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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 and Natural Resources

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	\$70 million	\$169 million	\$198 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 electric generating facilities fueled by nuclear power for their emissions' attributes. Beginning January 1, 2020, electric consumers will fund this program through a dedicated monthly charge authorized through 2026 by the bill. Revenue to the Ohio Clean Air Program Fund will consist of charges paid by customers of electric utilities.
- The bill repeals the existing alternative energy portfolio standard as of January 1, 2020 and generally exempts consumers from the corresponding charges that fund this requirement. The bill makes exceptions for certain prior contractual obligations incurred by a utility.
- 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.

- Additionally, the bill requires the Development Services Agency to submit a completed waiver request to the federal government to expend 25% of federal low-income Home Energy Assistance Program (HEAP) funds from the home energy assistance block grants for weatherization services.

Detailed Analysis

H.B. 6 creates the Ohio Clean Air Program, to be administered by the Ohio Air Quality Development Authority (OAQDA). Electric generating facilities in Ohio fueled by nuclear power that meet the criteria of “clean air resource” may apply to the Ohio Clean Air Program. 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. A qualifying facility will continue to retain its certification until it no longer meets the criteria specified in the bill or when the Clean Air Program terminates on December 31, 2026.

The bill authorizes a new charge on electric consumers of an electric distribution utility (EDU) while simultaneously repealing the alternative energy portfolio standard (AEPS) required by R.C. 4928.64. The repeal takes effect January 1, 2020 and the associated charges paid by consumers would largely be eliminated, except for previously incurred costs associated with prior contractual obligations executed by the EDU.

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, (5) the Development Services Agency, (6) the Ohio Environmental Protection Agency (Ohio EPA), and (7) a change to the qualified energy project property tax exemption available under current law.

Ohio Air Quality Development Authority

OAQDA is charged with operating the Clean Air Program created by the bill. The main role of the Authority is to certify electric generating facilities as “clean air 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) is located in Ohio and fueled by nuclear power, (2) is not wholly or partially owned by a municipal or cooperative corporation, and does not supply customers of such a group, (3) satisfies requirements concerning air quality emissions, (4) is interconnected with the regional electric transmission grid, and (5) meets the continuing definition of “major utility facility” in the Revised Code (e.g., operating capacity of at least 50 megawatts).

In operating the program, the bill requires the Authority to adopt rules to provide a system of registering clean air credits, which can include using the Generation Attribute Tracking System, a system currently designed to track renewable portfolio standards compliance among utilities in various states in the east, midwest, and south. Additionally, the bill requires OAQDA to: (1) on a monthly basis, track the number of clean air credits earned by each clean air resource, and (2) on an annual basis, conduct an audit of the program.

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 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 six members to the Authority, bringing total board membership from seven to 13 members. Specifically, the bill adds four legislative members to serve ex officio as nonvoting members, and two members of the general public to serve as voting members. For the two general public members, one will be appointed by the President of the Senate and one will be appointed by the Speaker of the House of Representatives. None of the six new members are to receive compensation.

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 through CY 2026 (refer to Tables 1a and 1b). The bill provides some discretion to PUCO for establishing the structure and design of this monthly charge. No later than October 1, 2019, PUCO must establish a rate design for commercial and industrial customers that results in an average monthly charge across all customers, as displayed in the tables below. The bill repeals the AEPS and thus largely exempts customers from the AEPS charge currently in place, as explained

further in the next section of the Fiscal Note. The Ohio Clean Air Fund will pay the net impact of an EDU's prudently incurred costs for their prior AEPS-related contractual obligations. Should the fund have insufficient revenues to fully offset these costs after paying for clean energy credits, ratepayers would pay these costs directly.

