OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research and Drafting

Legislative Budget Office

H.B. 6
133rd General Assembly

Fiscal Note & Local Impact Statement

Click here for H.B. 6's Bill Analysis

Version: As Reported by House Energy Generation Subcommittee

Primary Sponsors: Reps. Callender and Wilkin

Local Impact Statement Procedure Required: No

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Highlights

Fund	FY 2020	FY 2021	Future Years
Ohio Clean Air Program Fund (custodial fund)			
Revenues	$86 million	$239 million	$306 million
Expenditures	Commensurate with revenues	Commensurate with revenues	Commensurate with revenues

Note: The state or school district fiscal year runs from July 1 through June 30 and is designated by the calendar year in which it ends. For other local governments, the fiscal year is identical to the calendar year.

- The bill creates a new Ohio Clean Air Program, which will compensate certain electric generating facilities for their attributes. Beginning January 1, 2020, electric consumers will fund this program through a dedicated monthly charge authorized by the bill. Revenue to the Ohio Clean Air Program Fund will consist of charges paid by customers of electric utilities.
- The bill revises the existing alternative energy portfolio standard and exempts consumers from the corresponding charges that fund this requirement.
- The Ohio Air Quality Development Authority (OAQDA) will incur new costs to oversee the Clean Air Program. LBO initially estimates that the Authority will need to hire six or more new technical and professional staff to administer the program. OAQDA will also likely need to expand its office space to house the new Clean Air Program staff.

Detailed Analysis

H.B. 6 creates the Ohio Clean Air Program, to be administered by the Ohio Air Quality Development Authority (OAQDA). Certain electric generating facilities that meet the criteria of "clean air resource" or "reduced emissions resource" may apply to the Ohio Clean Air Program for one or more program years, as determined by the Authority. The bill awards a "clean air credit" worth $9.00 for each megawatt hour of electricity a clean air resource produces, and the owner of the facility will receive payment from a newly created fund for each of its credits. Similarly, OAQDA may pledge a portion of money in that fund, the Ohio Clean Air Program Fund, for the benefit of any reduced emissions resource, provided the resource agrees to be bound by the conditions OAQDA may attach to the pledge.[1]

The bill authorizes a new charge on electric consumers of an electric distribution utility (EDU) while simultaneously exempting these same consumers from another existing charge for the alternative energy portfolio standard (AEPS) required by R.C. 4928.64. The bill also revises the baseline by which AEPS compliance is measured. In general, the existing section of the Revised Code subjects an increasing percentage of baseline electricity consumption to certain requirements over a number of years. The bill significantly reduces the baseline against which compliance is measured by exempting all of the electricity customers that do not explicitly "opt in" to the AEPS charge.

Please refer to the LSC Bill Analysis for a full description of the contents of H.B. 6. Following this section is a brief description and summary analysis of the bill's fiscal effects. The major headings include (1) the Ohio Air Quality Development Authority, (2) the Ohio Clean Air Program Fund, (3) the effect on ratepayers, (4) the Public Utilities Commission of Ohio, and (5) the Ohio Environmental Protection Agency (Ohio EPA).

Ohio Air Quality Development Authority

OAQDA's main role under the bill would be to certify electric generating facilities as "clean air resources" or "reduced emissions resources" eligible to participate in the Clean Air Program, which is newly authorized by the bill. The bill defines a "clean air resource" as an electric generating facility that (1) emits zero carbon dioxide, (2) is not wholly or partially owned by a municipal or cooperative corporation, and (3) satisfies several additional requirements specified in the bill.

Additionally, the bill requires OAQDA to complete other duties in operating the program, including (1) on a monthly basis, tracking the number of clean air credits earned by each clean air resource, (2) on an annual basis, conducting an audit of the program, and (3) on a one-time basis, in the year 2029, completing a report to determine whether the program is in the public interest to operate in 2030 and beyond, and submitting the report to the General Assembly.

