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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 429  
134<sup>th</sup> General Assembly

## Fiscal Note & Local Impact Statement

[Click here for H.B. 429's Bill Analysis](#)

**Version:** As Introduced

**Primary Sponsors:** Reps. Weinstein and Howse

**Local Impact Statement Procedure Required:** No

Tom Wert, Senior Budget Analyst, and other LBO staff

### Highlights

#### Ohio Environmental Protection Agency

- The Ohio Environmental Protection Agency (Ohio EPA) will need additional staff and resources in order to accomplish the various administrative and oversight duties prescribed by the bill (implementation of the statewide greenhouse gas emissions goals and calculation/collection of the new energy community reinvestment fee). The number of new staff needed is not known, but Ohio EPA indicates that the Agency's current funding sources would be insufficient to accomplish the new duties. Funding for these new duties is not provided in the bill.

#### Department of Development

- The bill creates the Governor's Office of Energy Justice to advance energy justice goals for residential consumers and administer four workforce and job development programs.
- The bill appropriates \$4.0 million in each fiscal year of the FY 2022-FY 2023 biennium under the Governor's Office of Energy Justice Operating Fund (Fund 5YH0) to support the Office's operating costs.
- The bill seeds Fund 5YH0 with an initial \$4.0 million cash transfer from the GRF in FY 2022 and, if necessary, allows for a subsequent GRF cash transfer in FY 2023 to ensure Fund 5YH0 maintains a cash balance of \$4.0 million. The cash transfers from the GRF must be repaid according to a repayment schedule agreed to by the Director of Development and the Director of Budget and Management.
- The bill appropriates \$15.0 million in both FY 2022 and FY 2023 under the Greenhouse Gases Pollution Fund (Fund 5YI0) to support the Office's job training and workforce

development programs. The source of revenue for Fund 5Y10 is an energy community reinvestment fee to be collected from owners of fossil fuel generating plants.

- The bill creates the Community Support Committee to study the economic impacts that electric generating facility closures have on Ohio communities. The bill provides GRF funding of \$100,000 over the biennium to support the Committee's activities.

## **Public Utilities Commission of Ohio**

- The bill creates additional duties for the Public Utilities Commission of Ohio (PUCO), as well as the Ohio Power Siting Board (OPSB), which shares staff with PUCO and is led by the PUCO Chairperson. The additional duties may increase costs; the bill does not include an appropriation increase, but the existing agency appropriations are primarily from the Public Utilities Fund (Fund 5F60).
- A change in the setback requirement for siting wind turbines would allow additional turbines to be located on a given site, and may result in an increase in revenue to political subdivisions from payments in lieu of property taxes.
- The bill's changes to state law affecting electric distribution utilities (EDUs) and electric power providers may have an indirect effect on the prices paid for electricity. State agencies, local governments, and public institutions of higher education are consumers of electricity, but LBO staff does not have a reliable basis for estimating the bill's impact on their future utility expenditures.

## **Community Transition Facility Closure Fund**

- The bill creates the Community Transition Facility Closure Fund, which must be in the custody of the Ohio Treasurer of State (TOS) but not part of the state treasury. If an electric generating facility located in the state permanently closes, PUCO must establish a monthly charge collected from electric customers across the state to replace the tangible personal property tax revenue losses resulting from the closure and to provide funding for economic development and job training programs for the taxing districts in which the facility is located. Revenue from the monthly charge is to be deposited into the new fund.

## **Treasurer of State**

- The bill establishes the Ohio Clean Energy Jobs and Justice Linked Deposit Program, to be administered by the Treasurer, a program designed to subsidize loans to eligible Ohio businesses to assist in financing specific renewable energy or energy waste reduction projects. Administering the program will increase workload at TOS, and could also marginally reduce earnings on investments deposited into the GRF.

