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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

**S.B. 2**  
**(1\_136\_0333-1)**  
**136<sup>th</sup> General Assembly**

## **Fiscal Note & Local Impact Statement**

[Click here for S.B. 2's Bill Analysis](#)

**Version:** In Senate Energy

**Primary Sponsor:** Sen. Reineke

**Local Impact Statement Procedure Required:** No

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### **Highlights**

- The bill exempts electric generation property placed into service on or after the effective date of the bill from tangible personal property (TPP) taxes. The associated revenue loss is indeterminate, as it depends on future investment activity and the catalyst for those decisions.
- The bill provides a five-year property tax exemption for TPP used to transport or transmit electricity or natural gas within an approved priority investment area (PIA), which is a new designation created by the bill. Property tax losses are permissive for the legislative authority approving the exemption but not for other affected taxing authorities.
- The bill repeals provisions of law that allowed for certain solar energy resources to apply to the Ohio Air Quality Development Authority (OAQDA) to receive payments for solar energy credits. The total savings are uncertain but expected to grow as those select solar facilities increase their generation activity.
- The bill requires that an electric distribution utility's (EDU) standard service offer (SSO) be established exclusively as a market-rate offer (MRO) by eliminating the electric security plan (ESP) option and making the MRO mandatory. The fiscal impact is indeterminate, with potential fluctuations in future electricity costs.
- The bill repeals the current charge on electric ratepayers for costs related to the Ohio Valley Electric Company (OVEC) at the end of an EDU's current ESP, saving ratepayers an estimated \$397.5 million through 2030.

## Detailed Analysis

The bill makes several changes to Ohio's public utility laws with fiscal implications, including property tax policy modifications, the repeal of solar energy credit payments, the restructuring of the standard service offer (SSO), and the elimination of ratepayer charges for Ohio Valley Electric Company (OVEC) costs. Additionally, the bill introduces a refund requirement for unlawful utility charges and establishes priority investment areas (PIAs) for tax-exempt energy infrastructure development. The following sections provide a detailed analysis of these provisions.

### Electric generation property tax exemption

Under continuing law, local property taxes extend to the tangible personal property (TPP) of those whose business is supplying electricity to others. The bill exempts from taxation TPP used to generate electricity, but only for TPP placed into service on or after the bill's effective date.

The bill's changes apply to electric companies, rural electric companies (i.e., electric cooperatives), and "energy" companies. An "energy" company is one that generates, transmits, or distributes electricity from a facility that (a) has a nameplate capacity of more than 250 kilowatts and (b) consists of wind turbines, solar panels, other renewable energy source, clean coal, or cogeneration technology.

### Fiscal effect

The associated revenue loss is indeterminate, as it depends on future investment activity and the catalyst for those decisions. Prospective electric production property that would have been placed into service regardless of the bill is generally expected to result in tax revenue losses for local governments.

According to the Department of Taxation, tax year (TY) 2023 data shows that the statewide valuation of TPP owned by electric and energy companies is approximately \$17.9 billion, with about \$0.9 billion attributed to electricity production property. Under current law, generation property is assessed at a 24% rate (25% for rural electric companies), but the bill would fully exempt newly in-service properties.

Table 1 highlights recent trends, showing that nearly 98% of new nameplate capacity in Ohio utilizes natural gas, solar, or wind energy for electricity generation. However, the existing property tax base cited above likely excludes many of these facilities because most benefit from tax exemptions available under continuing law.

Renewable energy facilities may qualify for a real and TPP exemption, if they obtain the "qualified energy project" designation under R.C. 5727.75. Upon doing so, those facilities make a payment in lieu of taxes (PILOT) ranging between \$6,000 and \$9,000 per megawatt (MW) of nameplate capacity. Under the bill, PILOT receipts should continue from existing facilities, but future facilities are not expected to undertake PILOT agreements because the TPP exemption authorized under the bill only leaves owners with a real property tax liability, which is usually smaller than their TPP tax. Additionally, according to the Department of Development, six natural gas-fired power plants developed in the past decade have obtained Enterprise Zone tax incentives from their local communities, enabling a 100% property tax exemption for their first 15 years.

