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OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 772
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Romanchuk

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SUMMARY

H.B. 6 provisions being repealed

- Repeals the provisions of H.B. 6 of the 133rd General Assembly that do the following:
 - Require an electric distribution utility (EDU) to collect a per-customer monthly charge on all rate payers in Ohio to subsidize credits for nuclear resources and qualifying renewable resources (certain in-state solar resources) for which facility owners or operators apply to the Ohio Air Quality Development Authority;
 - Eliminate the reductions in compliance with the renewable energy benchmarks based on kilowatt hours produced by in-state solar resources eligible to apply to the Authority for renewable energy credit;
 - Eliminate the prohibition against qualifying in-state solar resources getting both a renewable energy credit through application to the Authority and a renewable energy credit under ongoing law enacted prior to H.B. 6;
 - Repeal the provision that allowed cost recovery associated with a contract executed before April 1, 2014, to procure renewable energy resources through a bypassable charge only to the end of 2032 and revives prior law that allowed an EDU to recover the contract costs through a bypassable charge *until the associated costs are fully recovered*;
 - Replace any existing cost-recovery mechanism approved by the Public Utilities Commission (PUCO) associated with contractual commitments related to a legacy generation resource (including Ohio Valley Electric Corporation (OVEC) facilities), with a nonbypassable rate mechanism applied to all rate payers in Ohio;
 - Permit an EDU to enter into agreements with a mercantile customer or mercantile customer group for constructing a customer-sited renewable energy resource in Ohio that would provide the customer or group with a material portion of its electricity requirements;

- Allow certain EDUs to file an application with PUCO to implement a decoupling mechanism;
- Require the Director of Development Services to annually submit a waiver request to spend 25% of federal low-income home energy assistance program (HEAP) funds for weatherization services;
- Disallow future reductions in the taxable value of tangible personal property of electric companies that are or a part of a qualifying nuclear resource receiving nuclear resource credits from the Authority.

H.B. 6 provisions being retained

- Retains the H.B. 6 provisions that do the following:
 - Change the renewable energy benchmarks to require 8.5% of an EDU's or electric services company's electric supply be obtained from renewable energy resources by the end of 2026, to eliminate the solar energy requirement after 2019, and end further renewable energy resource requirements after 2026;
 - Qualify the definition of "net metering system" to specify that, for an industrial customer-generator, certain energy generation systems satisfy the definition if sized so as to not exceed 100% of the customer-generator's annual requirements for electric energy at the time of interconnection;
 - Eliminate energy efficiency savings requirements after 2020 and modify energy efficiency and peak-demand reduction portfolio plans and provide a plan to obtain full deemed compliance with energy efficiency savings requirements;
 - Permit mercantile customers to opt out and later opt back into an EDU's energy efficiency/peak demand reduction portfolio plan;
 - Repeal the requirement that customers opting out of an EDU's energy efficiency/peak demand reduction portfolio plan submit initial and updated reports to PUCO staff regarding energy intensity reduction projects, actions, policies, and practices, and cumulative energy-intensity reductions achieved.
 - Require an EDU to file with PUCO a new rate schedule for county fairs and agricultural societies that includes a fixed monthly service fee or an energy charge on a kilowatt-hour basis;
 - Exclude from Power Sitting Board jurisdiction wind farms of five or more, but less than 20, MWs that are primarily dedicated to providing electricity to a single customer at a single location;
 - Permit energy projects of up to 20 MWs to be exempted from property taxation without the formal approval of a board of county commissioners and release the projects from various other prerequisites for the tax exemption (such as repair of affected infrastructure, emergency responder training and equipment, and career training).

New provisions under H.B. 772

- Expressly terminates any mechanism for retail recovery of prudently incurred costs authorized and established under the legacy generation resource/OVEC provisions of H.B. 6.
- Expressly prohibits any mechanism for retail recovery of costs for all specified generating facilities (the same as those defined as legacy generation/OVEC resources in H.B. 6) that was in effect on or before the effective date of H.B. 6 from being “revived, reimposed, reestablished, or in any way reinstated” as a result of H.B. 772, or by PUCO action.
- Expressly prohibits any amount, charge, mechanism, or rider related to such mechanisms in effect on or before the effective date of H.B. 6 from being assessed or collected from customers.
- Repeals the provisions already in law prior to H.B. 6 that permit EDUs to include in their electric security plans (ESPs) a (1) revenue decoupling mechanism or any other incentive ratemaking regarding distribution service or (2) decoupling mechanism for energy efficiency or conservation programs.
- Prohibits any decoupling mechanism established under that prior law or under H.B. 6 from remaining in effect and prohibits any amount, charge, mechanism, or rider related to these decoupling provisions from being assessed or collected from customers.
- Removes energy efficiency programs from the provisions in law enacted prior to H.B. 6 that permit EDUs to include provisions for implementing economic development and job retention and *energy efficiency programs* in their ESPs.
- Repeals the provision that permits the allocation of economic development, job retention, and energy efficiency program costs across all classes of EDU customers, including customers of EDUs in the same holding company system.
- Requires that the full amount of revenues collected from customers under the legacy generation resource/OVEC provisions and under the decoupling mechanism under H.B. 6 to be promptly refunded to customers from whom the revenues were collected and allocated to customer classes in the same proportion as originally collected.
- Declares an emergency.

