Ohio Legislative Service Commission

www.lsc.ohio.gov

Office of Research and Drafting

Legislative Budget Office

H.B. 685
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Edwards and Cross

Mackenzie Damon and Rocky Hernandez, Attorneys

SUMMARY

EnergizeOhio program

- Creates numerous incentives for the development of natural gas pipelines and related infrastructure within locally designated "EnergizeOhio zones."

Bond programs

- Allows the Director of Development to request that the Treasurer of State issue economic development bonds specifically to fund natural gas infrastructure projects in EnergizeOhio zones.
- Requires the Director to use the bond proceeds to provide loans to natural gas companies engaged in such projects.
- Specifies that natural gas infrastructure projects also qualify for the existing bond-funded 166 Direct Loan and Enterprise Bond Fund Loan programs.

Pipeline easement loan program

- Provides for loans to local governments and related entities to acquire natural gas pipeline easements on property located within an EnergizeOhio zone.

Cost recovery and rate of return for EnergizeOhio investments

- Allows a natural gas company (NGC) approved for an infrastructure development rider (IDR) to recover an additional $1.50 from customers in the state if the company is doing infrastructure development in an EnergizeOhio zone.
- Allows a NGC, notwithstanding any current law, regulation, or order of the Public Utilities Commission of Ohio to the contrary, to collect up to a 12% rate of return for investments in infrastructure development in an EnergizeOhio zone.

IDR changes

- Requires a NGC that collects money from an IDR to keep any money collected by that IDR until the project that IDR was approved for is completed.
- Allows a NGC with an IDR, under certain circumstances, to receive a separate IDR for a new project.

Taxation of natural gas company personal property

- Modifies the valuation formula for NGC personal property that is placed into service in an EnergizeOhio zone, with the effect of reducing such property's taxable value.

DETAILED ANALYSIS

EnergizeOhio program

The bill creates various incentives for the development of natural gas pipelines and associated infrastructure. The incentives are available for projects located in locally designated areas, called EnergizeOhio zones, and include loan programs, cost recovery provisions, and a personal property tax reduction.

Creation of an EnergizeOhio zone

A county, municipality, or township may petition the Department of Development to designate an EnergizeOhio zone. To request the designation, the subdivision must adopt an ordinance or resolution outlining the zone's boundaries. The Director of Development will approve the designation if the Director finds that a lack of natural gas infrastructure in the area is adversely affecting the area economy.

Once approved, an EnergizeOhio zone designation lasts for five years. A zone can be renewed for an additional five years, if the subdivision requests the renewal and the Director finds that a lack of natural gas infrastructure continues to adversely affect the area economy.

The Director is required to notify the Tax Commissioner of each EnergizeOhio zone designation or renewal and to publish maps displaying each zone on the Department of Development's website.[1]

Bond programs

Continuing law, enacted pursuant to the Ohio Constitution, allows the Treasurer of State to issue bonds to generate revenue for economic development assistance programs.[2] These proceeds are credited to the Facilities Establishment Fund and are used to provide loans and other funding for certain infrastructure and economic development projects. The bill expands this bonding authority to permit the issuance of bonds to fund natural gas infrastructure

[1] R.C. 122.161.

[2] Ohio Constitution, Article VIII, Section 13.

projects located in an EnergizeOhio zone. It also allows such projects to qualify for certain existing bond-funded loan programs (see **COMMENT**).

EnergizeOhio bond program

The bill allows the Director of Development to request that the Treasurer of State issue new economic development bonds specifically to fund natural gas infrastructure. The Director will use the bond proceeds to provide loans directly to natural gas companies (NGCs), i.e., natural gas-supplying public utilities, excluding a retail natural gas supplier or governmental aggregator.

The Director can loan bond proceeds to such companies to fund infrastructure projects located in an EnergizeOhio zone. An eligible project is one that involves the acquisition, expansion, remodeling, rehabilitation, or modernization of infrastructure that provides or transports natural gas to areas that are underserved, or not served at all, by existing infrastructure.