<b>Table 1. Nameplate Capacity of Ohio Electric Generating Facilities Placed into Service, by Energy Source: 2019-2023</b>					
<b>Year</b>	<b>Natural Gas</b>	<b>Solar</b>	<b>Wind</b>	<b>Others</b>	<b>Total</b>
2019	0	21	0	2	23
2020	10	3	134	32	1,379
2021	1,732	369	250	1	2,351
2022	0	4	0	73	77
2023	2,055	1,324	5	23	3,406
<b>Total</b>	<b>3,797</b>	<b>1,720</b>	<b>388</b>	<b>130</b>	<b>6,036</b>

Source: U.S. Energy Information Administration, Form 860

## Priority investment areas

The bill authorizes a county, municipal corporation, or township to petition the Director of Development to designate a brownfield or former coal mine site as a PIA, within which utility TPP dedicated to transporting or transmitting electricity or natural gas will be exempt from TPP taxation for five years. The designation also triggers accelerated review of electric generation or transmission projects and gas pipeline projects by the Power Siting Board (PSB).

### Fiscal effect

The bill is expected to result in property tax revenue losses for local governments due to a five-year tax exemption for TPP used to transport or transmit electricity or natural gas within an approved PIA. The exemption applies to new TPP placed into service during a time when the PIA is in effect.

However, the amount of potential tax revenue loss will vary, as the exemption applies only to designated PIAs, which are adopted by local legislative authorities. Furthermore, while counties, municipalities, and townships can adopt and certify a PIA designation, school districts and other affected taxing jurisdictions are not included in the approval process, meaning they may face revenue losses without their consent.

Additionally, the number of eligible properties for transporting or transmitting electricity or natural gas will depend on future energy infrastructure investments and demand. Ohio has approximately 1,132,000 acres of brownfields and former mine sites, with the majority being former mine sites. Only about 7,300 acres are classified as brownfields. The map on the last page of this fiscal note illustrates the distribution of former coal mine lands across Ohio. These areas could qualify for PIA designation, depending on local government actions and new energy projects proposed by developers.

## Solar energy credit program repeal

The bill repeals the solar energy credit program, which allowed qualifying solar energy resources to apply to the Ohio Air Quality Development Authority (OAQDA) for payments for

credits received for generating electricity via solar energy. Under the current law, it allows for an electric distribution utility (EDU) to collect a monthly charge from each retail customer in the state to produce a revenue requirement of \$20 million annually for disbursement through the credit program.

The bill prohibits an EDU, beginning on the bill's effective date, from collecting any charge that was authorized pursuant to the solar energy credit program provisions the bill repeals. The bill further prohibits OAQDA from directing the Treasurer of State (TOS) to remit, and the Treasurer is prohibited from remitting, any money from the Solar Generation Fund (SGF) to owners or operators of qualifying solar resources.

The bill does not state what is to happen to the money already collected and deposited in the Solar Generation Fund.

### **Fiscal effect**

The bill eliminates the solar energy program, repealing a charge on ratepayers. According to the TOS annual report, payments for solar energy generation credits could total up to \$1.1 million or less in FY 2024.<sup>1</sup> Due to fluctuations in disbursement amounts over the years, the total savings for ratepayers remain uncertain. However, savings are expected to increase as another approved solar facility becomes operational and overall generation rises among the approved facilities.

### **Elimination of ESPs and requirement for MRO-based SSOs**

The bill requires an EDU's SSO to be established exclusively as a market-rate offer (MRO) by eliminating the option for an electric security plan (ESP) and making the MRO mandatory. SSO is an offer of all the competitive retail electric services (CRES) necessary to maintain essential electric service that an EDU is required to provide to customers who either (1) have not selected their own electric generation supplier or (2) whose supplier has defaulted, and the customer did not obtain a new supplier. Under current law, an EDU may establish its SSO as either an ESP or an MRO.

### **Fiscal effect**

State agencies, political subdivisions, and school districts are major electricity consumers. Since no utility has proposed an MRO before, the fiscal impact is uncertain. Additionally, the shift from the ESP to a mandatory MRO may lead to fluctuations in electricity costs, with potential savings or increases depending on market conditions.

In general, the three major components of electric bills in Ohio are the price of generation, transmission, and distribution of that electricity. The generation charge should be relatively consistent between an ESP and MRO, as it is determined by a competitive bidding process under an ESP. The transmission charge is a rate set by formula based upon costs submitted annually to the Federal Energy Regulatory Commission (FERC). Therefore, the distribution component is most affected by state regulation. Distribution lines are the lower voltage lines usually mounted on utility poles or buried underground and used to deliver electricity to homes and businesses.

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<sup>1</sup> Based on the TOS annual report, total outflows of the SGF is approximately \$1.3 million. After accounting for a \$256,000 transfer from the SGF, the estimated net outflow is approximately \$1.1 million.