DETAILED ANALYSIS

H.B. 6 provisions being repealed

The bill repeals certain H.B. 6 provisions and either explicitly or implicitly returns those provisions of law to its pre-H.B. 6 state, with the likely effect of reviving the provisions as they were. Below is a summary discussion of the repealed provisions, and a link to LSC’s analysis of H.B. 6, As Passed by the General Assembly, for a more detailed discussion of the provisions.

Payments for nuclear resource and renewable energy credits

The bill repeals the in-state nuclear and renewable resource payment provisions of law enacted in H.B. 6. The repeal includes all provisions related to the per-customer monthly charges that an electric distribution utility (EDU) must collect starting January 1, 2021, and ending on December 31, 2027, to subsidize those resources. The bill, in turn, repeals the nuclear resource credit program, which dealt with the application for, the issuance of, and the payment for, nuclear resource credits administered primarily by the Ohio Air Quality Development Authority. It also repeals the similar provisions regarding the renewable energy credit program for certain in-state solar energy resources.¹

A detailed discussion of the law being repealed is available on pages 11 to 18 of LSC's analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

Renewable energy credit compliance reduction and double counting

The bill also eliminates renewable energy credit provisions related to the renewable resource payment provisions of H.B. 6. First, the bill removes the renewable energy compliance reduction established in H.B. 6 that is based on kilowatt hours produced by in-state solar energy resources qualified to receive renewable energy credits. Second, it eliminates the H.B. 6 prohibition against an in-state solar energy resource getting both a renewable energy credit under the H.B. 6 renewable energy credit program and a renewable energy credit under ongoing law enacted prior to H.B. 6.²

A detailed discussion of the renewable energy requirements of H.B. 6 being repealed is available on pages 19 and 20 of LSC's analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

Renewable energy contract recovery

The bill revives prior law that allowed an electric distribution utility to recover costs through a bypassable charge for a renewable resource procurement contract executed before April 1, 2014, for as long as the costs are outstanding and removes the H.B. 6 provision that allows recovery only to the end of 2032 "regardless of the H.B. 6 amendments to the renewable energy requirements." The bill retains the H.B. 6 changes to the renewable energy requirements, but it is not clear whether or how the bill's removal of the phrase quoted above will affect contracts under this provision. See "**H.B. 6 provisions being retained: Renewable energy requirements.**"³

¹ R.C. 3706.40 to 3706.65, repealed by the bill.

² R.C. 4928.64(B)(2) and 4928.645(C); R.C. 4928.642, repealed by the bill.

³ R.C. 4928.641.

A detailed discussion of the renewable energy contract recovery requirement being repealed is available on page 20 of LSC's analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

Legacy generation resource/OVEC cost recovery

The bill repeals H.B. 6 provisions related to cost recovery of a legacy generation resource (which are generating facilities owned directly or indirectly by a corporation formed prior to 1960 by investor-owned utilities for the original purpose of providing power to the federal government for use in the nation's defense or in furtherance of national interests, including the Ohio Valley Electric Corporation (OVEC)). The bill also repeals the H.B. 6 provision requiring that any preexisting PUCO-authorized mechanism for retail recovery of prudently incurred costs related to a legacy generation/OVEC resource must be replaced with a nonbypassable rate mechanism approved by PUCO for recovery of those costs from all customers of Ohio EDUs.⁴

A detailed discussion of the law being repealed can be found on pages 22 to 23 of LSC's analysis of HB. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

Agreements for customer-sited renewable energy resources

The bill repeals the agreements for customer-sited renewable energy resources provision of law enacted by H.B. 6. Generally, this provision gives an EDU the ability to enter into an agreement of three years or more with a mercantile customer, or group of mercantile customers, to construct a customer-sited renewable energy resource in Ohio that would provide the mercantile customer or group with a material portion of their electricity requirements.⁵