## **Detailed Analysis**

### **Ohio Environmental Protection Agency**

#### **Implementation of statewide greenhouse gas emissions goals**

The bill gives the Ohio Environmental Protection Agency (Ohio EPA) broad administrative and oversight authority over new statewide greenhouse gas emissions goals. The bill establishes the following three goals:

1. 26% reduction in statewide greenhouse gas emissions by 2025;
2. 50% reduction in statewide greenhouse gas emissions by 2030; and
3. 100% reduction in statewide greenhouse gas emissions by 2050.<sup>1</sup>

In order to achieve the goals, Ohio EPA is required to adopt rules, establish strategies, and provide for ongoing tracking of greenhouse gas emission sources statewide including those that adversely affect disproportionately impacted communities. Auditing requirements and procedures must also be established. The bill is silent regarding the consequences if such goals are not met; however, it is possible that sanctions could be levied against individual operators in coordination with other participating agencies, such as the Public Utilities Commission of Ohio (PUCO). It appears that these emissions goals would apply to not only fossil fuel generating plants, but also individuals. The bill requires Ohio EPA to solicit input from other state agencies, stakeholders, and the public on the advantages of different statewide greenhouse gas emission mitigation measures.

Beginning March 31, 2023, and every two years thereafter, Ohio EPA must submit a report to the General Assembly specifying: (1) the progress made towards reducing greenhouse gas emissions and meeting the goals, (2) any newly available, cost-benefit, or regulatory analysis developed to assess the progress in meeting the goals, and (3) any recommendations on future legislative action.

Under current law, and unchanged by the bill, Ohio EPA is charged with protecting the state's environment and public health by ensuring compliance with environmental laws. Ohio EPA has regulatory operations, each of which issues permits to regulate industries that pollute in a specific area, for example, air emissions or wastewater discharges to bodies of water. It also has nonregulatory operations that provide financial assistance to businesses and communities, site cleanup and spill response, environmental education, pollution prevention assistance, laboratory analysis, and criminal environmental investigations. In order to accomplish these duties, the agency is organized into a variety of divisions and offices, one of which is dedicated to air pollution control. It is unclear whether the Division of Air Pollution would be assigned these new duties or if a new division/office would be created. However, according to Ohio EPA representatives, it would be difficult to estimate the number of staff needed to implement this program. Expertise in this area would need to be developed. Additionally, the agency's current funding is largely restricted to current statutorily required programs that have dedicated funding sources. Current funding levels would likely not be sufficient to support a new program of this type. Funding for these new duties is not provided in the bill.

### **Calculation of energy community reinvestment fees**

The bill requires Ohio EPA to calculate, charge, and collect an energy community reinvestment fee from owners of fossil fuel generating plants that is to be credited to the Greenhouse Gases Pollution Fund (Fund 5Y10), which is created by the bill. Ohio EPA will calculate the fee based on a number of factors including a plant's total emissions of carbon dioxide,

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<sup>1</sup> Ohio EPA has indicated that current technology may make these goals difficult to attain, especially the 2050 zero emissions goal, which appears to impact all state sources of greenhouse emissions, not just fossil fuel generating plants.

methane, and nitrous oxide measured in carbon dioxide equivalent tons as well as a notification from the Governor's Office of Energy Justice outlining its revenue and spending requirements for the upcoming fiscal year. The bill specifies that the projected revenue and spending required for any program year shall be at least \$100 million per year for all calendar years that the Ohio electric sector generates greenhouse gas emissions.

While Ohio EPA is responsible for setting and collection of the fee, as well as enforcement for nonpayment (including written warnings and possible revocation of Title V permits<sup>2</sup>), the fees will be utilized solely by the Governor's Office of Energy Justice.<sup>3</sup> Ohio EPA is uncertain if more than \$100 million in revenue would need to be generated in order to support the annual expenditures of the Office of Energy Programs. Collection of the fees will begin on June 1, 2022, and be due quarterly thereafter.

Ohio EPA has characterized administration of the fee, including calculation (which will require a thorough review of certain pollutants), collection, and enforcement as "time intensive." The bill is silent on how Ohio EPA is to pay for the costs of operating the fee program.

## **Department of Development**

### **Office of Energy Justice**

The bill creates the Governor's Office of Energy Justice within the Department of Development (DEV). The Office's mission is to ensure that decisions and actions made by PUCO and other relevant agencies (1) are guided by and benefit from energy justice principles, and (2) advance energy justice goals for all residential consumers and participants in the job training, workforce development, and accelerator programs established by the bill. (These programs are described in the section following this one.) At a minimum, the bill requires the Office of Energy Justice to participate in proceedings before PUCO if those proceedings touch on energy justice principles. The bill also requires the Office to conduct outreach to residential customers and community organizations to ensure that it remains informed of current energy policies and how they affect energy justice. The bill also requires the Office of Energy Justice to issue a report that describes the Office's activities and assesses the effectiveness of its programs by December 31, 2030.