Under current law, the Public Utilities Commission of Ohio (PUCO) must approve, or modify and approve, an EDU's application for an ESP if it finds that the ESP so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO.<sup>2</sup> The Supreme Court of Ohio has determined that does not bind PUCO to a strict price comparison, but rather instructs the Commission to consider pricing, as well as all other terms and conditions. Consequently, PUCO must ensure that the ESP as a total package is considered, including both a quantitative and qualitative analysis.

Many distribution riders are also recoverable under an MRO. However, some riders in an ESP do not offer clear quantitative advantages to customers. In the past, PUCO approved riders with various types of intended qualitative benefits, such as (1) rate stability for customers, (2) enabling EDUs to proactively improve reliability by improving distribution infrastructure, (3) provisions for economic development, (4) bill payment assistance and energy efficiency programs for low-income customers, (5) to establish a senior citizen discount, and (6) to promote electric vehicle (EV) charging.

## **Legacy generation resource recovery repeal**

The bill repeals provisions of law that allow an EDU to collect a monthly charge from each customer in the state to recover costs for a legacy generation resource (LGR), such as the Ohio Valley Electric Company. The bill allows, despite the repeal of the LGR provisions, for a rider or cost recovery mechanism for an LGR authorized under an EDU's ESP in effect on the bill's effective date to remain in effect until the termination date of the ESP. After the termination date of the ESP, the EDU cannot apply for, and PUCO cannot authorize, any rider or cost recovery mechanism for an LGR or OVEC.

### **Fiscal effect**

The repeal of the OVEC cost recovery rider is projected to generate total savings of over \$397.5 million for ratepayers through 2030, assuming the bill has an effective date on or before May 31, 2025. Table 2 displays the estimated ratepayer savings from 2025 to 2030 for each EDU, along with their respective ESP expiration dates. This estimate is based on the cost recovery mechanism employed by applicable EDUs.

As EDUs submit projected net costs related to OVEC to PUCO every six months, LBO staff analyzed these semiannual projections to forecast future expenses. The estimated ratepayer savings are based on the most recent projection for OVEC costs applicable to January 2025 through June 2025.<sup>3</sup> This analysis estimates an annualized amount of those costs, approximately \$107.5 million for all three EDUs, and projects the savings to begin following the expiration of all current ESPs.

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<sup>2</sup> R.C. 4928.143(C)(1).

<sup>3</sup> Refer to "PROJECTED OVEC NET COSTS (6 Months)" totaling \$53,764,927, as found in PUCO case number [24-1070-EL-RDR](https://www.puc.state.oh.us/cases/24-1070-EL-RDR), which is available on PUCO's website: [dis.puc.state.oh.us/](https://dis.puc.state.oh.us/).

**Table 2. Estimated Customer Savings from LGR Rider Repeal, 2025-2030**

EDU	ESP Expiration Date	Estimated Ratepayer Savings (in millions)
AEP Ohio	May 31, 2028	\$159.0
Dayton Power and Light Company	August 31, 2026	\$175.3
Duke Energy Ohio	May 31, 2025	\$63.2
FirstEnergy EDUs	N/A	\$0.0
<b>Total</b>	<b>N/A</b>	<b>\$397.5</b>

Note: The three FirstEnergy EDUs are unaffected by these LGR/OVEC provisions because they are not sponsoring companies of OVEC.

## Refunds for utility charges

The bill requires that all charges paid by customers to any public utility that are later found to be unreasonable, unlawful, imprudent, or otherwise improper by the PUCO or the Supreme Court be promptly refunded to the customers who paid the charges. PUCO must order these refunds in a manner designed to allocate them to customer classes in the same proportion as the charges were originally collected.

### Fiscal effect

The refund provision may reduce costs to ratepayers, but it is uncertain to predict frequency (if any) with which this provision would be invoked in future years. In a 2014 Ohio Supreme Court decision, the Court found that PUCO had improperly approved certain charges in American Electric Power's (AEP Ohio) first ESP, which was in effect from 2009 to 2011. As a result, AEP Ohio collected \$368 million from customers. Although PUCO later regarded the charges as "unjustified," PUCO asserted that a refund under the circumstances would be tantamount to retroactive ratemaking, something it is not authorized to engage in.<sup>4</sup> The Ohio Supreme Court affirmed PUCO's decision due to existing statutes and case law.

