Ohio House of Representatives

State Representative Robert Cole Sprague
83rd House District

Sponsor Testimony
House Bill 143
House Public Utilities Committee
January 23, 2018

Chair Cupp, Vice Chair Carfagna, Ranking Member Ashford, and members of the House Public Utilities Committee:

Thank you for giving me the opportunity to offer sponsor testimony on House Bill 143. I introduced House Bill 143 to correct an issue with the application of the kilowatt-hour tax. Specifically, the bill clarifies and solidifies the long-held exemption of self-generators from the kilowatt-hour tax on the distribution of power.

Through the passage of Senate Bill 3, which became effective in 2001, the kilowatt-hour tax replaced the public utility excise tax. As part of the bill, there were specific exemptions. The exemption being clarified under this bill is the exemption related to self-generators. Since the passage of Senate Bill 3, during the 123rd General Assembly, the Ohio Department of Taxation, until recently, interpreted the law as exempting self-generators from the kilowatt-hour tax.

In order to stay competitive, manufacturers and other large energy users began self-generating. As self-generators, these entities were exempt from the kilowatt-hour tax. Under the public utilities portion of the Ohio Revised Code, specifically Section 4928.01, "self-generator" means:

> "an entity in this state that owns or hosts on its premises an electric generation facility that produces electricity primarily for the owner's consumption and that may provide any such excess electricity to another entity, whether the facility is installed or operated by the owner or an agent under a contract."

It is common business practice for these large energy users to enter lease agreements for their facilities and land, including energy generation facilities. In addition, it is common for these companies to contract with agents to assist them in the operation of these facilities. Although the application of exempting self-generators from the kilowatt-hour tax became a standard, the

kilowatt-hour tax is now being assessed on some entities that should qualify as "self-generators" under the public utilities code. It is important not to confuse the kilowatt-hour tax on distribution with taxes on generation or any other public utility issue. This specific issue has to do with the interpretation of language regarding the tax on the distribution of energy over the grid.

Since "self-generator" is not specifically defined under Ohio's tax code, the Ohio Department of Taxation is treating certain entities that fit under the Ohio Revised Code Section 4928.01 definition of a "self-generator" as electric distribution companies. House Bill 143 attempts to correct this issue. Specifically, the language attempts to clarify Ohio Revised Code Section 5727.80 and align its language with language found in Ohio Revised Code Section 4928.01.

I have been working with various interested parties, including the Ohio Department of Taxation, and continue to move closer to completing substitute language that resolves the issue and ensures the spirit of the exemptions from the 2001 law are applied properly in statute. At the request of some interested parties, instead of making the necessary clarifications in Ohio Revised Code Section 5727.80, the current substitute language draft revises the kilowatt-hour tax exemption provisions of Ohio Revised Code 5727.81. My hope is we will soon reach a consensus on the language issues, but, due to certain views on the original principle of the exemption, there will still be opposition. My intention was and is not to address the principle of whether the exemption is right or wrong; it is to clarify the intentions of Senate Bill 3 from the 123rd General Assembly.

The intent of the policy clarifications under House Bill 143 will ensure our manufacturers have the ability to remain competitive. As companies invest in innovative ways to compete, House Bill 143 will ensure that self-generators and their agents are exempt from the kilowatt-hour tax. This exemption was the original intent under the law, and a language revision is necessary to ensure companies, especially end-users utilizing large amounts of energy, continue to innovate their processes and are treated fairly under the tax code for their significant investments – investments partially based, in addition to utilizing clean energy, on the historic interpretation of the exemption.

Thank you for your time and consideration. I am happy to answer any questions.