OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sub. H.B. 554*

131st General Assembly

(As Reported by S. Energy & Natural Resources)

Reps. Amstutz, Hill, Landis, Schaffer

BILL SUMMARY

Requirements and benchmarks

- Effectively makes the renewable energy requirements for 2017 and 2018 no longer true requirements, but keeps the benchmarks for those years (and the years that follow) at the levels in current law.
- Effectively makes the energy efficiency requirements for 2017 and 2018 no longer true requirements.
- Decreases the energy efficiency benchmarks, resulting in a decrease to the current cumulative requirement from 22.2% to 17.2%.
- Seeks to clarify that the energy efficiency requirements terminate at the end of 2027.
- Effectively makes the peak demand reduction requirements for 2017 and 2018 no longer true requirements, but keeps the benchmarks for those years (and the year that follows) at the levels in current law.
- Requires that electric distribution utilities (EDUs) be deemed in compliance with the energy efficiency and peak demand reduction requirements and eligible for incentives approved by the Public Utilities Commission (PUCO) in any year in which their "actual cumulative energy efficiency and peak demand reduction savings" meet or exceed the "cumulative mandates."

* This analysis was prepared before the report of the Senate Energy & Natural Resources Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Requires the following to be counted toward the energy efficiency and peak demand reduction requirements:
  - Energy intensity reductions resulting from heat rate improvements at electric generating plants (also prohibited from qualifying for shared savings);
  - Energy efficiency savings and peak demand reductions that occur as a consequence of consumer reductions in water usage or reductions and improvements in wastewater treatment;
  - Nonelectric energy efficiency savings and nonelectric peak demand reductions that occur as a consequence of an EDU's energy efficiency and peak demand reduction portfolio plan;
  - The savings and reduction associated with heat rate improvements, other efficiency improvements, or other energy intensity improvements, if proposed by an EDU and achieved since 2006 from an electric generating plant that is either owned by the EDU or, in some cases, owned and operated by an EDU affiliate (also prohibited from qualifying for shared savings).
- Requires the following to be counted toward the energy efficiency requirements only: any plan, policy, behavior, or practice that reduces the energy intensity of a facility, pipeline, building, plant, or equipment; or any water supply function or water treatment function.
- Modifies the current definition of energy intensity and broadens the definition's applicability.

Reports, reviews, and testimony

- Requires every EDU and electric services company (ESC) to report to the Public Utilities Commission (PUCO), by July 1 of each year, its status of compliance for the prior calendar year with the renewable energy, energy efficiency, and peak demand reduction provisions, as applicable.
- Requires that the PUCO's review of EDU and ESC compliance with the renewable energy requirements must be based on the EDUs' and ESCs' reports to the PUCO, as well as any other information that is public.
- Makes the following changes regarding the annual report that the PUCO is currently required to make to the General Assembly on renewable energy:
  - Requires the report to be made by August 1.

- Requires the portion of the report that details EDU and ESC compliance with the renewable energy provisions to be based on the EDUs' and ESCs' reports to the PUCO.
- Repeals a provision requiring the PUCO to allow and consider public comments on the report prior to its submission to the General Assembly.
- Repeals a provision specifying that nothing in the report is binding on any person, including for the purpose of compliance with the renewable energy benchmarks.
- Requires the report to include EDU compliance with the energy efficiency and peak demand reduction provisions, and requires that portion of the report to be based on the EDUs' reports to the PUCO.

- Requires that the PUCO's currently required annual report of EDU compliance with the energy efficiency and peak demand reduction provisions must be based on the EDUs' reports to the PUCO, as well as any other information that is public.
- Requires the PUCO Chairperson to provide testimony, by September 1 of each year, on the August 1 report, to the standing committees of both houses of the General Assembly that deal with public utility matters.

Mercantile-customer opt out

- Adds mercantile customers to those customers that may opt out of an EDU's energy efficiency and peak demand reduction portfolio plan, effective January 1, 2019.

Funding for home energy assistance

- Changes funding allocations for federal funds from the Home Energy Assistance Block Grant; however, due to the effective date of the changes, they will likely have no effect.

Clarification

- Clarifies that the law as amended by Sub. S.B. 310 of the 130th General Assembly would continue in effect until the law as amended by Sub. H.B. 554 takes effect.

