



# Ohio Legislative Service Commission

Russ Keller

## Fiscal Note & Local Impact Statement

**Bill:** Am. Sub. S.B. 232 of the 128th G.A.

**Date:** June 3, 2010

**Status:** As Enacted

**Sponsor:** Sen. Widener

**Local Impact Statement Procedure Required:** Yes

**Contents:** To exempt qualifying energy facilities from property taxation upon county approval and to require payments in lieu of taxes on the basis of each megawatt of production capacity of such facilities

### State Fiscal Highlights

- No direct fiscal effect on the state.

### Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2010	FY 2011	FUTURE YEARS
Counties			
Revenues	- 0 -	Potential loss up to several million dollars based on current applications to the Power Siting Board; loss would be permissive in the case of larger energy projects	Potential loss up to several million dollars based on current applications to the Power Siting Board; loss would be permissive in the case of larger energy projects
Expenditures	- 0 -	- 0 -	- 0 -
Other Local Governments			
Revenues	- 0 -	Potential loss up to several million dollars based on current applications to the Power Siting Board	Potential loss up to several million dollars based on current applications to the Power Siting Board
Expenditures	- 0 -	- 0 -	- 0 -
Municipal Corporations			
Revenues	Potential gain to fund alternative energy revolving loans		
Expenditures	Potential increase (permissive) to issue and administer alternative energy revolving loans		
Special Improvement Districts			
Revenues	Potential gain to fund special energy improvement projects		
Expenditures	Potential increase (permissive) to administer special energy improvement projects		

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- The bill would exempt an energy facility (250 kilowatts or less) from the public utility tangible personal property tax and real property tax if its construction or installation is completed on or after the bill's effective date.

- "Qualified energy projects" using renewable energy resources, which are larger than 250 kilowatts, may be exempt from the public utility tangible personal property tax and real property tax if they submit an application to the applicable siting authority before December 31, 2011. Project construction must begin on or after January 1, 2009, and before January 1, 2012 in order to qualify, and several other requirements are necessary to maintain the property tax exemption. Qualified energy projects that are larger than five megawatts require the approval of the local board of county commissioners in order to receive the property tax exemption.
- "Qualified energy projects" using clean coal technology, advanced nuclear technology, or cogeneration technology may be permanently exempt from property taxation if: (a) the property is put into service before January 1, 2017, (b) the local county board of commissioners approves of the tax exemption and the amount of the corresponding service payment in lieu of taxes, (c) an application is filed with the Director of Development before December 31, 2013.
- At least six facilities with the potential to generate about 1,100 megawatts from renewable wind energy sources and with applications that were already approved or still pending before the Power Siting Board may establish facilities in Ohio.
- A facility designated a "qualified energy project" must make a \$6,000 to \$8,000 service payment in lieu of taxes for each megawatt of name plate capacity. The payment will be allocated to counties, school districts, and local governments in the same manner that revenue from public utility tangible personal property taxes is disbursed.
- The local county board of commissioners may require an additional service payment beyond the \$6,000 to \$8,000 amount required by the bill. The potential payment cannot cause the total amount of service payments to exceed \$9,000 per megawatt. This separate payment of \$1,000 to \$3,000 per megawatt must be directed to the county's general fund and may be used for any purpose.
- The bill authorizes the expansion of current municipal solar panel revolving loan programs to include other alternative energy and energy efficiency technologies. Municipalities may incur additional costs, which would be permissive, to issue and administer loans under such programs, which may be partially or wholly offset by any additional revenues authorized by a municipality to fund the program.
- The bill adds certain alternative energy and energy efficiency technologies to the list of eligible technologies that may be the subject of special energy improvement projects, and adds consulting and energy auditing to the list of eligible activities and costs for special improvement projects. This may increase the costs of such districts to engage in such projects. However, these costs would be permissive, and may be partially or wholly offset by any new revenue the district collects to fund such expanded projects.

