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Bill Analysis

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SUMMARY

Ohio Clean Air Program

- Creates the Ohio Clean Air Program, to be administered by the Ohio Air Quality Development Authority.
- Allows a clean air resource or reduced emissions resource to apply to be a certified clean air resource or certified reduced emissions resource to be eligible for participation in the Ohio Clean Air Program for one or more program years, as determined by the Authority.
- Allows a clean air resource or reduced emissions resource to be recertified if the resource continues to meet the definition of clean air resource or reduced emissions resource and any additional requirements set by the Authority.
- Requires customers of an electric distribution utility to pay a per-account monthly charge to fund the Ohio Clean Air Program. Those charges are:
 - Residential, \$2.50;
 - Commercial, generally \$20;
 - Industrial, generally \$250;
 - Commercial or industrial customers that exceeded 45 million megawatt hours of electricity at one location in the preceding year, \$2,500.
- Exempts customers subject to the Ohio Clean Air Program monthly charge from the renewable energy charge and the energy efficiency and peak demand reduction charge, except in the case of costs prudently incurred for both of the following:
 - Contractual obligations that existed prior to the effective date of the bill in reliance on current law;

- Programs approved by the Public Utilities Commission of Ohio (PUCO) that are modified or eliminated by the bill.
- Creates the Ohio Clean Air Program Fund, where all the moneys collected via the Ohio Clean Air Program monthly charges are remitted.
- Requires the Authority to adopt rules for the implementation and administration of the Ohio Clean Air Program.
- Allows the Authority in its sole discretion to decertify a clean air resource or a reduced emissions resource after a public hearing and comment if it determines certification is not in the public interest.
- Requires an owner of a clean air resource and a reduced emissions resource to report to the Authority the number of megawatt hours the resource produced in the preceding month.
- Specifies that certified clean air resources earn a clean air credit for each megawatt hour of electricity produced, and requires the Authority to direct the State Treasurer to remit money to owners of certified clean air resources from the Ohio Clean Air Program Fund based on the number of credits earned, at a credit price that begins at \$9.25.
- Allows the Authority to pledge moneys that may be accumulated to the Ohio Clean Air Program Fund for the benefit of a certified reduced emissions resource, if the resource agrees to be bound by the conditions the Authority may attach to the pledge.
- Requires PUCO to facilitate and encourage the establishment of certain retail purchased power agreements.
- Allows an electric distribution utility to file an application for a decoupling mechanism with the PUCO.
- Requires PUCO to review and submit a report to the General Assembly if the Federal Energy Regulatory Commission authorizes a program that would allow Ohio to take action to satisfy any portion of the capacity resource obligation associated with the organized wholesale market that meets energy needs of Ohio consumers.
- Adds four legislative members to the Authority's board.
- Expands the public policy of the state through the operation of the Authority to include the Ohio Clean Air Program priorities.

E-Check

- Authorizes the Director of Environmental Protection 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.

- Requires the Director 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.

TABLE OF CONTENTS

Overview	3
Definitions: clean air resource and reduced emissions resource.....	4
Ohio Clean Air Program	5
Application process	5
Recertification	7
Decertification.....	7
Reporting Requirement	7
Rulemaking.....	7
Funding under the Ohio Clean Air Program.....	8
Customer charges.....	8
Clean air credits for clean air resources.....	8
Capital formation and investment for reduced emissions resources.....	9
Administration of the Ohio Clean Air Program Fund	9
Customer exemption from other charges.....	9
Exemption from renewable, efficiency, and peak demand charges.....	9
Exception for contract and program costs.....	9
Exempt customers may opt in to paying charges	10
Retail purchased power agreements.....	10
Decoupling	12
Federal Energy Regulatory Commission program	13
Air Quality Development Authority board.....	13
Air Quality Development Authority public policy.....	13
E-Check.....	13

DETAILED ANALYSIS

Overview

The bill creates the Ohio Clean Air Program to encourage reduced emissions and the development of clean air energy generation resources. The bill allows an electric generating facility to apply for certification as a clean air resource or reduced emissions resource in order to be eligible for participation in the Ohio Clean Air Program. The Ohio Clean Air Program is funded through a monthly per-account charge billed to all retail electric customers of Ohio electric distribution utilities.