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CONTENT AND OPERATION

Renewable energy requirements

The bill effectively makes the renewable energy requirements for 2017 and 2018 no longer true requirements. But it keeps the benchmarks for those years (and the years that follow) at the levels in current law. The bill accomplishes this change by doing the following:

- Making the noncompliance payments for 2017 and 2018 inapplicable;
- Eliminating the requirement that the Public Utilities Commission (PUCO) review compliance for those years;
- Specifying that the imposition of noncompliance payments is the sole penalty for noncompliance with the renewable energy provisions; and
- Changing references to the renewable energy requirements to the renewable energy *provisions*.[1]

Energy efficiency requirements

The bill makes two changes to the energy efficiency requirements: (1) it effectively makes the energy efficiency requirements for 2017 and 2018 no longer true requirements and (2) it decreases the energy efficiency benchmarks.

The bill effects the first change by doing the following:

- Specifying that noncompliance with the energy efficiency provisions is subject to forfeitures only for the requirements for years 2016, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, and 2027;

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[1] R.C. 4928.64(B)(2), (C), and (D), 4928.643, 4928.645, 4928.65, and 5727.75; Section 5.

- Limiting the PUCO's requirement to assess forfeitures to only those years; and

- Specifying that the assessment of forfeitures is the sole penalty for noncompliance with the energy efficiency provisions.

The bill decreases the energy efficiency benchmarks as follows, resulting in a decrease to the current cumulative requirement from 22.2% to 17.2%:

Year	Current law	L-131-2143-5
2017	1%	1%*
2018	1%	1%*
2019	1%	1%
2020	1%	1%
2021	2%	1%
2022	2%	1%
2023	2%	1%
2024	2%	1%
2025	2%	1%
2026	2%	2%
2027	2%	2%
*not true requirements		

Finally, the bill seeks to clarify that the energy efficiency requirements terminate at the end of 2027 by repealing the language requiring savings of 2% "each year thereafter." Under current law this language might be interpreted to imply that the 2% requirement extends beyond 2027.[2]

Peak demand reduction requirements

The bill effectively makes the peak demand reduction requirements for 2017 and 2018 no longer true requirements. But it keeps the benchmarks for those years (and the year that follows) at the levels in current law. The bill accomplishes this change by doing the following:

- Specifying that noncompliance with the peak demand reduction provisions is subject to forfeitures only for the requirements for years 2016, 2019, and 2020;

- Limiting the PUCO's requirement to assess forfeitures to only those years; and

[2] R.C. 4928.66(A)(1)(a), (A)(1)(c), and (C).

- Specifying that the assessment of forfeitures is the sole penalty for noncompliance with the peak demand reduction provisions.[3]

Compliance with and incentives for energy efficiency and peak demand

The bill requires an EDU to be deemed in compliance with the energy efficiency and "peak demand reduction savings" requirements and to be eligible for PUCO-approved incentives in any year in which the EDU's "actual cumulative energy efficiency and peak demand reduction savings" meet or exceed the "cumulative mandates" under provisions governing energy efficiency and peak demand reduction.[4] (See **COMMENT** 1.)

Improvements to be counted as energy efficiency and peak demand reduction

The bill requires the following to be counted toward the energy efficiency and peak demand reduction requirements:

- Energy intensity reductions resulting from heat rate improvements at electric generating plants (also prohibited from qualifying for shared savings);
- Energy efficiency savings and peak demand reductions that occur as a consequence of consumer reductions in water usage or reductions and improvements in wastewater treatment;
- Nonelectric energy efficiency savings and nonelectric peak demand reductions, required to be counted on a British-thermal-unit-equivalent basis, that occur as a consequence of an EDU's energy efficiency and peak demand reduction portfolio plan;
- The savings and reduction associated with heat rate improvements, other efficiency improvements, or other energy intensity improvements, if those savings and reduction are proposed by an EDU in its sole discretion and achieved since 2006 from an electric generating plant that is either owned by the EDU or owned and operated by an EDU affiliate, provided that the plant was previously owned, in whole or in part, by an Ohio EDU (also prohibited from qualifying for shared savings).

[3] R.C. 4928.66(A)(1)(c) and (C).

[4] R.C. 4928.6621(B).