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<sup>2</sup> Title V of the federal Clean Air Act requires each state to develop a Permit-to-Operate system and emission fee program for major sources of air pollution. Ohio's rules for this program became effective in April 1994. The Title V permit for major sources is enforceable by Ohio EPA and U.S. EPA. Major sources must certify compliance with the terms of their permits annually.

<sup>3</sup> The bill allows the Title V permit to be revoked for nonpayment. However, Ohio EPA has not revoked a Title V permit due to nonpayment of other existing fees in the past. Ohio EPA would make efforts to obtain payment of the fee from the permit holder. If the permit holder does not pay the fee, Ohio EPA would refer the matter to the Office of the Attorney General for collections. Absent a Title V permit, the source does not have authority to operate, but does not mean it has to shut down, however it would be subject to enforcement for operating without a permit.

To support the Office's operations, the bill establishes the Governor's Office of Energy Justice Operating Fund (Fund 5YH0) which would receive revenue from assessments<sup>4</sup> charged to public utilities. The bill appropriates \$4.0 million in both FY 2022 and FY 2023 under Fund 5YH0 line item 1956A4, Office of Energy Justice Operating, to cover the cost of these functions. To provide initial operating cash in FY 2022, the bill requires the Director of Budget and Management to transfer \$4.0 million in cash from the GRF to Fund 5YH0 not later than 30 days after the bill's effective date. For FY 2023, the bill allows the Director of Development to request the Director of Budget and Management to make an additional cash transfer from the GRF to Fund 5YH0 in an amount sufficient to restore the balance of Fund 5YH0 to \$4.0 million. The bill subsequently requires the Director of Development, in consultation with the Director of Budget and Management, to establish a repayment plan to reimburse the GRF for any cash transferred to Fund 5YH0.

### **Clean energy jobs programs**

The bill requires the Governor's Office of Energy Justice to administer various job training, workforce development, and accelerator programs. To support these programs, the bill appropriates \$15.0 million in both FY 2022 and FY 2023 under Fund 5YI0 line item 1956A5, Office of Energy Justice Clean Energy Jobs Programs. The programs include (1) the Clean Jobs Training Program, (2) the Ohio Jumpstart Clean Jobs Training Program, (3) the Clean Energy Entrepreneurs Program, and (4) the BIPOC Clean Energy Contractor Accelerator. The bill then requires DEV to contract with a community-based organization to provide the relevant training under these programs. These various jobs programs would be administered locally at one of at least 15 "Ohio Clean Energy Incubators" throughout the state serving communities with a high concentration of minorities, low-income communities, communities that are harmed by poor air quality and climate change relative to other areas, and communities that are adversely affected by the closure of an electric generation facility or by a decline in the extractive fossil fuel industry.

### **Community Support Committee**

The bill creates the Community Support Committee to study the economic impacts that electric generating facility closures have on Ohio communities and to develop recommendations for legislative action regarding strategies to mitigate the negative impacts that facility closures have on those communities. To support the Committee's activities, the bill appropriates \$100,000 in FY 2022 under GRF appropriation item 195409, Community Support Committee, and then appropriates the unexpended, unencumbered amount remaining in line item 195409 at the end of FY 2022 for use in FY 2023.

Under the bill, the Committee consists of 19 members including members of the General Assembly, specified cabinet agency directors, and members representing specified civic, labor, and minority groups. The bill specifies that members serve without compensation, except that members representing the civic, labor, and minority groups may be reimbursed for actual and necessary expenses incurred in the performance of their duties. The bill also allows experts who are invited by the Committee to assist with official business to also be reimbursed for reasonable

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<sup>4</sup> The bill requires total assessments to be equal to the amount appropriated under Fund 5YH0 each year and charged to public utilities on a prorated schedule based on each utility's proportionate share of intrastate gross receipts during the preceding calendar year.

travel expenses. The bill requires the Committee to compile and publish a report on the Committee's activities, findings, and recommendations within 12 months of the bill's effective date.