Overall, the bill will result in a significant rise in costs for OAQDA, in particular for hiring new staff to implement and oversee the Clean Air Program. As of March 2019, the Authority employed four full-time staff. Although it is difficult to assess staffing needs under the bill at this stage, OAQDA will probably be required to hire a handful of additional employees to run

[1] Section 3706.49(A).

the new initiative. This would potentially include a program manager, engineers, and technical experts. An attorney conversant with utility and energy law and a public information officer may also be necessary.

There are also likely to be some costs at the outset for hiring technical consultants to study and develop Clean Air Program guidelines. In addition, more office space and new supplies and equipment would likely be needed to house the program. OAQDA currently rents office space in the LeVeque Tower at 50 West Broad Street in Columbus. The bill does not include funding to cover these additional personnel or office expenses.

FY 2019 spending for OAQDA's operating expenses is expected to be just over $630,000. H.B. 166, the pending main operating budget bill for the FY 2020-FY 2021 biennium, provides OAQDA with funding for operations totaling approximately $775,000 in FY 2020 and $790,000 in FY 2021. The increase would allow the Authority to hire one new permanent full-time employee to handle customer service and administrative duties. OAQDA's operating costs are supported by bond financing fees and a portion of air permit fees collected by the Ohio EPA.

OAQDA's current role is to assist businesses, political subdivisions, and not-for-profit entities in complying with the federal Clean Air Act. Its primary function is to help with clean air project financing, issuing revenue bonds to install clean air facilities, and helping them qualify for tax exemptions on the projects. OAQDA also awards grants to small businesses to buy clean air equipment. A seven-member board governs the Authority, of whom five are paid and two serve ex officio. The bill adds four legislative members, serving ex officio without compensation, bringing the total board membership from seven to 11.

Ohio Clean Air Program Fund (custodial fund)

The bill creates the Ohio Clean Air Program Fund for the purpose of funding benefits provided by the Ohio Clean Air Program. The fund would be in the custody of the state treasurer rather than be part of the state treasury; one implication of that is that expenditures from the fund would not require appropriations by the General Assembly. Revenues to the fund consist of fixed monthly charges paid by customers of electric utilities. The monthly charge varies depending on the customer type, as provided in Section 3706.47 of the bill. The applicable charge for calendar year (CY) 2020 is lower for residential and commercial customers than the charge applicable to CY 2021 and thereafter (refer to Tables 1a and 1b). The bill exempts customers from the AEPS charge currently in place, as explained further in the next section of the Fiscal Note.

Table 1a. Estimated Revenue Raised for CY 2020 from Fixed Monthly Charge in H.B. 6			
Customer Type	**Monthly Charge**	**Customer Bills (per year)**	**Annual Revenue**
Residential	$0.50	50,790,393	$25,395,197
Commercial	$15	6,342,449	$95,136,735
Industrial	$250	189,217	$47,304,250
Large customers*	$2,500	1,764	$4,410,000
Total	**N/A**	**57,323,823**	**$172,246,182**

*The $2,500 monthly charge applies to those commercial or industrial customers that exceeded 45 million kilowatt hours of electricity at a single location in the preceding year, as specified in Section 3706.47(B)(4). The threshold is identical to the delineation used by Ohio's kilowatt-hour tax for self-assessing purchasers. LBO relied upon North American Industry Classification System (NAICS) codes provided by applicable taxpayers to identify whether these large customers would be classified as commercial or industrial customers. The PUCO customer counts were modified accordingly.