The bill requires the following to be counted toward the energy efficiency requirements only: any plan, policy, behavior, or practice that reduces either of the following:

- The total energy intensity of a facility, pipeline, building, plant, or equipment, regardless of the type of energy intensity reduction;
- The energy intensity of any water supply function or water treatment function.

The bill changes the current definition of energy intensity, and applies the bill's definition to the provisions discussed above. The bill defines energy intensity as the amount of energy used to produce a certain level of output or activity, measured by the quantity of energy needed to perform a particular activity, expressed as energy per unit of output, energy per unit of gross total floor space, or an activity measure of service. The current definition, which applies only to the customer-opt-out provisions, defines the term as the amount of energy, from electricity, used or consumed per unit of production.

The bill also defines water supply function to mean functions associated with raw water collection, purification, treatment, and storage; establishing or maintaining pressure to balance water supply and demand; and water delivery and transfer. Water treatment function means any of the preliminary, secondary, tertiary, and advanced activities, whether physical, biological, or chemical, associated with removing contaminants from, or conditioning of, wastewater before recycling it or returning it to the environment.[5]

Reports, reviews, and testimony

Utility and company reporting requirement

The bill requires every electric distribution utility (EDU) and electric services company (ESC) to submit an annual report for the prior calendar year to the PUCO not later than July 1 of each year. The report must detail the EDU's or ESC's status of compliance with the renewable energy, energy efficiency, and peak demand reduction provisions, as applicable.[6] Under continuing law, only EDUs are subject to the energy efficiency and peak demand reduction provisions, while both EDUs and ESCs are

[5] R.C. 4928.66(A)(2)(d)(i)(V) and (A)(2)(d)(ii), 4928.662, and 4928.6610(B).

[6] R.C. 4928.6620(A).

subject to the renewable energy provisions.[7] The report is required for every year, even the years in which there are no true requirements under the provisions.

The bill also requires the PUCO to modify its rules in accordance with the reporting requirement, including the filing date.[8]

PUCO reviews and reports

Renewable energy

The bill requires that the PUCO's review of EDU and ESC compliance with the renewable energy requirements must be based on the EDUs' and ESCs' reports to the PUCO, as well as any other information that is public. Current law requires the PUCO to conduct an annual review of EDU and ESC compliance with the renewable energy requirements. The bill does not require that a review be conducted for the years in which there are no true requirements.[9]

The bill also makes changes regarding the annual report that the PUCO is currently required to make to the General Assembly on renewable energy. First, the bill requires the report to be made by August 1 of each year. Current law requires an annual report but does not specify a date. Second, the bill requires the portion of the report that details EDU and ESC compliance with the renewable energy provisions to be based on the EDUs' and ESCs' reports to the PUCO (but it does not specify "any other information that is public"). Third, the bill repeals a provision requiring the PUCO to allow and consider public comments on the report prior to its submission to the General Assembly. Fourth and finally, the bill repeals a provision specifying that nothing in the report is binding on any person, including any EDU or ESC for the purpose of its compliance with any renewable energy benchmark, or the imposition of noncompliance payments.[10]

Energy efficiency and peak demand reduction

The bill requires that the PUCO's annual report of EDU compliance with the energy efficiency and peak demand reduction provisions must be based on the EDUs' reports to the PUCO, as well as any other information that is public. Continuing law requires this report to be produced and docketed at the PUCO, with a copy provided to

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[7] R.C. 4928.64 and 4928.66.

[8] R.C. 4928.6620(A).

[9] R.C. 4928.64(C)(1).

[10] R.C. 4928.64(D) and 4928.6620(B).

the Ohio Consumers' Counsel.[11] Current law does not specify a date by which this report must be produced.

The bill also requires the August 1 report on renewable energy, discussed above, to include EDU compliance with the energy efficiency and peak demand reduction provisions. It is unclear whether this is the same report as the compliance report that is currently required. (See **COMMENT** 2.)