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	\$10	6,342,449	\$63,424,490
Industrial	\$250	189,217	\$47,304,250
Large customers*	\$2,500	1,764	\$4,410,000
Total	N/A	57,323,823	\$140,533,937

*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	\$1.00	50,790,393	\$50,790,393
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	\$197,641,378

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 \$15 per month on these customers, which is equivalent to \$180 per year. In conjunction with this new charge, the bill essentially exempts customers from paying costs associated with future AEPS

requirements by repealing section 4928.64 of the Revised Code. The bill repeals the AEPS as of January 1, 2020, but enables utilities to recover costs associated with prior contractual obligations, if revenues to the Ohio Clean Air Program Fund are insufficient.

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 in CY 2021 and thereafter, 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. For plans extended a fourth year, their approved budget must be an amount equal to the annual average of the approved budget for the current portfolio plan in effect.

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.¹ 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 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.” The bill repeals the energy efficiency standard for CY 2021 through CY 2027.

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. With limited exceptions, 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

¹ Case No. 2018-0379.

“recover an amount equal to the base distribution revenue and revenue resulting from implementation of section 4928.66 of the Revised Code, excluding program costs and shared savings, 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 prohibits PUCO from approving a decoupling mechanism if it determines that approval “will result in a double recovery” by EDU.

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.² The Dayton Power and Light Company recently established new base distribution rates effective October 1, 2018.³ 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.”⁴ Separately, the three FirstEnergy EDUs are currently operating under a base distribution rate freeze through May 31, 2024.⁵

Alternative energy charges

By repealing the AEPS requirements as of January 1, 2020, the bill eliminates any future charges incurred by utilities to comply with this energy sourcing standard. Consequently, ratepayers will not pay any charges except for those already incurred by the EDU for certain prior contractual obligations.

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.

² PUCO Case No. 17-0032-EL-AIR, *Opinion and Order*, December 19, 2018.

³ FERC Form 1, 2018 Annual Report of Major Utilities, filed by The Dayton Power and Light Company.

⁴ PUCO Case No. 16-1852-EL-SSO, *Opinion and Order*, April 25, 2018.

⁵ FERC Form 1, 2018 Annual Report of Major Utilities, filed by Ohio Edison Company.

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.

Table 2 identifies the typical charges paid by customers of EDUs, and since these existing riders are authorized by R.C. 4928.64, they would lose their legal basis when H.B. 6 repeals this section of law. All of the EDUs currently operate under an electric security plan, so their cost of service is the foundation for their charges to ratepayers. Repealing the AEPS reduces the EDUs' compliance costs, which should result in the eventual elimination of AEPS riders and related charges. On the other hand, the bill's impact on customers of CRES providers is less certain. The CRES customers sign fixed or variable rate contracts for a term of service, so a change in law does not necessarily result in lower costs to these customers. Some CRES providers will likely reduce their electric rates in response to the AEPS repeal. However, any potential ratepayer savings would occur as a result of market forces rather than PUCO's intervention.

LBO economists have not undertaken a comprehensive survey of the contractual terms for CRES providers. But language in one such contract can illustrate the uncertainty for customers of CRES providers. FirstEnergy Solutions (FES) offers electric generation within AEP Ohio's service territory for a fixed rate of \$0.0519 per kWh through April 2022. Eliminating the

AEPS would reduce FES's compliance costs by an amount roughly equal to \$0.00034 per kWh. However, the terms of service for a residential electric offer found on PUCO's website,⁶ is silent on whether customers would share in the benefit of reduced costs attributed to a law change. It is therefore unclear if FES (and perhaps other CRES providers) would pass along this savings to their customers.

Ohio Valley Electric Corporation charges

The bill permits EDUs to recover the net impact of their ownership stake in two coal plants operated by the Ohio Valley Electric Corporation (OVEC). With the exception of the three FirstEnergy EDUs,⁷ all other EDUs currently recover some form of their OVEC ownership costs through an existing rider authorized by PUCO. For those EDUs with PUCO-approved riders, the term generally aligns with their Electric Security Plan. The bill enables EDUs to continue recovering on a nonbypassable basis their net impact attributable to OVEC after the "expiration of any mechanism authorized by" PUCO. The bill discontinues this OVEC cost recovery on December 31, 2030, but some deferred costs may still be recovered from ratepayers after that date.