Table 1b. Estimated Annual Revenue Raised from Fixed Monthly Charge in H.B. 6 After CY 2020			
Customer Type	**Monthly Charge**	**Customer Bills (per year)**	**Annual Revenue**
Residential	$2.50	50,790,393	$126,975,983
Commercial	$20	6,342,449	$126,848,980
Industrial	$250	189,217	$47,304,250
Large customers	$2,500	1,764	$4,410,000
Total	**N/A**	**57,323,823**	**$305,539,213**

Revenue from the fund will generally be used to fund the Clean Air Program, but the bill permits utilities to apply to OAQDA for reimbursement for certain "contractual obligations" related to the AEPS. LBO economists are aware of three contractual commitments that cost AEP Ohio approximately $18.4 million in CY 2018, but no other EDU reported similar power purchase agreements to PUCO on their most recent long-term forecast.[2]

Separately, the three FirstEnergy EDUs will likely have some contractual commitments related to their renewable energy credit (REC) procurement. During FirstEnergy's request for proposals held in October 2011, the companies entered into "eleven ten-year contracts as a result of winning bids." According to a settlement agreement pending before PUCO, FirstEnergy may continue to regard the pricing and supplier terms as a trade secret and refrain from

[2] PUCO Form FE-R3, submitted pursuant to R.C. 4935.04.

publicly disclosing this information.[3] Therefore, LBO does not have access to the magnitude of costs for these contracts, or other REC procurement details from prior years.

Finally, the bill's provision also enables an EDU to receive reimbursement for other AEPS-related costs that stem from the modification or elimination of programs approved under the AEPS, as it existed prior to H.B. 6.

Effect on ratepayers

The fiscal effect on government expenditures is minimal. State agencies and local governments purchase electricity from a variety of providers, and those outside the service area of an electric distribution utility will not be affected. Refer to the map at the end of this Fiscal Note for a detailed illustration of EDU boundaries.

The substantial majority of, if not all, government entities within EDU territories will likely be classified as commercial customers under H.B. 6 (though under the bill, each EDU determines the classification of its customers). The bill imposes a charge up to $20 per month on these customers, which is equivalent to $240 per year. In conjunction with this new charge, the bill exempts customers from paying costs associated with the requirements under section 4928.64 of the Revised Code. This default exemption is optional, and the bill enables customers to submit written notice of intent to opt in to pay the renewable energy monthly charge to the EDU from which it receives service.[4]

Energy efficiency and peak demand reduction charges

The bill revises the energy efficiency and peak demand reduction (EE/PDR) benchmarks in R.C. 4928.66. Given the uncertain outcomes, LBO economists cannot definitively evaluate the fiscal effect of these changes. The revisions grant discretion to EDUs as to whether EE/PDR programs will continue past 2020. As of this writing, at least two EDUs have portfolio plans due to expire by the end of 2020, while the remaining EDUs expire at the end of 2019. Generally, the plans are for three years from 2017-2019, but H.B. 6 extends the current plans of applicable EDUs for a fourth year.

The bill mandates that all current EE/PDR portfolio plans must terminate by December 31, 2020. It further permits an EDU to "recover in the following year all remaining program costs incurred or to be incurred, including costs incurred for contractual obligations and any costs to discontinue the portfolio plan programs." LBO does not have an estimate for the magnitude of these costs. Any such estimate would be complicated by a case currently pending before the Ohio Supreme Court.[5] Presently, the court must decide whether PUCO can lawfully implement a cost cap on an EDU's EE/PDR portfolio plans equal to 4% of their 2015 electric operating revenues. The bill language does not refer to "prudently incurred" costs, so perhaps

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[3] PUCO Case No. 11-5201-EL-RDR, *Stipulation and Recommendation*, March 5, 2019. Under the agreement yet to be approved by PUCO, "no party shall disclose the price paid to any supplier under any ten-year contract entered into as a result of winning bids in [the October 2011 RFP] until after December 31, 2021."

[4] Section 3706.471.

[5] Case No. 2018-0379.

the EDUs could recover costs in excess of the PUCO-ordered cap, regardless of any potential Supreme Court decision. Given the uncertainty, LBO cannot estimate the costs related to this provision.

