SEIPs and levy a single assessment against specially benefited property.¹⁰

The bill also provides that, for purposes of levying the special assessment, the SEIP or SEIPs are deemed a special benefit to any private property owners subject to the petition. Also, the use of special assessments levied under the bill does not constitute an expenditure of public funds.¹¹

Involvement by the municipal corporation or township

The bill permits a municipal corporation or township levying a special assessment for an SEIP to develop, finance, manage, or implement part or all of the SEIP. The bill also permits the municipal corporation or township to contract with any person, community improvement corporation, political subdivision, state agency, or port authority to develop, finance, manage, or implement part or all of an SEIP.¹² If the contract is made with a port authority, the port authority must have jurisdiction over

⁹ R.C. 1710.24(A).

¹⁰ R.C. 1710.24(B) and (C).

¹¹ R.C. 1710.24(C).

¹² R.C. 1710.26.



the parcel or parcels upon which the SEIP is proposed to be developed and implemented.¹³

Constitutional purposes

The bill states that a petition for SEIPs under the bill and any actions taken by the municipal corporation or township under the petition and legislation approving the petition are in furtherance of the purposes set forth in Section 2o or 2q of Article VIII, Ohio Constitution (conservation and revitalization purposes and the Clean Ohio Program) if approved by the municipal corporation or township with which the petition is filed.¹⁴

Rights and privileges of property owners

The bill grants to a property owner assessed under the bill all applicable rights and privileges of a property owner that is assessed under continuing law governing special assessments for municipal corporations. The bill also states "unless waived by the property owner." (See **COMMENT.**)¹⁵

Transactions by the municipal corporation or township

The bill permits a municipal corporation or township levying a special assessment for an SEIP under the bill to sell, transfer, lease, or convey the SEIP if it is owned by the municipal corporation or township. But the legislative authority of the municipal corporation or township must first determine that the SEIP is not required to be owned exclusively by the municipal corporation or township for its purposes or for any of the following purposes:

- Uses that will promote the welfare of the people of the municipal corporation or township;
- To improve the quality of life and the general and economic well-being of the people of the municipal corporation or township;
- To better ensure the public health, safety, and welfare;
- To protect water and other natural resources;

¹³ R.C. 4582.06(A)(17)(b) and 4582.31(A)(27)(b).

¹⁴ R.C. 1710.241.

¹⁵ R.C. 1710.24(D).



- To provide for the conservation and preservation of natural and open areas and farmlands, including by making urban areas more desirable or suitable for development and revitalization;
- To control, prevent, minimize, clean up, or mediate certain contamination of or pollution from lands in the state and water contamination or pollution;
- To provide for safe and natural areas and resources.

The legislative authority must specify the consideration and any other terms for a sale, transfer, lease, or conveyance of an SEIP under the bill.

The bill states that any determinations made by a legislative authority regarding the sale, transfer, lease, or conveyance of an SEIP or regarding the consideration are conclusive.

The bill exempts the sale, transfer, lease, or conveyance of an SEIP made under the bill from competitive bidding and related advertising requirements that might otherwise apply.¹⁶

Laws not superseded

The bill states that it does not prohibit or restrict the rights of municipal corporations under the Ohio Constitution or the right of the municipal legislative authority to impose reasonable conditions in legislation approving SEIPs. The bill also states that the acquisition, installation, equipping, and improvement of any SEIPs under the bill does not supersede any of the following:

- Any local zoning, environmental, or similar law or regulation;
- Continuing law governing the certified territories of electric suppliers;
- Any state or federal law relating to the provision of electric service or the regulation of electric light companies that operate their utilities not for profit or public utilities.¹⁷

¹⁶ R.C. 1710.28.

¹⁷ R.C. 1710.24(A).



Port authorities

The bill expressly permits port authorities having jurisdiction over the parcel upon which the SEIP or SEIPs are proposed to be developed and implemented to provide financing to pay or reimburse the costs of those SEIPs. The bill also specifies that the authorized purposes given to port authorities by the bill may be exercised jointly or separately by one or more port authorities, are in addition to the powers granted to port authorities under continuing law, and are not limitations on any of those existing powers.¹⁸

Special improvement districts

The bill provides a special voting process for each of the following regarding a special improvement district that includes condominium property:

- Inclusion of the property in a proposed district;
- Approval of the district plan;
- Repealing an improvements or services plan of the district;
- Dissolution of the district.

A vote must be made in favor of the action and conducted according to the unit owners association bylaws and declaration. The petition must then be signed by a member of the board of directors of the unit owners association on behalf of all unit owners. The bill prohibits a unit owner from signing the petition on the unit owner's own behalf.¹⁹ With respect to action to dissolve the district or repeal the district's improvements or services plan, the bill requires the member of the board of directors that signed the petition to appear at the meeting of district members required under current law, unchanged by the bill, to consider the petition. The board member is required to vote for dissolution or repeal consistent with the earlier vote of the unit owners regarding the underlying petition.²⁰

COMMENT

Due to the ambiguous structure of two sentences in the bill, the meaning of the phrase "unless waived by the property owner" is unclear. The waiver could apply to

¹⁸ R.C. 1710.01(O), 4582.06(A)(17)(a) and (c), and 4582.31(A)(27)(a) and (c).

¹⁹ R.C. 1710.01(P), 1710.02(E)(2)(b), 1710.06(B)(2)(b), and 1710.13(B)(2) and (C).

²⁰ R.C. 1710.13(C).



only the right to notice of a resolution of necessity and the filing of an estimated assessment, or it could also apply to other rights and privileges as well.²¹

HISTORY

ACTION	DATE
Introduced Reported, S. Energy & Natural Resources	06-16-15 ---

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²¹ R.C. 1710.24(D).