The Director will determine any additional eligibility requirements, as well as the loan repayment terms, interest rates, and any other terms and conditions. The loans are subject to Controlling Board approval.[3]

Program funds

The bill creates two funds related to the new bond program. All bond proceeds will be deposited into the Natural Gas Infrastructure Fund, and the money in the fund will be used to provide loans. All money received as repayment of those loans, including interest, will be deposited back into the fund.

In addition, the bill creates a Natural Gas Infrastructure Reserve Account within current law's Facilities Establishment Fund. The money in this account will initially be used as credit enhancement for bonds issued under the program – i.e., the money will serve as a guarantee for the repayment of the bonds, thereby making the bonds more attractive to investors. And, once bonds are issued, the account may be used for their repayment. The bill appropriates $50 million to this account from the State Fiscal Recovery Fund, which holds revenue the state received under the federal American Rescue Plan Act (ARPA).[4]

Existing bond-funded programs

The bill also qualifies natural gas infrastructure projects located in an EnergizeOhio zone for two existing state programs funded through economic development bond proceeds. Through both the 166 Direct Loan program and the Enterprise Bond Fund program, the Director of Development uses bond proceeds to make loans to eligible projects related to industry, commerce, distribution, or research. Under the 166 Direct Loan program, loans are provided from the Facilities Establishment Fund, which is funded through the issuance of economic

---

[3] R.C. 166.01, 166.02, 166.08, and 166.31.

[4] R.C. 166.32; Section 6.

development bonds and the repayment of loans made from the fund. Under the Enterprise Bond Fund program, the Treasurer can issue project-specific bonds, backed by money in the Facilities Establishment Fund, and the Director uses those bonds proceeds to provide loans.

The bill specifies that natural gas infrastructure projects are eligible for both of these programs. To qualify, the project must meet the same requirements as those that qualify for the EnergizeOhio bond program.[5]

Pipeline easement loan program

The bill creates a pipeline easement revolving loan program. Through the program, local governments and other entities can receive loans to purchase or lease natural gas pipeline easements on property located within an EnergizeOhio zone.

Loans are administered by the Director of Development and available to a county, municipality, township, port authority, community improvement corporation, regional council of governments, an economic development organization that operates in at least five counties, or a partnership consisting of any of those entities and a third party. The loan must be used to purchase or lease easements on property located in an EnergizeOhio zone with the goal of installing natural gas pipelines or other infrastructure on the property.

The bill requires the Director, by the earliest date possible and in consultation with the Chief Investment Officer of JobsOhio, to adopt rules prescribing the terms and conditions of such loans and the criteria the Director will use to evaluate loan applications.

The bill appropriates $20 million to the program from the Facilities Establishment Fund initially, and subsequently allows the Director of Development to request additional transfers from the Facilities Establishment Fund to fund the program.[6]

Cost recovery and rate of return for EnergizeOhio investments

Additional cost recovery mechanism

The bill allows for an NGC to recover additional costs when performing infrastructure development in EnergizeOhio zones. Under the bill, a NGC that has been approved for an infrastructure development rider (IDR) under continuing law can collect an additional $1.50 from each customer in the state if the company is doing infrastructure development in a designated EnergizeOhio zone.[7]

Under continuing law:

- "Infrastructure development" means constructing extensions of transmission or distribution facilities that a NGC owns and operates.

---

[5] R.C. 166.01(D).

[6] R.C. 122.162 and 166.02(B)(10); Sections 3 and 5.

[7] R.C. 4929.16(A), 4929.161, not in the bill, and 4929.164.

- "Infrastructure development costs" (IDC) means the investment to which both of the following apply:
  - The investment is in infrastructure development;
  - The investment is for any deposit required by the NGC, as defined in the line-extension provision of the company's tariff, less any contribution in aid of construction received from the owner or developer of the project.