H.B. 6 enables EE/PDR plans to continue beyond CY 2020, at the discretion of the EDU. Should the EDU apply to PUCO, it may implement a successor EE/PDR program beginning January 1, 2021. On that date, an EDU may begin recovering costs and incentives related to a program that encourages energy efficiency or peak demand reduction. PUCO must approve any such application "if it finds that the proposed programs will be cost-effective, in the public interest, and consistent with state policy."

Decoupling mechanism charges

H.B. 6 authorizes a new charge pertaining to base distribution rates and the associated impact of EE/PDR programs. This decoupling provision in Section 4928.471 of the bill may yield additional charges paid by electric customers. PUCO must approve any application submitted by an EDU under this section. PUCO's approval of the decoupling mechanism must "remain in effect until the next time that the EDU applies for and the Commission approves base distribution rates for the utility." Specifically, the provision permits an EDU to decouple the base distribution rates for residential and commercial customers and "recover an amount equal to the base distribution revenue and revenue resulting from implementation of section 4928.66 of the Revised Code and recovered pursuant to an approved electric security plan under section 4928.143 of the Revised Code, as of the twelve-month period ending on December 31, 2018."

The bill does not specify how revenue for this decoupling provision should be measured. Therefore, it could be interpreted in a number of ways, including: (1) holding EDUs harmless for base distribution revenue received in 2018, or (2) permitting EDUs to recover portions (e.g., attributable to shared savings and lost distribution revenue) or the entire amount previously collected by the EE/PDR rider in CY 2018. Given the uncertainty, LBO does not have an estimate for this potential new charge.

All but one EDU would be affected by the decoupling provision. The bill specifically prohibits an EDU from applying for the decoupling mechanism if it had base distribution rates become effective between December 31, 2018 and the effective date of the bill. Only Duke Energy meets this criterion.[6] The Dayton Power and Light Company recently established new base distribution rates effective October 1, 2018.[7] The rates of both AEP Ohio and the three FirstEnergy EDUs have been effective for multiple years. Prospectively, AEP Ohio must file a base distribution case by June 1, 2020 "in order to help address concerns about some of the distribution riders becoming excessive and to recalibrate the costs being reflected in base rates versus riders."[8] Separately, the three FirstEnergy EDUs are currently operating under a base distribution rate freeze through May 31, 2024.[9]

[6] PUCO Case No. 17-0032-EL-AIR, *Opinion and Order*, December 19, 2018.

[7] FERC Form 1, 2018 Annual Report of Major Utilities, filed by The Dayton Power and Light Company.

[8] PUCO Case No. 16-1852-EL-SSO, *Opinion and Order*, April 25, 2018.

[9] FERC Form 1, 2018 Annual Report of Major Utilities, filed by Ohio Edison Company.

Alternative energy charges

Table 2 below illustrates the current charge from the alternative energy rider, assuming average electricity usage for each customer type. The electricity consumption of the typical customer was derived from 2017 statistics for the average Ohio customer, as reported by the U.S. Energy Information Administration. Notes in the table contain LBO's assumptions regarding all of these typical customers' kilowatt-hour (kWh) consumption, voltage delivery level, and their billing demand.

Table 2. Monthly Billing Amounts of Typical Customers for Alternative Energy Resource Requirements Authorized by R.C. 4928.64, as of April 2019

Electric Distribution Utility	Residential 833 kWh	Commercial 6,133 kWh	Industrial 226,151 kWh
AEP Ohio	$1.30	$9.57	$340.52
Cleveland Electric Illuminating Company	$0.52	$3.81	$140.44
Dayton Power and Light (embedded SSO charge)	$0.11	$0.83	$30.62
Duke Energy	$0.62	$4.56	$168.03
Ohio Edison	$0.52	$3.85	$141.80
Toledo Edison	$0.40	$2.96	$109.23
Statewide average	**$0.74**	**$5.78**	**$198.21**

Note: Assumptions for customers' respective service voltage and level of demand – Commercial: secondary, 25 kilowatt (kW); Industrial: primary, 500 kW. Statewide average weighted by each utility's share of total kWh consumption for each of the three general customer classifications: residential, commercial, industrial.

