

**BEFORE THE**  
**PUBLIC UTILITIES COMMITTEE**  
**OF THE OHIO HOUSE OF REPRESENTATIVES**  
**HOUSE BILL 143**  
**PROPONENT TESTIMONY OF JEREME KENT**  
**GENERAL MANAGER & CEO**  
**ONE ENERGY ENTERPRISES LLC**

**FEBRUARY 13, 2018**

Good afternoon Chairman Cupp, Vice-Chair Carfagna, Ranking Member Ashford, and members of House Public Utilities Committee. My name is Jereme Kent and I am the founder and CEO of One Energy Enterprises LLC. One Energy is a Findlay, Ohio headquartered company that develops, installs, and operates *Wind for Industry*® projects. These projects connect utility-scale wind turbines directly to large commercial and industrial facilities across the State of Ohio to provide those facilities with electricity at a lower cost than they would otherwise pay, at a fixed price, for 20 years.

One Energy is responsible for more of these on-site wind energy projects in the State of Ohio than everyone else combined. Our projects range from 1.5 megawatts to 4.5 megawatts in size and our public customers include Cooper Farms, Haviland Plastics, Whirlpool Corporation, Ball Corporation, Valfilm North America, and Marathon Petroleum Corporation.

I think the best thing I can do here today is to give you the same background information that I provided to Representative Sprague when I first met with him to ask for his help on this issue.

This all began a few years back, when my company first developed a concept at the request of our customers to both deliver on-site projects and provide capital for those projects. Before we began executing these projects, we reached out to the Ohio Department of Taxation. We had a number of conversations with the Department regarding a range of taxes, including the kilowatt-hour (kWh) tax. At that time, we explained our projects in detail and explained that it was our understanding that because our customers were self-generators, they were clearly self-generating and therefore not subject to the kWh tax. We received a verbal agreement from the Department of Taxation and did not hear from them again for several years.

In late 2016, we received word from the Department of Taxation that they were now going to assess our projects and our customers with the kWh tax. I immediately called the same individual at the Department of Taxation that I had worked with previously and explained that there must have been some sort of mistake – that since these projects were clearly self-generators, they must be self-generating. The response I received on the phone was “I seem to recall that, and that sounds right, but let me check and get back to you.”

That was the last substantive conversation I was able to have with the Department of Taxation on this issue until interested party meetings were held by Representative Sprague in 2017. We asked multiple times for the Department to explain why they believed self-generators do not self-generate under Ohio law. They refused. We provided them with flow charts and asked them to comment on them to see if they agreed on the definition of self-generator and self-generating. They refused. We asked them to produce their own flow charts or guidance

documents. They refused. We asked them to engage in a rulemaking to establish rules that clearly explained what they believed the law to be. Again, they refused.

Since there was no public information available to make sense of the Department's position, we submitted a public records request to the Department. We had hoped this request would explain the standards the Department was using to determine when a self-generator was not self-generating and therefore subject to the kWh tax. We again came up empty-handed. The most telling document that we found in that public records request was an internal email suggesting that if someone built a project themselves but used lease financing with a bank to raise the capital needed for the project, the Department believed the bank should pay the tax because they held title to the project.

On top of that, the Department has repeatedly told us they will not look outside the tax section of the Revised Code when considering their interpretation. They told us this despite the fact that Chapter 1 of the Revised Code requires them to do just that – to look at other definitions when the tax code fails to provide a definition of a technical term.

None of this makes sense to me. None of this is in line with the way the law was written. None of this is in line with the way that the Department of Taxation should interpret law. And none of this is in line with how the Department should provide notice to Ohioans of what they believe the law is. This entire issue before you in this bill today should not need to be in front of you. But we have no other option because the Department of Taxation refuses to follow legislative intent and provide public guidance on what they believe the law to be.

It seems obvious to me that the Department should consider the definition of “self-generator” found in the public utilities section of the Revised Code when determining what it means to “self-generate,” since both phrases came out of the same bill, Senate Bill 3. It seems obvious to me that a self-generator is, in fact, self-generating. It seems obvious to me that if a word or phrase is used in one section of the Revised Code and it is not defined, but there is a clear definition on point that exists elsewhere in the Revised Code, then that definition should at least be considered. It seems obvious to me that one should not attempt to tax an entity without being able to answer basic questions or provide information to the public about when that tax is believed to apply. But apparently what seems obvious to me is not obvious to everyone, which is how we find ourselves here today. The current stance of the Ohio Department of Taxation is a self-generator in the State of Ohio does not necessarily self-generate and may be subject to the kWh tax.

Stepping back, this issue gets even more baffling. The kWh tax was never intended to be a generation tax; it was intended to be a distribution tax. Everyone, including the Department of Tax, agrees the kilowatt-hour tax does not apply to those who are self-generating electricity.

If you take the logical conclusion of the Department's current stance, you come to realize that many, many, many instances would be subject to the kWh tax that were never intended to be. For example, a large generator at a county fair would be subject to the kWh tax. A large standby generator powering a factory or a facility in an emergency power outage would be subject to the kWh tax. Any rental company renting large generators should be put on notice that they may need to install a meter to figure out how to tax the people who use their power. Any finance company that's going to give debt and take title to a facility until that debt is paid off, even if they do nothing but finance the project, is subject to kWh tax. I can't wait until the banks find out.

But the scary part is that the Department's stance goes much further. There is no minimum generator size contained in the kWh tax-enabling statute. That means all generators of all sizes could potentially be assessed the kWh tax if they are not self-generating in the Department's mind. If you borrow your neighbor's generator for a camping trip; if you rent a generator for a construction site; if you tailgate at an OSU game and “borrow” power from the group next to you; you could be subject to the kWh tax. Surely, we all see how ridiculous this could get.

This is not what was intended with the kWh tax. The kWh tax was intended to be a distribution tax, and if the power generated is not distributed, then it does not make sense to assess the tax.

This bill provides further clarity and explicit language to make it clear that it was not the intention of this legislature to have the kWh tax apply to on-site projects that provide electricity to a single customer. This bill should not have to exist. However, the circumstances we find ourselves in have mandated its existence. I appreciate your support of this bill, and I know my customers and everyone else in this state who produces and consumes power on-site also appreciates your support on this issue.