For clean air resources, the bill institutes a clean air credit. A clean air resource earns a clean air credit for each megawatt hour of electricity it produces. The Ohio Air Quality Development Authority directs the Treasurer of State to remit money from the collected charges to each owner of a certified clean air resource in the amount equivalent to the number of credits earned by the resource during the previous month multiplied by the price of the credit.

For reduced emissions resources, the bill permits the Ohio Air Quality Development Authority to pledge money from the collected charges for the benefit of those resources, provided a resource agrees to be bound by conditions that the Authority may impose.

Definitions: clean air resource and reduced emissions resource

“Clean air resource” means an electric generating facility that emits zero carbon dioxide and that produces electricity from the utilization or consumption of any form of primary energy that satisfies all of the following criteria:

1. The facility does not receive state tax exemptions, deferrals, exclusions, allowances, payments, credits, deductions, or reimbursements calculated using a metric that provides a value for air emissions not produced by the facility through any program other than the Ohio Clean Air Program created by the bill;
2. The facility is not wholly owned by a municipal or cooperative corporation or a group, association, or consortium of those corporations;
3. The facility is not used to supply customers of a wholly owned municipal or cooperative corporation or a group, association, or consortium of those corporations;
4. Either of the following:
 - a. The facility has made a significant historical contribution to the air quality of the state by minimizing emissions that result from electricity generated in this state;
 - b. The facility will make a significant contribution toward minimizing emissions that result from electric generation in this state.
5. The facility is interconnected with PJM interconnection, L.L.C., or its successor organization;
6. The facility is either of the following:
 - a. An electric generating plant with associated facilities designed for, or capable of, operation at a capacity of 50 megawatts or more;
 - b. A wind farm designed for, or capable of, operation at an aggregate capacity of at least 5 but less than 50 megawatts.

“Reduced emissions resource” means an electric generating facility that emits a reduced amount of carbon dioxide in the production of electricity from the utilization or consumption of any form of primary energy that satisfies all of the following criteria:

1. The facility does not receive state tax exemptions, deferrals, exclusions, allowances, payments, credits, deductions, or reimbursements calculated using a metric that

provides a value for air emissions not produced by the facility through any program other than the Ohio Clean Air Program created by the bill;

2. The facility is not wholly owned by a municipal or cooperative corporation or a group, association, or consortium of those corporations;
3. The facility is not used to supply customers of a wholly owned municipal or cooperative corporation or a group, association, or consortium of those corporations;
4. Either of the following:
 - a. The facility has made a significant historical contribution to the air quality of the state by minimizing emissions that result from electricity generated in this state;
 - b. The facility will make a significant contribution toward minimizing emissions that result from electric generation in this state.
5. The facility is interconnected with PJM interconnection, L.L.C., or its successor organization;
6. The facility is an electric generating plant with associated facilities designed for, or capable of, operation at a capacity of 50 megawatts or more.¹

Ohio Clean Air Program

The bill creates the Ohio Clean Air Program. The bill permits any person that owns or controls an electric generating facility and meets the definition of clean air resource or reduced emissions resource may submit a written application to the Ohio Air Quality Development Authority for certification as a clean air resource or reduced emissions resource. Certification enables the resource to participate in the Ohio Clean Air Program. Applications for the program must be submitted by February 1 for any program year beginning in June of the same calendar year.² Under the bill, “program year” means the twelve-month period beginning June 1 and ending May 31 of the following year.³

Application process

An application for the Ohio Clean Air Program must include all of the following:

1. The in-service date and estimated remaining useful life of the resource;
2. For existing resources, the quantity of megawatt hours generated by the resource annually and the “annual capacity factor” (defined as the actual energy produced in a

¹ R.C. 3706.40, 4906.01(B)(1)(a), and 4906.13(A).

² R.C. 3706.42(A) and (B).