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.⁸ 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."⁹ PUCO must also include recommendations on how to maintain participation by end-use customers in this state in the demand response program offered by PJM Interconnection, L.L.C., or its successor organization.

⁶ <http://energychoice.ohio.gov/>.

⁷ Unlike other Ohio EDUs, the three FirstEnergy EDUs do not have direct ownership stakes as one of OVEC's sponsoring companies.

⁸ Section 4928.47.

⁹ Section 4928.46.

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 an EDU's existing base distribution rates.

Separately, the bill requires each EDU to file with PUCO an electric tariff applicable to county fairs and agricultural societies. The bill also provides parameters for rate design and corresponding recovery of potential revenue losses incurred by the EDU.

The bill reduces the scope of projects subject to Ohio Power Siting Board (OPSB) approval. The Board is funded by a line item in PUCO's operating budget. OPSB is a self-supporting entity that assesses fees on applicants to cover the cost of evaluating their proposals. The bill exempts a "small wind farm" from OPSB jurisdiction. Previously, the definition of small wind farm specified that it operate at an aggregate capacity less than 5 megawatts (MW), but that distinction was eliminated by the bill. Prospectively, the bill limits OPSB authority to an economically significant wind farm with an aggregate capacity of at least 20 MW. This provision may decrease both revenue to and expenditures from the Power Siting Board Fund (Fund 5610).

Elsewhere, the bill permits a referendum among the electors in an unincorporated area of a township to decide whether the OPSB's approval of a large or economically significant wind farm located in the unincorporated area should be rejected.

Development Services Agency

The bill requires the Development Services Agency (DSA), beginning in FY 2021, to submit a completed waiver request in accordance with federal law for the state to expend 25% of federal low-income Home Energy Assistance Program (HEAP) funds from the home energy assistance block grants for weatherization services. Under continuing federal guidelines, states are required to use 15% of HEAP funds for weatherization purposes, but may use up to 25% of HEAP funds for weatherization if they request a waiver to do so. The majority of HEAP funding is used to subsidize the costs of electricity for households at or below 175% of the federal poverty level.

Federal allocations for HEAP are deposited into the Home Energy Assistance Block Grant Fund (Fund 3K90). Over the most recent five fiscal years, FY 2014 to FY 2018, DSA has received an average of \$171.1 million annually. If this revenue trend continues, this increase of required funds for weatherization purposes, from 15% to 25%, would result in about \$17 million more per year in HEAP funds for weatherization purposes, and an offsetting decrease in funds for the low-income electricity assistance. This is contingent not only on actual revenue received from the federal government, but also appropriations to spend the funding in each fiscal year.

As part of its repeal of the AEPS, the bill eliminates one potential funding source for the Advanced Energy Fund (Fund 5M50). EDUs and CRES providers under current law must remit payments for undercompliance or noncompliance with renewable energy sourcing requirements specified by law. Under the bill, the final renewable benchmark will be for CY 2019. After that date, these compliance payments are repealed by the bill.

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 Envirotech 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.

Qualified Energy Project Property Tax Exemption

The bill modifies requirements for obtaining an existing property tax exemption for a qualified energy project by applying them to projects with a nameplate capacity of 20 MW or more. Continuing law enables a project to be exempt from both tangible personal property and real property taxation, if such an exemption is authorized by the local board of county commissioners. Generally, the owners of a qualified energy project make a service payment in lieu of taxes (PILOT). Under current law, the PILOT option could apply to projects with a nameplate capacity of at least 5 MW. The bill raises this threshold to 20 MW and applies this change to energy projects certified by the Director of Development Services on or after the bill's effective date. Continuing law permits the Director to receive applications through December 31, 2020 for an energy project using renewable energy resources.

Attachment: Electric Distribution Utilities – Service Areas