A detailed discussion of the law being repealed can be found on page 23 of LSC's analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

Decoupling

The bill repeals the decoupling provisions of law enacted in H.B. 6. Generally, these provisions give an EDU the ability to file an application to implement a decoupling mechanism for calendar year 2019 and each calendar year thereafter. Under a decoupling mechanism, the base distribution rates for residential and commercial customers is decoupled to the base distribution revenue and revenue resulting from implementation of the energy efficiency and peak demand reduction requirements, excluding program costs and shared savings, and

⁴ R.C. 4928.01(A)(41) and (42); R.C. 4928.148, repealed by the bill.

⁵ R.C. 4928.47, repealed by the bill.

recovered pursuant to an approved electric security plan (ESP), as of the 12-month period ending December 31, 2018.⁶

A detailed discussion of the law being repealed can be found on page 24 of LSC's analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

Home energy assistance programs (HEAP)

The bill repeals the HEAP provisions enacted in H.B. 6 that require the Director of Development Services to annually (starting in FY 2021) submit a federal waiver request for the state to spend 25% of HEAP funds for weatherization services allowed under federal law.⁷

A detailed discussion of the law being repealed can be found on page 25 of LSC's analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

Tangible Personal Property

The bill repeals the provision of H.B. 6 that disallows any future reduction in the taxable value of tangible personal property of an electric company that receives payments for nuclear resource credits.⁸

A detailed discussion of the law being repealed can be found on page 26 of LSC's analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

H.B. 6 provisions being retained

The bill does not repeal all provisions of H.B. 6. Below is a summary discussion of the provisions being retained as a result, and a link to LSC's analysis of H.B. 6, As Passed by the General Assembly, for a more detailed discussion of the provisions.

Renewable energy requirements

The bill retains the changes to the renewable energy requirements that H.B. 6 enacted. First, the bill retains the benchmark changes established in H.B. 6 that require (1) electric EDUs and electric services companies to have provided a minimum of 8.5% of their electricity supply from qualifying renewable energy resources by the end of 2026, (2) no solar energy requirement or compliance payment after 2019, and (3) no further renewable energy requirements after 2026. Second, the bill retains the renewable energy compliance reduction that is based on the exclusion of the electric load and usage of mercantile customers who are self-assessing purchasers.⁹

⁶ R.C. 4928.471, repealed by the bill.

⁷ Section 4; R.C. 4928.75, repealed by the bill.

⁸ R.C. 5727.231, repealed by the bill.

⁹ R.C. 4928.64(B) and (C)(2)(a); R.C. 4928.644, not in the bill.

A detailed discussion of the renewable energy requirements of H.B. 6 being retained is available on pages 19 and 20 of LSC's analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

Energy efficiency

The bill retains the energy efficiency changes enacted in H.B. 6 that do the following:

- Limit to 8.2% the annual energy savings for each EDU by the end of 2020, with no future requirements;
- Provide for the modification of portfolio plans to extend to and then terminate, or simply terminate, on December 31, 2020;
- Determine cumulative energy savings using the cumulative threshold of 17.5% for all EDUs collectively, with the result that: (1) meeting or exceeding the threshold leads to full compliance with the energy efficiency requirements, and (2) failing to meet the threshold requires PUCO to determine how and when full compliance will be achieved;
- Discontinue existing energy efficiency cost recovery mechanisms if full compliance with energy efficiency savings is deemed achieved (that is meeting the 17.5% threshold or PUCO determination of full compliance);
- Repeal the energy intensity reduction reports by certain high-volume electric customers that opt out of an EDU's energy efficiency/peak demand reduction portfolio plan;
- Permit mercantile customers to opt out and later opt back in to an EDU's energy efficiency/peak-demand reduction portfolio plan.¹⁰

A detailed discussion of the H.B. 6 energy efficiency changes being retained can be found on pages 20 to 22 of LSC's analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

Wind farms of 5-20 megawatts

The bill retains the amendment regarding wind farms of five, but less than 20, MWs enacted in H.B. 6. These provisions deal with subjecting such wind farms to local control if they meet certain conditions.¹¹

A detailed discussion of the H.B. 6 wind farm provisions being retained, as well as prior law, can be found on pages 24 to 25 of LSC's analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

¹⁰ R.C. 4928.66(A)(1)(a), (E), and (F) and 4928.6610; R.C. 4928.6616, not in the bill.