³ R.C. 3706.40(C).

year divided by the energy that would have been produced if the facility was operating continuously at the maximum rating⁴) for each of the previous five calendar years;

3. A forecast estimate of the annual quantity of megawatt hours to be generated by the resource and the projected annual capacity factor over the remaining useful life of the resource;
4. A forecast estimate of the emissions that would occur in this state during the remaining useful life of the resource if the resource discontinued operations prior to the end of the resource's useful life;
5. Verified documentation demonstrating all of the following:
 - a. That certification as a clean air resource or reduced emissions resource and participation in the Ohio Clean Air Program will permit the resource to reduce future emissions per unit of electrical energy generated in this state;
 - b. That without certification as a clean air resource or reduced emissions resource, the positive contributions to the air quality of this state that the resource has made and is capable of making in the future may be diminished or eliminated;
 - c. That the clean air resource or reduced emissions resource meets the definition of a clean air resource or reduced emissions resource, as applicable;
 - d. That the person seeking certification owns or controls the resource.
6. The resource's nameplate capacity;
7. The level of funding requested from the Ohio Clean Air Program;
8. Any other data or information that the Authority requests and determines is necessary to evaluate the application or to demonstrate that certification would be in the public interest.

The bill requires the Authority to post all applications and nonconfidential supporting materials on the Authority's website. The bill allows interested persons to file comments on the applications not later than 20 days after an application has been placed on the website. All comments must be posted on the website. The bill allows an applicant to respond to the comments not later than ten days after the comments are posted.⁵

The bill requires the Authority to review all timely submitted applications. The Authority must issue an order certifying a clean air resource or reduced emission resource for one or more program years, as determined in the Authority's sole discretion, on or before March 31. A certified clean air resource or certified reduced emissions resource is eligible for participation in the Ohio Clean Air Program provided the resource continues to meet the definition of clean air resource or reduced emissions resource and any additional requirements set by the Authority.

⁴ R.C. 3706.40(E).

⁵ R.C. 3706.42(C), (D), and (E).

If the Authority fails to issue an order on or before March 31, the bill requires that each electric generating facility included in a timely and properly filed application be deemed a clean air resource or reduced emissions resource, as applicable, and is eligible for participation in the Ohio Clean Air Program.⁶

Recertification

During the last year⁷ in which a clean air resource's or reduced emissions resource's certification is effective, the bill requires the Authority to reevaluate the eligibility of the resource for participation in the Ohio Clean Air Program. If, at the time of reevaluation, the clean air resource or reduced emissions resource still meets the definition of a clean air resource or reduced emissions resource, as applicable, and any additional requirements that were imposed by the Authority when the resource was last certified, the Authority must recertify the resource for one or more program years.

If the Authority recertifies the resource, the Authority may impose requirements on the resource in addition to any of the requirements that were imposed when the resource was last certified. If additional requirements are imposed at the time of recertification, the bill requires a resource to comply with both the old and new requirements. The Authority must adopt rules to determine the amount of time the resource has to come into compliance with the new requirements.⁸

Decertification

The bill allows the Authority, in its sole discretion, to decertify a clean air resource or reduced emissions resource at any time if the Authority determines that certification is not in the public interest. Before decertifying a resource, the Authority must hold a public hearing and allow for public comment.⁹

Reporting Requirement

Every owner of a certified clean air resource or certified reduced emissions resource must report the number of megawatt hours the resource produced in the preceding month to the Authority not later than seven days after the close of each month.¹⁰

Rulemaking

The bill requires the Authority to adopt rules necessary for the initial implementation of the Ohio Clean Air Program not later than 90 days after the effective date of the bill. The rules adopted must include provisions for tracking the number of clean air credits earned by each

⁶ R.C. 3706.44(A) and (B).

⁷ An amendment may be needed to change this reference to "program year."

⁸ R.C. 3706.45.

⁹ R.C. 3706.44(C).

¹⁰ R.C. 3706.48.

certified clean air resource during each month of a program year, based on the information required to be reported under the bill.

Additionally, the bill requires the Authority to adopt additional rules necessary for the further implementation and administration of the Ohio Clean Air Program not later than 275 days after the effective date of the bill.¹¹

Funding under the Ohio Clean Air Program

Customer charges

The bill requires each retail electric customer of an electric distribution utility in this state to pay a per-account monthly charge that is billed and collected by each electric distribution utility. The charges are to be remitted to the State Treasurer for deposit in the Ohio Clean Air Program Fund, which the bill creates. Under continuing law, “electric distribution utility” means an electric utility that supplies at least retail electric distribution service. The monthly charges are as follows:

- For customers classified by the utility as residential, \$2.50;
- For customers classified by the utility as commercial, generally \$20;
- For customers classified by the utility as industrial, generally \$250.