    (Also includes planning, development, and construction costs and, if applicable, any allowance for funds used during the construction.)
- "IDR" refers to the rider approved by the Public Utilities Commission (PUCO) to allow a NGC to recover prudently incurred IDCs of one or more economic development projects.[8]

Rate of return

The bill allows for a NGC to recover, notwithstanding any current law, regulation, or order of PUCO that sets a limit on the rate of return for infrastructure development investments made by such companies, up to a 12% rate of return for those investments in an EnergizeOhio zone.[9]

IDR changes

The bill requires NGCs that have recovered costs using an IDR to keep those funds until the economic development project for which the IDR was approved is completed. Also, the bill provides that a NGC with money remaining from an IDR that is no longer being collected for a project that has not yet been completed cannot be precluded from receiving a new IDR under continuing law for a new project.[10]

Taxation of NGC personal property

Under continuing law, local property taxes apply to the tangible personal property, e.g., machinery and equipment, of public utilities. Similar to real property, the property tax due with respect such personal property involves (1) determining the "true" value of the property, (2) deriving its taxable value from that true value, i.e., applying an assessment percentage specified by law, and (3) applying the relevant local tax rate.

Valuation

Generally, the true value of NGC personal property is calculated by determining the cost of the property to the company, as capitalized on the company's books, and subtracting annual

---

[8] R.C. 4905.02, 4905.03, 4929.01(G), 4929.16, and 4929.161, not in the bill.

[9] R.C. 4929.168.

[10] R.C. 4929.161, not in the bill, and 4929.169.

depreciation allowances prescribed by the Tax Commissioner and based on the property's useful life.

The bill modifies this valuation formula for NGC property that is placed into service in an EnergizeOhio zone. The effect is to reduce the valuation of such property, thereby reducing the property's taxable value.

First, the bill requires that, when the Tax Commissioner determines the property's annual depreciation allowance, the property's useful life must be considered to be one-third (or less) of the useful life of similar, nonqualifying property. For example, if a pipeline typically has a useful life of 30 years, the useful life of a pipeline installed in an EnergizeOhio zone must be ten years or less. The result of this change is to accelerate the property's depreciation allowances, producing a lower valuation.

Second, the bill requires that the Tax Commissioner further reduce the value of property in an EnergizeOhio zone by 75%. This reduction occurs after the value is calculated using the accelerated depreciation allowance described above. Continuing the above example, if the pipeline in the EnergizeOhio zone would otherwise be valued at $400,000 for a particular year (after taking into account a useful life of ten years), the Commissioner must further reduce its true value to $100,000.

The bill's changes apply to property that is placed into service while an EnergizeOhio zone designation is in effect. However, the benefits are available to property for ten years, beginning in the tax year that the property is placed into service, regardless of whether EnergizeOhio zone designation expires during that ten-year period.[11]

COMMENT

The Ohio Constitution generally prohibits the state from lending its credit in aid of private, for-profit corporations.[12] There are some exceptions to this prohibition, however, including a constitutional amendment that authorizes the issuance of economic development bonds to fund the Facilities Establishment Fund, which finances the 166 Direct Loan and Enterprise Bond Fund Loan programs described earlier in this analysis.[13]

That particular exception allows the state to issue bonds that will fund loans for a broad array of economic development projects, including constructing or improving property for industry, commerce, distribution, and research. While these purposes would appear broad enough to allow the state to lend money to natural gas companies, a separate provision of that section specifically states that:

[11] R.C. 5727.11.

[12] Ohio Const., art. VIII, sec. 4; *State ex rel. Saxbe v. Brand*, 176 Ohio St. 44 (1964).

[13] Ohio Const., art. VIII, sec. 13.

> [N]o guarantees or loans and no lending of aid or credit shall be made under the laws enacted pursuant to this section of the Constitution for facilities to be constructed for the purpose of providing electric or gas utility service to the public.

This limitation suggests that the state may not use economic development bond proceeds from the Facilities Establishment Fund and perhaps other sources to fund loan or other financing programs for natural gas facilities.

HISTORY

Action	Date
Introduced	05-25-22

ANHB0685IN-134/ks