¹¹ R.C. 303.213, 519.213, 731.081, and 4906.13, not in the bill.

Net metering system using wind under 20 megawatts

The bill retains the change to the definition of “net metering system” by H.B. 6. That change allows certain industrial customer-generator systems to meet the definition of a net metering system.¹²

A detailed discussion of the law being retained can be found on page 25 of LSC’s analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

Rate schedule for county fairs and agricultural societies

The bill retains the H.B. 6 rate schedule requirement for county fairs and agricultural societies. Under H.B. 6, an EDU must file a new rate schedule with PUCO for county fairs and agricultural societies that includes either (1) a fixed monthly service fee or (2) an energy charge on a kilowatt-hour basis.¹³

A detailed discussion of the law being retained can be found on page 25 of LSC’s analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

Property tax exemption for energy projects

The bill retains the property tax exemption provisions of law enacted in H.B. 6 that address the ability of larger-scale energy generation projects to be exempted from property taxation without the approval of the board of county commissioners and the ability of a board to condition a tax exemption on payments in lieu of taxes only if a project has a capacity of at least 20 MWs.¹⁴

A detailed discussion of the law being retained, and prior law, can be found on pages 25 and 26 of LSC’s analysis of H.B. 6, As Passed by the General Assembly, available here <https://www.legislature.ohio.gov/download?key=13060&format=pdf>.

New provisions under H.B. 772

The bill enacts the following new provisions as described below.

Legacy generation resource cost assessment/collection prohibition

The bill terminates any mechanism for retail recovery of costs for a legacy generation/OVEC resource in effect *on or before* the effective date of H.B. 6 from being “revived, reimposed, reestablished, or reinstated” as a result of this bill, or PUCO order, decision, or rule. The bill also prohibits any amount, charge, mechanism, or rider related to a legacy generation resource cost recovery mechanism from being assessed or collected from customers. As described above in “**H.B. 6 provisions being repealed: Legacy**

¹² R.C. 4928.01(A)(31)(d).

¹³ R.C. 4928.80, not in the bill.

¹⁴ R.C. 5727.75, not in the bill.

generation resource/OVEC cost recovery,” the bill repeals the H.B. 6 provision for retail recovery of prudently incurred costs related to a legacy generation resource/OVEC.¹⁵

Decoupling

The bill prohibits any decoupling mechanism established under H.B. 6 from remaining in effect on and after the effective date of the bill (if enacted), and prohibits any amount, charge, mechanism, or rider related to this decoupling provision from being assessed or collected from customers.¹⁶

The bill also repeals the current law provisions (that were already law prior to H.B. 6) that permit EDUs, as part of their ESPs, to include a (1) revenue decoupling mechanism or any other incentive ratemaking regarding distribution service or (2) decoupling mechanism for energy efficiency or conservation programs. Under the bill, any decoupling mechanism established under these provisions is prohibited from remaining in effect and any amount, charge, mechanism, or rider related to the decoupling provisions is prohibited from being assessed or collected from customers.¹⁷

Economic development, job retention, and energy efficiency in ESPs

The bill removes energy efficiency programs from the current law provisions (that were already law prior to H.B. 6) that permit EDUs to include provisions for implementing economic development and job retention and *energy efficiency programs* in their ESPs. The bill also repeals the provision that permits the allocation of economic development, job retention, and energy efficiency program costs across all classes of EDU customers, including customers of EDUs in the same holding company system.¹⁸

Customer refunds

The bill requires customer refunds of the full amount of the revenues collected through an amount, charge, mechanism, or rider established under the legacy generation resource/OVEC cost recovery provisions and decoupling provisions of H.B. 6 as those sections existed prior to the effective date of the bill. Refunds must be made promptly to customers from whom the revenues were collected and must be allocated to customer classes in the same proportion as originally collected.

Refunds under the bill must be made notwithstanding any other provision in Ohio utility law, including the current law that prohibits public utilities from refunding any rate, rental, toll, or charge established in its rate schedule, except as specified in that rate schedule.¹⁹

¹⁵ Section 5(A).

¹⁶ Section 5(B).

¹⁷ R.C. 4928.143(B)(2)(h) and 4928.66(D); Section 5(B).

¹⁸ R.C. 4928.143(B)(2)(i).

¹⁹ Section 6; R.C. 4905.32, not in the bill.

Emergency clause

The bill includes an emergency clause.²⁰

HISTORY

Action	Date
Introduced	09-30-20

H0772-I-133/ks

²⁰ Section 7.