Customers that are classified by the utility as commercial or industrial that exceeded 45 million kilowatt hours of electricity at a single location in the preceding year are subject to a per-account monthly charge of \$2,500.¹²

Clean air credits for clean air resources

A certified clean air resource earns a clean air credit for each megawatt hour of electricity it produces. For the first program year, the price of a clean air credit is to be \$9.25. In subsequent program years, the price of the credit may be adjusted for inflation using the gross domestic product implicit price deflator as published by the United States Department of Commerce, Bureau of Economic Analysis.¹³

The bill requires the Authority to direct the Treasurer to remit the money from the Ohio Clean Air Program Fund to each owner of a certified clean air resource in the amount equivalent to the number of credits earned by the resource in the previous month multiplied by the credit price. The remittance is to occur not later than 14 days after the close of each month in a program year. The remittance of funds is conditional upon there being sufficient money in the fund.¹⁴

¹¹ R.C. 3706.50.

¹² R.C. 3706.40(D), 3706.46(A), 3706.47(A) and (B), and 4928.01(A)(6).

¹³ R.C. 3706.40(F), 3706.481, and 3706.482(B).

¹⁴ R.C. 3706.482(A).

Capital formation and investment for reduced emissions resources

To facilitate air quality development related capital formation and investment by or in a certified reduced emissions resource, the bill permits the Authority to pledge a portion of moneys that may, in the future, be accumulated in the Ohio Clean Air Program Fund for the benefit of any certified reduced emissions resource. The resource must agree to be bound by the conditions the Authority, in its sole discretion, may attach to the pledge.

The Authority is not required to direct distribution of moneys in the Ohio Clean Air Program Fund unless or until there are adequate moneys available in the fund. Nothing in the bill is to be construed or applied to create, directly or indirectly, a general obligation of or for the state.¹⁵

Administration of the Ohio Clean Air Program Fund

The bill requires the Ohio Clean Air Program Fund to be in the custody of the State Treasurer but not a part of the State Treasury. The fund is to consist of charges collected under the bill. All interest generated by the fund is to be retained in the fund and used for funding the Ohio Clean Air Program. The bill requires the Treasurer to distribute the moneys in the fund in accordance with the directions provided by the Authority.¹⁶

Customer exemption from other charges

Exemption from renewable, efficiency, and peak demand charges

With an exception explained below under “**Exception for contract and program costs**,” the bill exempts customers subject to the Ohio Clean Air Program charge from paying the: (1) renewable energy charge and (2) energy efficiency and peak demand reduction charge.¹⁷ The bill requires those customers to be excluded from the baselines used for determining the actual number of megawatt hours for the renewable energy, energy efficiency, and peak demand reduction requirements. The effect of these baseline exclusions is that an electric distribution utility’s requirements for renewable energy, energy efficiency, and peak demand reduction would be reduced proportionately.¹⁸

Exception for contract and program costs

The bill requires customers that are subject to the Ohio Clean Air Program charge must continue to pay the following costs associated with the renewable energy charge and the energy efficiency and peak demand reduction charge:

¹⁵ R.C. 3706.49.

¹⁶ R.C. 3706.46.

¹⁷ R.C. 3706.47(C).

¹⁸ R.C. 4928.644(B) and 4928.66(A)(2)(a)(iv).

- Costs prudently incurred for contractual obligations that existed prior to the effective date of this bill by an electric distribution utility in reliance on the requirements under current law;
- Costs prudently incurred by an electric distribution utility associated with programs approved by the PUCO under current law that are modified or eliminated as a result of this bill, including any costs to discontinue those programs.¹⁹

Exempt customers may opt in to paying charges

A customer may decide to opt into one or both of charges described above in addition to paying the Ohio Clean Air Program charge.²⁰ Any customer that wants to opt in to paying the renewable energy charge, the energy efficiency and peak demand reduction charge, or both must provide a written notice to opt in to the electric distribution utility from which it receives service. The bill requires the customer to present an opt-in notice to the Secretary of the Public Utilities Commission of Ohio (PUCO). The notice must include all of the following:

- A statement indicating that the customer has elected to opt in;
- An indication of whether the customer is opting to pay both charges or which charge the customer is opting to pay;
- The effective date of the election to opt in;
- The account number for each customer account to which the opt in shall apply;
- The physical location of the customer's load center.²¹

Retail purchased power agreements

The bill requires the PUCO, through its general supervision, ratemaking, cost assignment, allocation, rate schedule approval, and rulemaking authority, as well as its authority under continuing law governing reasonable arrangements, 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. For retail purchase power agreements, the bill provides a special definition for clean air resource, specifically, any of the following:

- A clean air resource as defined by the bill;
- A customer-sited renewable energy resource;
- A renewable energy resource that is a self-generator.