The AEPS rider identified in Table 2 is bypassable, which means it is paid only by Standard Service Offer (SSO) customers. Other consumers that alternatively purchase their generation supply from a competitive retail electric service (CRES) provider do not pay the rider. Nevertheless, CRES providers are subject to the renewable portfolio standard, so they incur charges to comply with the law. Consequently, their customers likely pay some portion of these compliance costs, albeit indirectly. CRES providers differ from EDUs in that they do not seek approval of PUCO to recover costs through a rider on customers' electric bills.

Public Utilities Commission of Ohio

H.B. 6 specifies multiple duties for PUCO, which are enumerated below. Any marginal expenditures incurred by the agency to execute the tasks required by the bill will likely be borne by PUCO's primary revenue source, the Public Utilities Fund (Fund 5F60).

The bill requires PUCO, through its general authority under continuing law, to facilitate and encourage the establishment of retail purchased power agreements having a term of three years or more through which consumers commit to satisfy a portion of their electricity requirements from the output of a clean air resource.[10] The bill enables PUCO to exempt these purchasing customers from the charges authorized by the bill as well as those related to the AEPS and EE/PDR benchmarks.

If the Federal Energy Regulatory Commission authorizes a program by which Ohio may take certain actions associated with the organized wholesale electricity market, the bill requires PUCO to promptly review the program and submit a report of its findings to the General Assembly. The report must include any recommendations for legislation that may be necessary to permit the state to beneficially participate in the program. When completing the report, PUCO must also "incorporate the policy of facilitating the state's effectiveness in the global economy by minimizing any adverse impact on trade-exposed industrial manufacturers."[11]

As mentioned above, H.B. 6 permits a utility to file an application with PUCO to update its base distribution rates for certain customers based on a decoupling mechanism described in the bill. PUCO must verify the corresponding rate schedules before approving the application, and it must ensure the newly proposed rate design is aligned with the design of EDU's existing base distribution rates.

Ohio Environmental Protection Agency

The bill permits the Director of the Ohio EPA, no earlier than two years from the bill's effective date, to apply to the Administrator of the United States Environmental Protection Agency (USEPA) for an exemption from the decentralized motor vehicle inspection and maintenance program (E-Check) required under the federal Clean Air Act. The Director is required to request in the application that the Administrator of USEPA authorize implementation of the Ohio Clean Air Program established by the bill as an alternative to E-Check. The potential one-time cost for the Ohio EPA to prepare and submit the application is unclear, as the bill does not specify its form, manner, or content.

The Ohio EPA expends approximately $11 million annually to support the implementation, supervision, administration, operation, and enforcement of E-Check. About 80%, or $9 million, is allocated annually to pay Envirotest Systems, the contractor that actually operates the program. Under the executive budget for the FY 2020-FY 2021 biennium, the program is completely GRF funded.

E-Check started in January 1996 and is designed to identify motor vehicles that emit excessive levels of pollutants into the air. E-Check is a requirement that was developed as part of the federally approved State Implementation Plan and compliance with the federal Clean Air Act so as to avoid the loss of federal grant money and possible sanctions. These sanctions include requiring offsets from facilities building in nonattainment areas and the loss of federal highway funds.