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## Detailed Fiscal Analysis

S.B. 232 provides an exemption from real and tangible personal property taxes and assessments for certain types of renewable and advanced energy facilities. Smaller energy facilities with an aggregate nameplate capacity of 250 kilowatts (kW) or less are exempt if their construction or installation is completed on or after January 1, 2010. A facility larger than 250 kW that is engaged in the business of generating, transmitting, or distributing electricity is considered an "energy company" and would be regarded as a public utility. Energy companies may undertake "qualified energy projects" that are energy projects certified by the Department of Development. These larger qualified energy projects qualify for real and tangible personal property tax exemptions only if the projects meet certain conditions specified by S.B. 232.

The Department of Development is required to certify a larger renewable resource energy facility as "qualified," and thereby tax exempt, if it meets certain conditions, including: (1) an application to the Power Siting Board or the applicable local siting authority is submitted before December 31, 2011, (2) project construction begins on or after January 1, 2009, and before January 1, 2012, (3) the property on or around the project site was not previously used to supply electricity, and (4) approval for the property tax exemption is granted by the local board of county commissioners if the project is five megawatts or greater. The resolution adopted by a board of county commissioners may include a modification to the service payment stipulated in the bill (i.e., \$6,000 to \$8,000 per megawatt), and the resolution may specify additional requirements for the property tax exemption beyond what is required by state law. However, the total of the two service payments cannot exceed \$9,000 per megawatt. The facility must be placed in service on or before December 31, 2013 in order to qualify for the permanent tax exemption beginning in tax year (TY) 2013.

Energy facilities using clean coal technology, advanced nuclear technology, or cogeneration technology must meet criteria similar to those specified for renewable energy facilities, but there are some differences. These types of energy facilities must be placed into service before January 1, 2017, and the owners must file an application to the Director of Development before December 31, 2013, which is two years after the deadline set for applications for renewable energy projects. Property tax exemptions for energy facilities using clean coal technology, advanced nuclear technology, or cogeneration technology are also subject to county approval. Counties may modify the amount of the service payment in lieu of taxes.

Applicants seeking the Director of Development's certification as a qualified energy project must meet certain additional requirements to qualify for the designation. The applicant must employ in the project at least the number of workers that are projected by a generally accepted job estimating model, including but not limited to the

Job and Economic Development Impact (JEDI) model. A majority of the full-time equivalent employees must be domiciled in this state.

The qualified energy project is also required to pay annual service payments in lieu of taxes to the treasurer of the county where the facility is located in an amount equal to \$6,000 to \$8,000 per megawatt (MW) of name plate capacity. The exact amount depends on what type of energy resource is used in the qualified energy project and the percentage of Ohio domiciled full-time equivalent (FTE) employees working in the construction and installation of the project. All solar energy projects must make a service payment equal to \$7 per kilowatt, or \$7,000 per megawatt. Qualified energy projects with any other resource must pay \$6 per kilowatt (\$6,000 per MW) if the projects maintain an Ohio workforce of 75% or more. The required service payment is \$7 per kilowatt (\$7,000 per MW) if the project maintains a percentage greater than 60% but less than 75%. A facility maintaining a percentage greater than 50% but less than 60% must pay \$8 per kilowatt (\$8,000 per MW). This service payment will be shared by all taxing jurisdictions within the project area in the same manner that property tax collections would otherwise be allocated to counties, school districts, and local governments. The local county board of commissioners may require an additional \$1,000 to \$3,000 per megawatt payment beyond those required by S.B. 232, but the cumulative total of both service payments cannot exceed \$9,000 per megawatt.

The bill requires the facility to offer to sell power or renewable energy credits first to electric distribution utilities and electric service companies subject to the alternative energy portfolio requirements of current law before offering the power and credits to others. Other requirements apply including restoring roads affected by facility construction, and providing training and equipment to fire and emergency responders where the facility is located.

The bill clarifies the sales tax treatment of the newly defined "energy conversion equipment." Specifically, the bill exempts this equipment from the sales tax, but the energy conversion equipment may already be exempt from the sales tax given that it is used by a public utility and the Revised Code exempts<sup>1</sup> tangible personal property that is used for the delivery of a public utility service. Therefore this provision is expected to have no fiscal effect.