Under continuing law, "renewable energy resource" means any of the following:

¹⁹ R.C. 3706.47(D).

²⁰ R.C. 3706.47(C).

²¹ R.C. 3706.471.

- Solar photovoltaic or solar thermal energy;
- Wind energy;
- Power produced by certain hydroelectric facilities;
- Geothermal energy;
- Fuel derived from solid wastes through certain processes;
- Biomass energy;
- Energy produced by certain types of cogeneration technology;
- Biologically derived methane gas;
- Heat captured from a generator of electricity, boiler, or heat exchanger fueled by biologically derived methane gas;
- Energy derived from nontreated by-products of the pulping process or wood manufacturing process;
- Certain fuel cells;
- Methane gas emitted from an abandoned coal mine;
- Certain waste energy recovery systems;
- Storage facilities that promote better utilization of renewable energy resources;
- Distributed generation systems used by a customer to generate electricity from any such energy.

Under continuing law, a “self-generator” is 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 by an agent under a contract.²²

The bill requires the PUCO’s application and administration of the facilitation and encouragement of the purchased power agreements to be the same for all clean air resources regardless of whether the resource is certified or eligible for certification under the Ohio Clean Air Program.

In addition to any other benefits that may be available as a result of the PUCO’s application of its authority under the bill, on the effective date of a retail purchased power agreement, the PUCO may exempt a purchasing consumer from all of the following, provided the customer agrees to forgo related benefits:

- The Ohio Clean Air Program charge;

²² R.C. 3706.40, 3706.47(B)(1), and 4928.01.

- The renewable energy charge;
- The energy efficiency and peak demand reduction charge.

In exempting the purchasing consumers from these charges, the bill does not remove these consumers from the relevant baselines for those requirements. Without exclusions, the baselines would continue to include megawatt hours sold to the exempt customers and the relevant requirements would not be proportionately reduced.

The bill requires PUCO to promulgate rules not later than 90 days after the effective date of the bill to begin facilitating and encouraging the retail purchased power agreements. Not later than 275 days after the effective date of the bill, the PUCO is required to promulgate rules for the further implementation and administration.²³

Decoupling

The bill permits, no earlier than 30 days after the effective date of the bill, an electric distribution utility to file an application at the PUCO to implement a decoupling mechanism for the 2019 calendar year and each calendar year thereafter. For an electric distribution utility that applies for a decoupling mechanism under the bill, the base distribution rates for residential and commercial customers must be decoupled to the base distribution revenue and revenue resulting from implementation of the energy efficiency and peak demand reduction provisions under continuing law and recovered pursuant to an approved electric security plan, as of the 12-month period ending December 31, 2018. The bill specifies that an application made under the bill must not be considered an application to establish or change a rate.

The PUCO is required to issue an order approving an application for a decoupling mechanism not later than 60 days after the application is filed. Before approving the application, the PUCO must verify that the rate schedule or schedules are designed to recover the electric distribution utility's 2018 annual revenues and that the decoupling rate design is aligned with the rate design of the electric distribution utility's existing base distribution rates. The decoupling mechanism must recover an amount equal to the base distribution revenue and revenue resulting from the implementation of the energy efficiency and peak demand reduction provisions under continuing law and recovered pursuant to an approved electric security plan, as of the 12-month period ending December 31, 2018. The decoupling mechanism must be adjusted annually thereafter to reconcile any over recovery or under recovery from the prior year and to enable an electric distribution utility to recover the same level of revenues in each year.