## **Public Utilities Commission of Ohio**

### **Agency duties**

The bill requires PUCO to address the likely and potential impacts of its decision or action on energy justice and energy justice principles and outcomes for residential customers for each major decision, rulemaking, rate setting, or other action.

At least every two years, PUCO must "develop a comprehensive assessment of existing issues regarding energy justice and energy justice principles that are associated with rates, provision of energy services, operation of existing energy facilities of any kind, nonremediated issues associated with retired or closed energy facilities, and impending retirements or closures of energy facilities." Each assessment must be conducted in consultation with the Governor's Office of Energy Justice, and must include public hearings. PUCO is to issue a report with the results of its assessment.

Within 90 days of the effective date of the bill, PUCO must issue proposed performance-based rules. The bill says the purpose of these rules is "to align the interests of public utilities with those of the public and to provide incentives for public utilities to improve their performance in areas PUCO deems necessary." PUCO may create incentives to serve as rewards for reaching the performance targets, as well as penalties for failing to reach such targets. The bill limits incentive payments to an amount that cannot exceed the public utility's most recently approved return on equity by more than 0.5%.

Not later than 12 months after the effective date of H.B. 429, PUCO must open a proceeding and issue an order that considers distinct criteria enumerated by the bill:

1. Appropriate tariffs, contracts, or other mechanisms for the deployment of cost-effective distributed energy resources that are consistent with distribution planning objectives as determined by the Commission;
2. Cost-effective methods of effectively coordinating existing PUCO-approved programs, incentives, and tariffs to maximize the locational benefits and minimize any incremental costs of distributed energy resources; and
3. Barriers to the deployment of distributed energy resources.

PUCO staff must provide technical and administrative support as needed to the Community Support Committee established by the bill. The Committee is temporary, as the bill abolishes it 12 months after its establishment.

The bill does not include an appropriation for PUCO. Therefore, these additional duties would likely be paid from Dedicated Purpose Fund (DPF) item 870622, Utility and Railroad Regulation. The appropriation covers the broadest set of PUCO's responsibilities and represents the largest source for agency payroll. This item is funded by PUCO's primary revenue source, the Public Utilities Fund (Fund 5F60). All regulated utilities pay an assessment based on their intrastate revenues. The total amount of assessments collected is equivalent to the appropriations from Fund 5F60.

## **Ohio Power Siting Board**

### **Duties**

Under the bill, Ohio Power Siting Board (OPSB) applications must include an assessment of energy justice impacts associated with the proposal. In any decision issued by OPSB, the Board must explain how energy justice issues were evaluated and factored into any decision on the application, the mitigation required to avoid or minimize adverse energy justice impacts, and the monitoring, reporting, and compliance actions required from the applicant as a condition of approval.

OPSB may incur costs for these additional duties. The Board is funded by fees submitted with applications by those seeking OPSB approval for a certificate of environmental compatibility and public need. A public utility must have such a certificate before constructing or expanding major utility facilities. The applicant must also reimburse OPSB for expenses incurred during its consideration of the application. All receipts are deposited into Fund 5610 for use by DPF item 870606, Power Siting Board. Both the fund and appropriation are within PUCO's agency-wide budget.

### **Wind turbine setbacks**

The bill alters the minimum setback for wind turbines of wind farms with generating capacity of five megawatts or more by requiring the 1,125-foot horizontal distance measurement to be made to the exterior of the nearest, habitable residential structure, if any, located on adjacent property (current law measures to the property line of the nearest adjacent property). Although the law change would apply to prospective wind farms, the bill also applies the new setback requirement to future amendments of OPSB certificates already issued to wind farms.

The change in permissible wind turbine setbacks would allow more wind turbines to be included on a given site, which could spur additional applications to OPSB. If that occurs, the resulting revenues and expenditures would be made by Fund 5610. More wind turbines on a given site would also result in an increase in payments in lieu of property taxes.

### **Indirect effects on electric ratepayers**

The bill has multiple provisions that could affect the price of electricity paid by Ohio ratepayers. The following section discusses the potential indirect impact of these provisions.

Each electric distribution utility (EDU) and competitive retail electric service (CRES) provider must develop and implement a carbon reduction plan to meet the following requirements:

1. Not later than January 1, 2030, a 50% reduction of the retail electric service provider's greenhouse gas emissions from 2005 levels.
2. Not later than January 1, 2050, 100% carbon-free electricity.

