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Ohio Legislative Service Commission

Office of Research and Drafting

Legislative Budget Office

S.B. 2
136th General Assembly

Fiscal Note & Local Impact Statement

Click here for S.B. 2's Bill Analysis

Version: As Reported by Senate Energy

Primary Sponsor: Sen. Reineke

Local Impact Statement Procedure Required: No

Kyuhan Choi, Economist

Highlights

- The bill exempts electric generation and energy conversion equipment first used in Ohio in calendar year 2026 and years thereafter from tangible personal property (TPP) taxes. The local property tax revenue loss on behalf of this exemption for prospective electric generation property and energy storage systems is indeterminate.
- Beginning in tax year (TY) 2027, the bill reduces the assessment rate for electric transmission and distribution property from 88% to 25% for property placed into service in that year and years thereafter. Similarly, the TPP of pipeline companies placed into service on or after TY 2027 is assessed at 25% of its value instead of 88%. The reduction in assessment rates is expected to result in an annual revenue loss of $49 million to $74 million.
- 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, and transfers remaining funds in the Solar Generation Fund to the School Energy Performance Contracting Loan Fund. The Solar Generation Fund had a cash balance of $47.2 million at the close of FY 2024.
- 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) on the effective date of the bill, saving ratepayers an estimated $591.4 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.

Taxation of electric and pipeline company personal property

Under continuing law, local property taxes extend to the tangible personal property (TPP) of electric companies and pipeline companies. The bill makes changes to the taxation of electric and pipeline companies. Specifically, the bill exempts electric generation and energy conversion equipment first used in business in Ohio in calendar year (CY) 2026 and years thereafter. The bill also reduces the assessment rate on electric transmission and distribution property as well as pipeline company property that is placed into service on or after tax year (TY) 2027.

The bill reclassifies a subset of electric TPP as energy conversion equipment and production equipment, which, in essence, allows such property to qualify for the TPP tax exemption discussed above, provided the property is first used in Ohio in CY 2026 or thereafter. Specifically, the reclassification applies to TPP used to store and release energy, which the bill refers to as an "energy storage system." This TPP has particular significance in the context of energy companies, where the bill lists it as a type of energy resource that energy companies can generate electricity from, along with wind, solar, clean coal, or cogeneration.

Additionally, the bill reduces the assessment rate applicable to electric transmission and distribution property for electric company from 85% to 25% (and from 50% to 25% for a rural electric company) and lowers the assessment rate of taxable property of pipeline companies from 88% to 25% for TPP first subject to tax in TY 2027 or years thereafter.

A TPP tax exemption previously granted for qualified energy projects continues to apply. The bill says that "any payments in lieu of taxes made as required under [R.C. 5727.75] continue to apply and be required notwithstanding the enactment of S.B. 2 of the 136th general assembly."

Fiscal effect

The reduction in the tax assessment rate to 25% for new electric transmission and distribution property owned by electric and energy companies, as well as for new taxable property owned by pipeline companies, is expected to result in a statewide annual property tax revenue loss of $49 million to $74 million, assuming recent trends continue in future years. Since TPP tax is paid in arrears, the potential revenue loss for new TPP first subject to tax in TY 2027 will begin in CY 2028. According to the Department of Taxation (TAX), TY 2023 data presents that

the total statewide valuation of TPP for public utilities is $30.3 billion, with approximately $27 billion (89% of the total) attributed to transmission and distribution property for electric companies and taxable property for pipeline properties.

When accounting for recent trends in TPP valuation growth, the decline in TPP value for the affected taxable properties under S.B. 2 (excluding exemptions for new electric production properties) is expected to range from $629 million to $943 million. The estimate of potential revenue loss uses the statewide effective tax rate, but the estimated loss may vary depending on the tax rates applied by different local authorities.

The exemption of electric generation property from taxation for electric companies will result in an indeterminate revenue loss, 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. Additionally, since energy storage systems make up a relatively small share of energy generation and conversion equipment, the fiscal impact of their tax exemption is expected to be less significant than that of electric generation properties.

According to TAX, 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 (or 25% for rural electric companies' generation property), but the bill would fully exempt newly in-service properties beginning in or after CY 2026.