S.B. 232 requires the Public Utilities Commission of Ohio (PUCO) to conduct a study to review the condition of reactive power in the state. The Commission is required to issue a report of its findings to the General Assembly within one year after the effective date of the bill. According to PUCO, there will be no cost to the agency to complete this study because the Federal Energy Regulatory Commission preempts PUCO from doing such a study.

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<sup>1</sup> R.C. 5739.01(B)(3)(b).

## **Fiscal effect**

According to the Department of Development, the bill will not have a significant fiscal impact on the agency. Agency staff believe that the responsibilities under the bill can be sufficiently handled with existing resources by its Office of Tax Incentives. This office is supported by appropriations to the Tax Incentive Programs line item (195630), a non-GRF line item, as well as revenues derived from filing fees for various types of tax credit applications.

There will be a fiscal effect on some political subdivisions. For counties, the fiscal effects are permissive for larger projects. The bill gives authority only to boards of county commissioners to override the tax exemption, however, meaning that other political subdivisions that could be affected by the tax exemption could experience a loss of revenue from real and tangible personal property taxes, offset partially by revenue gains from the \$6,000 to \$8,000 payments in lieu of taxes. Counties may require an additional \$1,000 to \$3,000 payment such that the total amount of service payments does not exceed \$9,000 per megawatt, and this separate service payment would not be shared with other taxing jurisdictions within the county.

According to the sponsor testimony, which utilizes information from the Wind Energy Association, a 100 megawatt commercial wind facility could have a personal property tax liability of approximately \$4 million and a real property tax of about \$200,000. Such a facility would make a \$600,000 to \$900,000 payment in lieu of the public utility tangible personal property and real property taxes, but counties, school districts, and other local governments would forego future payments for the property taxes.

Currently, Ohio does not have any large renewable or advanced energy facilities that would be eligible for the "qualified energy project" certification and the resulting property tax exemption. However, six wind facilities (Table 1 below) have applications that were either approved or still pending before the Power Siting Board. Assuming the three remaining applications are approved, these facilities may qualify for the tax exemption if they were put into service before January 31, 2012. If all six wind facilities are put into service with the maximum estimated generating capacity, it would yield up to \$8.8 million in annual shared revenue to the counties from payments in lieu of taxes, which would offset the \$2.2 million loss (maximum possible amount) in real property tax revenue that the county treasurers might currently be collecting on those lands where wind facilities are proposed to be built. But the bill's exemption from public utility tangible property taxes would eliminate millions in additional property tax revenue that would have been raised if those projects had been undertaken in the absence of the bill.<sup>2</sup>

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<sup>2</sup> Property tax estimate made using examples provided in the sponsor testimony, which utilized information from participating companies and trade associations.

<b>Table 1: Wind Projects with Cases Approved or Still Pending Before the Ohio Power Siting Board<sup>3</sup></b>			
<b>Case No.</b>	<b>Project (County)</b>	<b>Company</b>	<b>Generating Capacity (Est.)</b>
08-0666-EL-BGN	Buckeye Wind Project (Champaign)	Buckeye Wind, LLC, a subsidiary of EverPower Wind Holdings, Inc.	125 to 175 MW
09-0277-EL-BGN	Hardin County North Wind Farm (Hardin)	JW Great Lakes Wind, LLC, a subsidiary of juwi Wind GmbH	50 MW (approx.)
09-0479-EL-BGN	Hardin Wind Farm (Hardin)	Hardin Wind Energy, LLC, a subsidiary of Invenergy LLC	300 MW
09-0546-EL-BGN	Black Fork Wind Project (Crawford and Richland)	Black Fork Wind LLC	201.6 MW
09-0980-EL-BGN	Timber Road Wind Farm (Paulding)	Paulding Wind Farm, LLC, a subsidiary of Horizon Wind Energy	48.6 MW
09-1066-EL-BGN	Blue Creek Wind Farm Project (Paulding and Van Wert)	Heartland Wind, LLC, a subsidiary of Iberdrola Renewables	Up to 350 MW