Attachment: Electric Distribution Utilities – Service Areas

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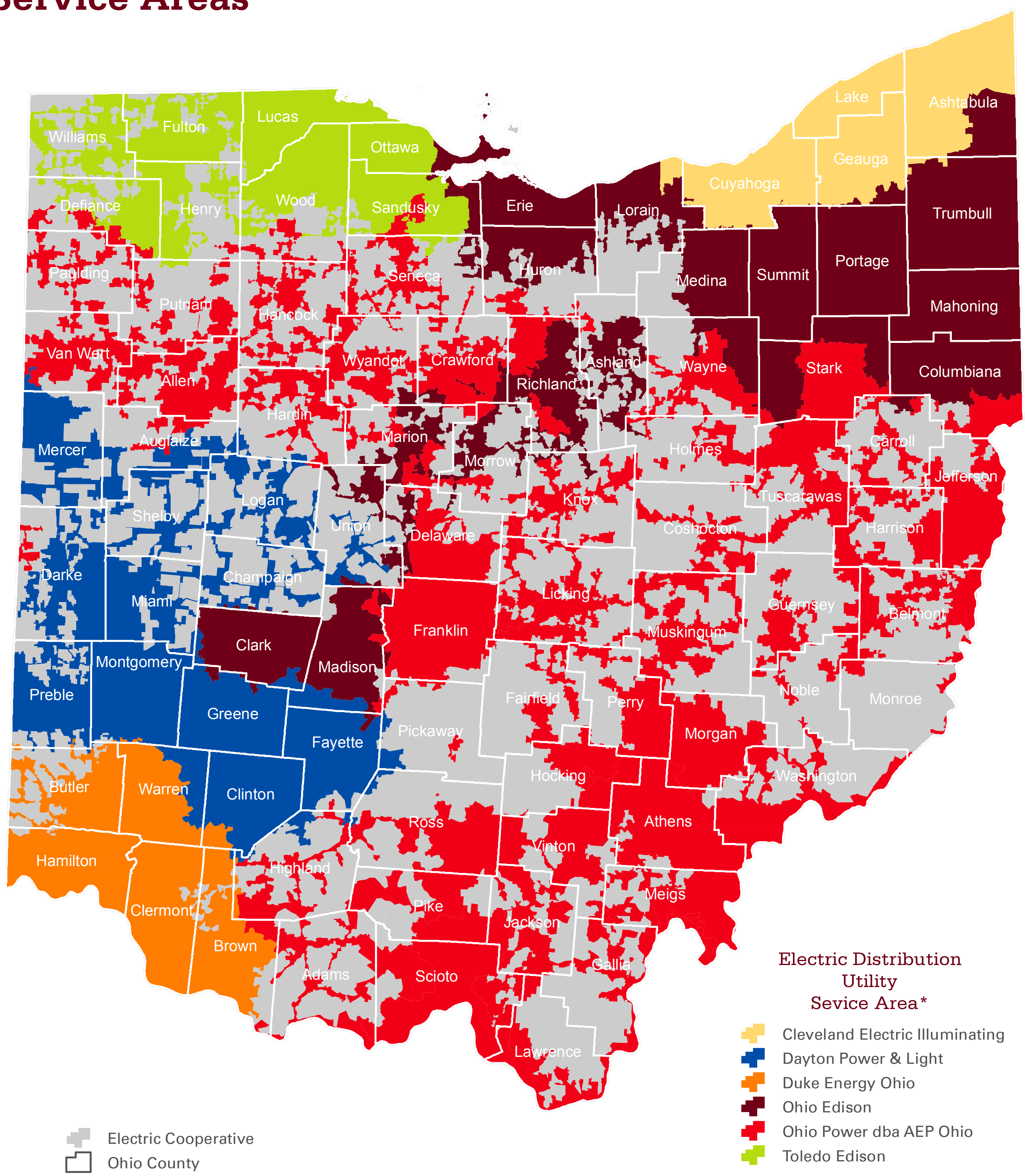
[10] Section 4928.47.

[11] Section 4928.46.

Electric Distribution Utilities
Service Areas

Ohio



Source: Public Utitlities Commission of Ohio, shapefile https://www.puco.ohio.gov/utility-maps/electric-maps/shapefile-of-electric-service-areas/ downloaded 4/16/2019.

*Data maintained by the PUCO. Electric service areas, or certified territories, are geographic regions within which an electric distribution utility (EDU) has the obligation and exclusive right to provide electric service. EDUs do not include municipalities that maintain their own electric systems.

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