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 TPP 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 "quailed 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.

Table 1. Nameplate Capacity of Ohio Electric Generating Facilities Placed into Service, by Energy Source: 2019-2023

Year	Natural Gas	Solar	Wind	Others	Total
2019	0	21	0	2	23
2020	10	3	134	32	1,379

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

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

Impact to the school funding formula

The reduction in the tax assessment rate to 25% for new electric transmission and distribution property owned by electric and energy companies, as well as for new taxable property owned by pipeline companies, also may lead to taxable property values for state funding purposes that are lower than what they would be under current law. However, the effects of the bill on state aid to school districts through the school funding formula are uncertain due to a number of factors. These provisions will first impact the school funding formula in FY 2029. A school funding formula for years after FY 2025 has yet to be enacted.

That said, historically Ohio's school funding formulas have used school district taxable property values to determine the local share of foundation funding. Under these formulas, lower taxable property valuations lead to lower local shares and correspondingly higher state shares, thus leading to higher state funding. Historically, school funding formulas have also included provisions that guarantee districts receive a certain amount of funding and other provisions that phase in or cap the amount of funding districts receive. These provisions dampen any effects of higher state shares.

Overall, assuming a funding formula similar to the current formula is enacted for future years, these provisions may lead to higher state funding for affected districts beginning in FY 2029. Any change in funding, however, will be highly dependent on the details of the formula in effect at that time, especially the formula's guarantee or cap provision, if there is one.

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.

Similar to the provision discussed above regarding taxation of electric and pipeline company TPP, this provision may also lead to state funding through the school funding formula that is higher than otherwise for affected school districts. Any change in state funding is uncertain, as it will depend on the amount of TPP exempt from taxation and the circumstances of the district.

Solar energy credit program repeal and school energy performance contracting loan fund

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 from the Solar Generation Fund (SGF) for credits received for generating electricity via solar energy. Under the current law, it requires 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 SGF to owners or operators of qualifying solar resources.

On the bill's effective date, or as soon as possible thereafter, the State Treasurer is directed to transfer the cash balance remaining in the SGF to the School Energy Performance Contracting Loan Fund.

The School Energy Performance Contracting Loan Fund ("Loan Fund") is created by the bill in the custody of the State Treasurer, but it is not part of the state treasury. Money in the fund is used for purposes of funding loans to school boards to pay all or part of an energy conservation measure installment payment contract or shared-savings contract. The Loan Fund consists of funds transferred from the SGF, repayments of loans, interest on amounts in the fund, and any appropriations, grants, or gifts made to the fund.

The Loan Fund is administered by the Ohio Facilities Construction Commission (OFCC), and OFCC must request the State Treasurer to create the account for the fund. The State Treasurer must distribute money in the fund in accordance with directions from OFCC.

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.[1] Due to fluctuations in disbursement amounts over recent years, the total savings for ratepayers in future years is uncertain. The remaining cash balance in the SGF will be transferred to the School Energy Performance Contracting Loan Fund. As of June 30, 2024, the remaining balance in the SGF was $47.2 million.

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.

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.[2] 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

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[1] 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.

[2] R.C. 4928.143(C)(1).

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. As of the bill's effective date, any EDU is prohibited from collecting the LGR/OVEC charge from any of its retail customers. Additionally, 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 $591.4 million for ratepayers through 2030, assuming the bill has an effective date on or before June 30, 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.[3] 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.

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

EDU	Estimated Ratepayer Savings (in millions)
AEP Ohio	$338.6
Duke Energy Ohio	$172.7
Dayton Power and Light Company	$63.2
FirstEnergy EDUs	$0.0
Total	**$591.4**

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

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

Refunds for utility charges

The bill requires all revenues collected from customers by a public utility as part of a rider or rates that are later found to be unreasonable, unlawful, imprudent, or otherwise improper by the Supreme Court are subject to refund from the date of the issuance of the Court's opinion until the date when, on remand, PUCO makes changes to the rider or rates to implement the decision. 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. PUCO must determine how to allocate any remaining funds that cannot be refunded for whatever reason. The refund order and determination how to allocate any remaining funds from PUCO must be issued no more than 30 days after the issuance of the Court's decision.