This provision may not affect electricity rates because PUCO's enforcement is optional; Section 4928.451(E) of the bill says, "The commission may impose financial and other penalties, including revocation of operating licenses or certificates, for failure to achieve carbon reduction plan goals." Elsewhere, Section 3704.21(C) of the bill says the Ohio EPA Director "shall not establish any requirements specifying a particular mix of electric generating resources that a public utility must use to meet applicable greenhouse gas emission limits." LBO staff cannot

reliably predict (1) how the EDUs and CRES providers will respond to the carbon reduction goals in this bill, or (2) future generating costs from renewable or nonrenewable sources. The responses of EDUs and CRES providers and those costs would affect the price of electricity paid by their customers.

The bill requires EDUs to restore the energy efficiency (renamed “energy waste reduction” by the bill) and peak demand reduction portfolio plans that terminated on December 31, 2020. The portfolio plan program reestablished under the bill must include the same terms and conditions that PUCO approved for the plan as it existed prior to the portfolio plan’s termination. The bill further imposes a requirement that EDUs achieve an annual energy savings of 2% for the year 2023 and each year thereafter, achieving cumulative energy waste reduction savings in excess of 22% by the end of 2030.

Within 90 days after the effective date of the bill, PUCO must require each utility to file a low-use, lower cost rate to encourage conservation along with plans for educating its customers about this rate.

The bill amends the standard service offer (SSO), by requiring that electric security plans (ESPs) must provide a lower rate than the market rate offer (MRO), in order to be approved by PUCO. Current law requires an EDU to provide consumers within its certified territory an SSO of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either an MRO in accordance with R.C. 4928.142 or an ESP in accordance with R.C. 4928.143.<sup>5</sup>

The bill may yield refunds to customers in certain instances. In the event the Ohio Supreme Court or any other entity having jurisdiction to consider an appeal reverses a PUCO decision, PUCO must issue an order requiring the refund of the amounts collected from consumers that was determined to be unlawful. Full refunds, including interest, must be completed within 120 days of the date of the final order from the Supreme Court or other entity.

The bill also codifies additional specificity about how a revenue decoupling mechanism should be designed.

## **Office of Consumers’ Counsel**

The bill changes current practice regarding the Office of Consumers’ Counsel (OCC’s) potential actions in response to a PUCO order that OCC is appealing. The bill says OCC may seek a stay of the implementation of a PUCO order that it is appealing on behalf of residential consumers “without posting a bond or any form of surety.” In the past, the agency has testified before legislative committees that posting bond is cost prohibitive for certain cases. Therefore, the bill could facilitate OCC appealing more PUCO orders, when it deems appropriate. Any additional expenditures would be paid from Fund 5F50 by DPF item 053601, Operating Expenses. OCC is funded by assessments against intrastate revenues of utility companies operating in Ohio.

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<sup>5</sup> The Supreme Court of Ohio has determined that codified law does not bind PUCO to a strict price comparison between an ESP and MRO, but rather instructs the Commission to consider pricing, as well as all other terms and conditions. Therefore, under current law PUCO must ensure that the ESP as a total package is considered, including both a quantitative and qualitative analysis.



## Ohio Treasurer of State

### Ohio Clean Energy Jobs and Justice Linked Deposit Program

H.B. 429 creates the Ohio Clean Energy Jobs and Justice Linked Deposit Program within the Treasurer of State's Office. In concept, a linked deposit program encourages a financial institution to issue loans to targeted beneficiaries by agreeing to commit the deposit of state funds into the financial institution at a below-market interest rate. To become eligible to participate in the bill's linked deposit program, businesses focused on energy waste reduction and renewables must be based in Ohio and submit an application to an eligible lending institution. Any financial institution which serves as a public depository, as well as any credit union located within the state, is eligible to participate as a loaner of funds in the program.

Currently, the Treasurer of State (TOS) administers five other linked deposit programs that maintain asset balances: GrowNow, BidOhio, Ag-LINK, ECO-Link, and Re-Energize Ohio. According to the most recently published TOS Annual Report,<sup>6</sup> a total of \$355.4 million of state interim funds were attributed to the above programs, with 1,090 participants in 75 counties across Ohio.