The PUCO's approval of a decoupling mechanism must not affect any other rates, riders, charges, schedules, classifications, or services previously approved by the PUCO. The bill requires the decoupling mechanism to remain in effect until the next time the electric

²³ R.C. 4928.47.

distribution utility applies for and the PUCO approves base distribution rates for the utility under continuing law.²⁴

Federal Energy Regulatory Commission program

If the Federal Energy Regulatory Commission authorizes a program by which Ohio may take action to satisfy any portion of the capacity resource obligation associated with the organized wholesale market that functions to meet the capacity, energy services, and ancillary services needs of consumers in this state, the bill requires the 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.²⁵

Air Quality Development Authority board

The bill expands the Authority's board. The bill adds four legislative members ex officio without compensation. The Speaker of the House of Representatives, the President of the Senate, and the minority leader of each house must each appoint one member. The bill allows the legislative members to fully participate in all the board's deliberations and activities. The bill exempts the legislative members from the requirement that appointed members give a surety bond of \$25,000 before the issuance of air quality revenue bonds.²⁶

Air Quality Development Authority public policy

The bill expands on the public policy of the state through the operation of the Authority. The bill adds that it is the policy of the state to do all of the following:

1. Maintain operations of certified clean air resources, as defined by the bill, that, through continued operation, are expected to provide the greatest quantity of carbon-dioxide-free electric energy generation;
2. Encourage the operation and development of other clean air resources that provide carbon-dioxide-free electric energy generation;
3. Encourage reduced emissions resources, as defined by the bill, to reduce the resources' emissions.²⁷

E-Check

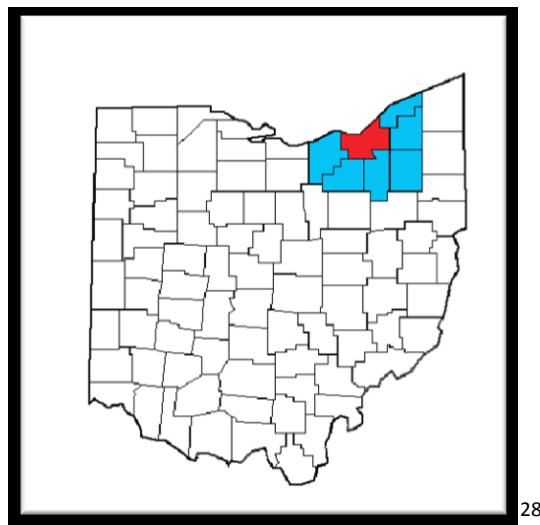
Under current law, seven counties (Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit) in the Cleveland-Akron area are required to implement a decentralized motor vehicle inspection and maintenance program known as E-Check.

²⁴ R.C. 4928.471.

²⁵ R.C. 4928.46.

²⁶ R.C. 3706.02.

²⁷ R.C. 3706.03.



These counties are required to do so because the Ohio Environmental Protection Agency (OEPA) measured violations in the Cleveland-Akron area of the federal Clean Air Act ozone standards, which were established in 2015. Due to the ozone standard violations, the United States Environmental Protection Agency (USEPA) designated the Cleveland-Akron area in a category known as “nonattainment” for ozone. An area must not only reach attainment status by reducing its emissions to comply with ozone standards, it must also demonstrate that it can continue to maintain that status for ten consecutive years. E-Check is one program that a state may implement to achieve compliance with the Clean Air Act’s air pollution standards.²⁹ Ohio law requires implementation of the E-Check program through June 30, 2019.³⁰

The bill authorizes the Director of OEPA to apply to the Administrator of the USEPA for an exemption from the requirement of the federal Clean Air Act to implement E-Check. The Director may make the application no earlier than two years from the bill’s effective date. In making the application, the Director must request the Administrator to authorize implementation of the Ohio Clean Air Program established by the bill as an alternative to E-Check.³¹

It is unclear whether the implementation of the Ohio Clean Air Program established by the bill would be sufficient to enable the Cleveland-Akron area to eliminate E-Check and comply

²⁸ See https://www.epa.ohio.gov/dapc/echeck/whycheck/seven_cos.

²⁹ See Ohio EPA E-Check Annual Report, 2017 p.3-4, available at: https://epa.ohio.gov/dapc/echeck/whycheck/annual_reports and USEPA 8-Hour Ozone (2015) Designated Area State/Area/County Report, available at: <https://www3.epa.gov/airquality/greenbook/jbcs.html#OH>.

³⁰ R.C. 3704.14, not in the bill.

³¹ Section 3.

with the federal Clean Air Act. If Ohio fails to comply with the Clean Air Act requirements, the federal government can withhold federal highway dollars.³²

HISTORY

Action	Date
Introduced	04-12-19

H0006-I-133/ts

³² 42 U.S.C. § 7509 (2019).