The bill requires the portion of the August 1 report that details EDU compliance with the energy efficiency and peak demand reduction provisions to be based on the EDUs' reports to the PUCO (but it does not specify "any other information that is public").[12]

PUCO testimony

The bill requires the PUCO Chairperson to provide testimony on the August 1 report to the standing committees of both houses of the General Assembly that deal with public utility matters. The testimony must be provided by September 1 of the same year.[13]

Mercantile customer opt out

Effective January 1, 2019, the bill adds mercantile customers to those customers that may opt out of an EDU's energy efficiency and peak demand reduction portfolio plan. Such an opt out would make them exempt from associated cost recovery and unable to participate in or directly benefit from the plan and associated programs.[14]

Funding for home weatherization services

The bill changes allocations for federal funds from the Home Energy Assistance Block Grant. However, due to the effective date of the changes, they will likely have no effect. These funding allocations are governed by appropriation language in the budget bill, which is currently in effect only for the current fiscal biennium, ending June 30, 2017. The effective date of the bill's changes is June 30, 2017. The funding allocations could be revised differently in the next budget bill, expected to take effect July 1, 2017.[15]

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[11] R.C. 4928.66(B).

[12] R.C. 4928.6620(B).

[13] R.C. 4928.6620(C).

[14] R.C. 4928.6610(A) and Section 9; R.C. 4928.6611 and 4928.6613, not in the bill.

[15] Sections 7, 8, and 9; Section 257.80 of Am. Sub. H.B. 64 of the 131st General Assembly.

Under the current budget, about 15% of the federal block grant funds are set aside for weatherization projects for individuals eligible for the Home Energy Assistance Program (HEAP) – below 175% of the poverty line. HEAP is administered by the Development Services Agency (DSA). The rest of the funds are used for home heating assistance.[16] This 15% allocation for weatherization is allowed under federal HEAP guidelines. However, the federal guidelines allow states to apply for a waiver to raise the set-aside for weatherization to a maximum of 25%.[17] The bill requires DSA to allocate the full 25% for weatherization and apply for the federal waiver.[18]

Amendment of uncodified law enacted by S.B. 310

The bill amends an uncodified section that was enacted by Sub. S.B. 310 of the 130th General Assembly. The bill's amendments clarify that the law as amended by Sub. S.B. 310 would continue in effect until the law as amended by Sub. H.B. 554 takes effect.[19]

COMMENT

1. The bill requires an EDU to be deemed in compliance with the energy efficiency and "peak demand reduction savings" requirements and to be eligible for PUCO-approved incentives in any year in which the EDU's "actual cumulative energy efficiency and peak demand reduction savings" meet or exceed the "cumulative mandates" under provisions governing energy efficiency and peak demand reduction.[20] The bill is unclear as to whether PUCO-approved incentives are the same as shared savings.

2. The bill is unclear as to how many reports the PUCO must make regarding EDU compliance with the energy efficiency and peak demand reduction provisions. Continuing law, largely unchanged by the bill, requires the PUCO to produce and docket an annual report containing verification of the annual levels of energy efficiency

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[16] Section 257.10 of Am. Sub. H.B. 64 of the 131st General Assembly, not in the bill; Home Energy Assistance Programs, available at: http://development.ohio.gov/is/is_heap.htm.

[17] Catalog of Federal Domestic Assistance, Program Information, available at: https://www.cfda.gov/index?s=program&mode=form&tab=core&id=840aa020c9362cf61db9ace65dc0867b; Office of Community Services, LIHEAP Q & As for Professionals, available at: http://www.acf.hhs.gov/ocs/resource/professional-frequently-asked-questions.

[18] Sections 7, 8, and 9; Section 257.80 of Am. Sub. H.B. 64 of the 131st General Assembly.

[19] Sections 3 and 4; Section 6 of Sub. S.B. 310 of the 130th General Assembly.

[20] R.C. 4928.6621(B).

and peak demand reductions achieved by each EDU. A copy of this report must be provided to the Ohio Consumers' Counsel. But the bill, in a separate provision, requires the PUCO to submit a report to the General Assembly by August 1 of each year detailing EDU compliance with the energy efficiency and peak demand reduction provisions (as well as EDU and ESC compliance with the renewable energy provisions).

If it is determined that only one report is required, it would be unclear whether the report must be based in part on public information. This is because the bill requires that the currently required report must be based in part on public information. But the bill does not require this for the August 1 report.[21]

HISTORY

ACTION	DATE
Introduced	05-19-16
Reported, H. Public Utilities	12-01-16
Passed House (55-41)	12-06-16
Reported, S. Energy & Natural Resources	---

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[21] R.C. 4928.66(B) and 4928.6620(B).