#### Administrative details

The Ohio Clean Energy Jobs and Justice Linked Deposit Program provides an interest rate reduction on eligible small business loans. Small businesses which are planning specific clean energy projects are eligible to apply.<sup>7</sup> Upon receipt of a loan application package, participating financial institutions must evaluate whether each applicant is an eligible borrower and apply their usual lending standards in evaluating each loan application. Upon reaching terms, the financial institution must then forward the loan package to TOS.

Upon acceptance of an accompanying linked deposit application, TOS must place some form of collateralized financial instrument, typically a certificate of deposit, with the eligible lending institution at a rate below the current market rate for each instrument, upon which time the participating financial institutions shall enter into a contract with TOS and lend the approved amounts to the eligible small business. The bill does not limit the length of each loan contract, but does limit the maturity time of TOS securities placed with the financial institution to four years. Generally, issuance of linked deposits under the program are subjected to limits set forth in R.C. 135.63, that lending under all linked deposit programs must not exceed 12% of the state's total average investment portfolio.

#### Fiscal impact

TOS would be responsible for various duties associated with implementing a new linked deposit program, including evaluating applications submitted by eligible financial institutions, and issuing a report on the program by February 1 each year to the Governor, the Speaker of the House of Representatives, and the President of the Senate. These duties will increase workload

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<sup>6</sup> FY 2020 TOS Annual Report: <https://www.tos.ohio.gov/report-archive/>.

<sup>7</sup> Eligible small business includes only those businesses whose core business focus is on energy waste reduction or renewables, has customers in the state, and which employs fewer than 150 persons, the majority of whom are residents of Ohio. Eligible small businesses must either participate in the Clean Energy Entrepreneurs Program, or the BIPOC Clean Contractor Accelerator, both created by H.B. 429.

at the Treasurer's Office, though LBO does not have an estimate of the magnitude of any increase in operating costs.

Presumably, establishing a new linked deposit program will increase the dollar amount of interim funds flowing to all linked deposit programs. Depending on investment returns earned in alternative securities, the program would slightly reduce investment income to the GRF, although neither LBO nor TOS are able to estimate a dollar amount.

## **Community Transition Facility Closure Fund**

The bill creates the Community Transition Facility Closure Fund, which must be in the custody of the Treasurer of State but not part of the state treasury. The fund would consist of the charges collected from electric customers in the state.

If an electric generating facility located in the state permanently closes, PUCO must establish a nonbypassable rate mechanism to replace the tangible personal property (TPP) tax revenue losses resulting from the closure and to provide funding for economic development and job training programs for the taxing districts in which the facility is located. The mechanism must be collected from customers of all EDUs in the state. The charges shall be collected for a period beginning two months before the closure and ending not more than five years later. The amount collected from the mechanism must be 125% of an amount certified by the Tax Commissioner.

If an electric generating facility located in the state permanently closes, the Tax Commissioner must certify to PUCO the annual TPP tax loss attributable to each taxing district in which the facility is located. The amount of the certified loss equals the average of the taxes charged and payable to each taxing district with respect to the TPP at the facility for the three tax years preceding the tax year in which the facility closed.

The monthly charge collected from electric customers cannot exceed \$1.50 for residential customers, \$500 for nonmercantile commercial customers (which would be inclusive of most state agencies and local governments), and \$1,500 for mercantile customers, which are those that annually use at least 700,000 kilowatt-hours (which would include some larger public institutions).

As of this writing, two electric generating facilities are scheduled to close in 2022. Depending on the effective date of this bill, these two facilities could create a charge for electric ratepayers from 2022 through 2026. According to the regional transmission organization, PJM Interconnection LLC (or "PJM") the planned deactivations<sup>8</sup> are:

- Zimmer coal plant located in New Exempted Village School District, by May 31, 2022; and
- Avon Lake coal plant located in Avon Lake City School District, by April 1, 2022.

Tax Department statistics indicate the closure of these two coal plants would cost ratepayers a combined amount between \$3.5 million and \$4.5 million per year, via the nonbypassable rate mechanism created by the bill.

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<sup>8</sup> <https://www.pjm.com/planning/services-requests/gen-deactivations>.