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.[4] 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.[5] 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 applicable to those rates sets forth a refund mechanism. FirstEnergy's tariffs for the DMR contained no refund mechanism.

Economic development and transmission billing programs

The bill permits PUCO to approve certain programs when considering a rate increase application. These include nondiscriminatory programs for all energy-intensive customers to implement economic development, job growth, job retention, or interruptible rates that enhance distribution and transmission grid reliability and promote economic development. It also includes nondiscriminatory programs for all mercantile customers that align retail rate recovery with how transmission costs are incurred by or charged to the EDU or programs that allow customers to be billed directly for transmission service by a CRES provider.

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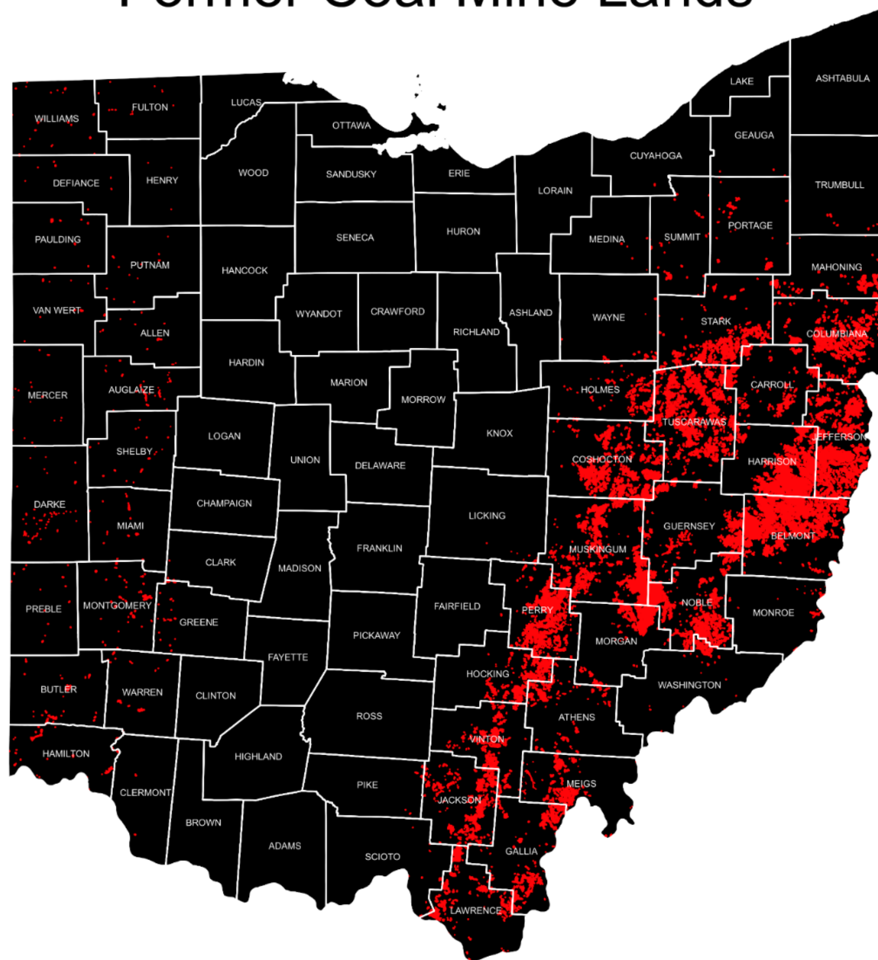
[4] *In re Application of Columbus S. Power Co.*, 138 Ohio St.3d 448, 2014-Ohio-462, affirming PUCO's decision in Case No. 08-0917-EL-SSO.

[5] *In re Application of Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401.

Fiscal effect

The provision allowing certain programs in rate increase applications could potentially increase utility costs for all ratepayers and introduce cost shifting to those not directly benefitting from the programs, which may increase electricity expenses for local governments and state agencies. Under current law, these two programs are authorized under an ESP, with EDUs recovering costs for these purposes through existing electric bill riders charged to ratepayers. While the provision is permissive, it could lead to higher utility costs to all ratepayers under an MRO.

Former Coal Mine Lands



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

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