In 2019, the Ohio Supreme Court ruled that PUCO improperly authorized FirstEnergy's Distribution Modernization Rider (DMR), which allowed the company to collect between \$168 million and \$204 million annually from customers starting in 2017.<sup>5</sup> The Court determined that the DMR lacked requirements for FirstEnergy to invest in grid modernization, making the charges unlawful and unreasonable. However, despite the Court's decision to halt the DMR charges, no refund was made available to ratepayers for money already recovered under the rider. The Court cited R.C. 4905.32, which bars any refund of recovered rates unless the tariff

<sup>4</sup> *In re Application of Columbus S. Power Co.*, 138 Ohio St.3d 448, 2014-Ohio-462, affirming PUCO's decision in Case No. 08-0917-EL-SSO.

<sup>5</sup> *In re Application of Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401.

applicable to those rates sets forth a refund mechanism. FirstEnergy’s tariffs for the DMR contained no refund mechanism.

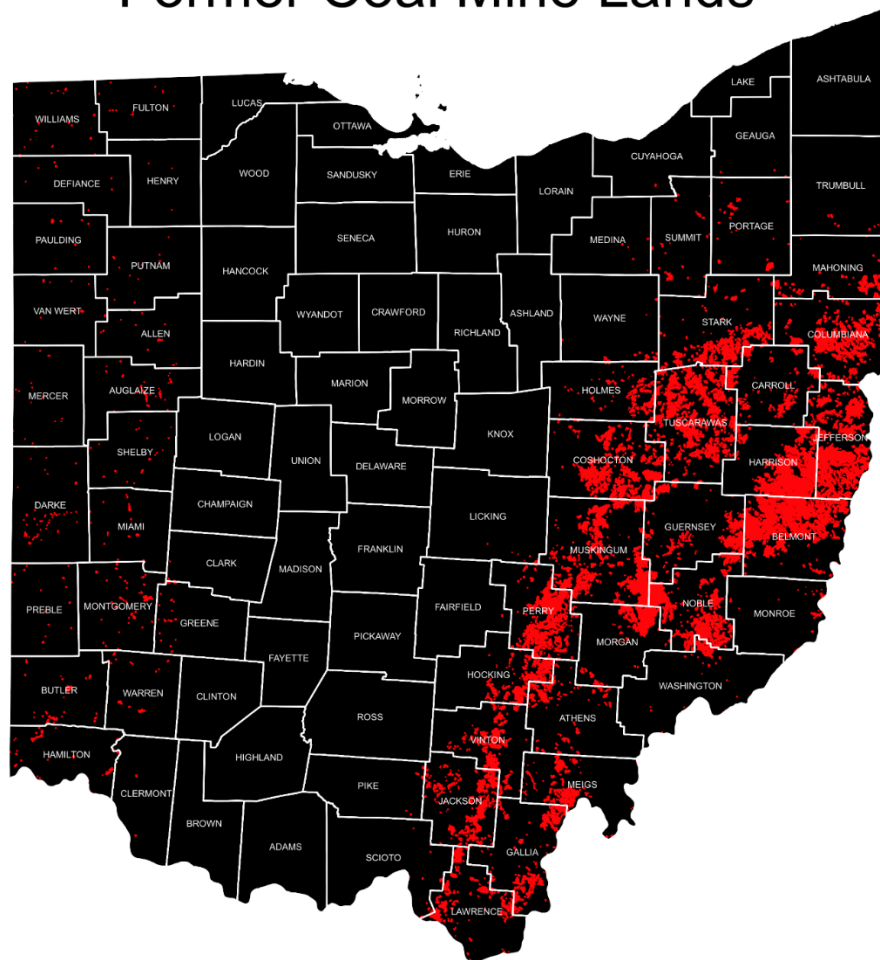
### Power Siting Board certification

The bill requires the replacement of an existing major utility facility with a like facility, as determined by the PSB, to constitute the construction of a major utility facility that requires PSB certification. The bill also repeals the provision stating that a replacement with a like facility is not exempt from other state or local laws or regulations.

### Fiscal effect

The PSB may see an increase in application submissions due to this provision. As the agency operates on a cost-recovery basis, its expenses are offset by fees paid by applicants. These fees are deposited into Fund 5610 and allocated through appropriation line item 870606, with costs matching the revenue generated from the fees.

## Former Coal Mine Lands



Source: Ohio Department of Natural Resources map viewer at: <https://gis.ohiodnr.gov/MapView/Viewer/?config=OhioMines#>