Although the six projects are all wind facilities, wind projects are not the only energy facilities that would qualify for the real and tangible personal property tax exemption authorized by S.B. 232. The total number of projects that may qualify for the tax exemptions is potentially larger than the six facilities mentioned above, including solar energy facilities as well as energy facilities using clean coal technology, advanced nuclear technology, or cogeneration technology. The net fiscal effect on local governments may vary from the example above based on the type of facilities and the tangible personal and real property taxes in the counties where those projects may be located. County governments will retain the ability to approve or deny the tax exemptions to these facilities as well as the option of negotiating an additional \$1,000 to \$3,000 payment made solely to their general fund, but school districts and other taxing jurisdictions within the county may lose local property tax revenues without their consent. All taxing authorities would share the larger (i.e., \$6,000 to \$8,000 per MW) service payment in lieu of taxes in the same manner that property taxes are allocated to the appropriate jurisdictions.

Solar energy facilities can be conceived and constructed in the shortest amount of time relative to the other types of energy facilities. Wind energy facilities tend to be larger scale projects and require more lead time before their construction. It is likely that more solar projects than wind projects will file property tax exemption applications to the Director of Development before the December 31, 2011 deadline.

Energy facilities using clean coal technology or advanced nuclear technology require a great deal of time for planning and construction. LSC staff does not know how many qualified energy projects could be ready to meet the December 31, 2013 application deadline. Clean coal facilities would cost \$1.75 billion or more and most involve some sort of federal funding or federal loan guarantee. LSC does not know of

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<sup>3</sup>Source: <http://www.opsb.ohio.gov>.

any federal support for clean coal or advanced nuclear energy facilities. Advanced nuclear energy facilities are distinguished by their third or fourth generation reactors. Third generation facilities have yet to be built in the United States, but they are in operation in Japan and under construction elsewhere in Asia and Europe. It is unclear whether Duke Energy will propose an advanced nuclear energy plant for its proposed nuclear facility in Piketon, Ohio, but it is highly unlikely an advanced energy facility could be constructed within the timeframe specified by S.B. 232.

Energy facilities using cogeneration technology have already been developed in Ohio, which indicates that more facilities could be added in the future. These types of facilities can vary widely in their capacity. For example, the OPSB approved construction of a 47 MW facility in Butler County in 2009, but industry data from 2006 suggests that average system capacity in Ohio was 11.8 MW while the median system capacity was 3.3 MW. The spectrum of possibilities prevents LSC staff from estimating future construction and the corresponding revenue impact on local taxing jurisdictions.

### **Municipal alternative energy revolving loans**

Current law allows the legislative authority of a municipal corporation to establish a low cost solar panel revolving loan program to assist residents in installing solar panels on their residences. The bill amends current law to expand the existing authority for solar panel loans into a broader alternative energy revolving loan program. Eligible alternative energy technologies under the bill are solar photovoltaic energy, solar thermal energy, wind energy, geothermal energy, or other energy efficiency technologies, products, and activities that reduce energy consumption or support clean and renewable energy production. If a municipality chooses to create such a program, it must establish an alternative energy revolving loan fund in the municipal treasury with a dedicated funding source.

### **Special energy improvement projects**

Current law allows the board of directors of a special improvement district within a municipality, township, or any combination thereof to adopt plans for special energy improvement projects, including solar photovoltaic and solar thermal energy projects. The bill adds wind energy, geothermal energy, biomass energy, and gasification projects, as well as energy efficiency improvements, to the list of eligible special energy improvement projects. The bill also adds consulting and energy auditing to the list of eligible activities and eligible costs under special improvement project plans. These provisions may increase the costs to special improvement districts, depending on the size of the alternative energy and energy efficiency projects engaged in by special improvement districts under the bill, and the extent to which existing or new revenues authorized by the districts cover such costs.