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## **PUBLIC UTILITIES COMMISSION**

### **Power Siting Board law**

- Includes as a "major utility facility" an electric transmission line and associated facilities with a design capacity of 100 kilovolts or more (125 kilovolts or more was the former requirement).
- Eliminates the two-year initial operation period during which the Ohio Environmental Protection Agency (OEPA) monitors and enforces compliance by newly certificated electric generating major utility facilities with OEPA law.
- Eliminates from the Power Siting Board law those provisions stating that a major utility facility (1) is under OEPA continuing jurisdiction and (2) must comply with all laws, rules, and standards regarding air and water pollution and solid and hazardous waste disposal laws.
- Limits a public agency or political subdivision from requiring approval, consent, a permit, a certificate, or any other condition for the operation of a major utility facility or an economically significant wind farm (under former law the limit was imposed only on initial operation).

### **Transportation of hazardous materials**

- Requires a person to file an annual registration statement with, and pay an annual registration fee to, the U.S. Department of Transportation in order to transport hazardous waste in Ohio, rather than requiring a uniform permit from the Public Utilities Commission (PUCO).
- Eliminates the uniform registration and permitting of the transportation of hazardous materials by PUCO.
- Eliminates the requirement that PUCO use a system for determining forfeitures that may be imposed on transporters of hazardous material or hazardous waste that is comparable to the recommendations of the Commercial Vehicle Safety Alliance.

### **Transportation of household goods**

- Eliminates several requirements with which PUCO must comply when setting the application fees for a certificate for the transportation of household goods.



## **Lifeline telephone service (PARTIALLY VETOED)**

- Eliminates the requirements that lifeline service be touch-tone, flat-rate, and for a primary line.
- Reconciles the eligibility for lifeline service provision that is based on household income to federal rules, effectively lowering the income threshold from 150% of the federal poverty level to 135%.
- Reduces from 60 days to 30 the time a customer has, after receiving a lifeline service termination notice, to submit documentation of continued eligibility or to dispute the termination.
- Would have required an incumbent local exchange carrier to implement lifeline service consistent with the requirements of federal law. (VETOED).

## **Small hydroelectric facility**

- Classifies the power from a small hydroelectric facility, which is a facility that operates, or is rated to operate, at an aggregate capacity of less than six megawatts, as a renewable energy resource under the competitive retail electric service law.
- Specifies that a small hydroelectric facility is a qualified energy resource for purposes of the renewable energy resource mandates and thus is eligible for renewable energy credits.

## **Power Siting Board law**

The act makes changes to the Power Siting Board (PSB) law governing the certification and operation of major utility facilities and the regulation of such facilities and economically significant wind farms.

### **Major utility facility expansion**

(R.C. 4906.01)

The act expands what type of "major utility facility" is subject to PSB certification. Under the act, an electric transmission line and associated facilities with a design capacity of 100 kilovolts or more is included as a major utility facility. Under prior law, the threshold was 125 kilovolts or more.



## **PSB law changes and OEPA oversight**

(R.C. 4906.10)

The act also eliminates from PSB law certain provisions regarding the initial operation period and Ohio Environmental Protection Agency (OEPA) oversight of major utility facilities.

### **Initial operation period**

The act eliminates the initial two-year operation period during which the OEPA enforces and monitors compliance by newly certificated facilities with Ohio's air and water pollution laws and laws governing solid and hazardous waste disposal. Despite this change, the act does not amend OEPA law to remove OEPA monitoring and enforcement duties regarding those laws.

With respect to the initial operation period elimination, the act also repeals provisions permitting a facility to apply to OEPA for a conditional operating permit if it fails to meet all applicable air pollution requirements. The eliminated language provided that the application had to be made under continuing OEPA law. The act, however, does not amend that continuing OEPA law to exclude newly certificated facilities from applying, with the result that such application may still be made, despite the bill's changes.<sup>141</sup> In fact, the act does not change the continuing law requirement that certificates are conditioned on compliance with Ohio's air and water pollution laws and laws governing solid and hazardous waste disposal.

The act also repeals the provision stating that "a major utility facility in compliance with a conditional operating permit is not in violation of its certificate."

### **OEPA continuing jurisdiction**

The act also eliminates from the PSB law the provision that after the initial operation period, a major utility facility is (1) under the OEPA's jurisdiction and (2) must comply with all laws, rules, and standards regarding air and water pollution and solid and hazardous waste disposal. The act does not, however, repeal those laws, rules, and standards, which, presumably, would still apply to such a facility.

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<sup>141</sup> R.C. 3704.03(G), not in the act.



## **Major utility facility/economically significant wind farm operation**

(R.C. 4906.13)

The act provides that no public agency or political subdivision may require approval, consent, permit, certificate, or other condition for the operation of a major utility facility or an economically significant wind farm (a wind farm that has an aggregate capacity of more than 5, but less than 50, megawatts). Prior law placed this limitation only on the *initial* operation of such a facility or wind farm.

## **Transportation of hazardous materials**

(R.C. 3734.15, 4905.02, 4921.01, 4921.19, 4921.21, 4923.02, and 4923.99; repealed R.C. 4921.15 and 4921.16)

The act eliminates the authority of the Public Utilities Commission (PUCO) to adopt rules for registering and issuing permits for the transportation of hazardous materials and its authority to enter into agreements with other states and a national repository to ensure that permits and fees are handled uniformly in each state.

In place of the PUCO registration and permitting, the act prohibits the transportation of hazardous waste in Ohio unless the transporter has filed an annual registration statement with, and paid an annual registration fee to, the U.S. Department of Transportation in accordance with federal rules.

According to PUCO, a uniform hazardous materials transportation system has not been adopted by every state. Thus, under prior law, hazardous waste carriers were required to comply with both Ohio requirements and federal requirements established by the federal Pipeline and Hazardous Materials Safety Administration.

Lastly, the act eliminates the requirement that, when determining a forfeiture amount for a violation committed by a transporter of hazardous material or hazardous waste that was discovered during a motor vehicle inspection or compliance review, PUCO use a system that was comparable to the recommendations of the Commercial Vehicle Safety Alliance. PUCO still must comply with requirements of the U.S. Department of Transportation, use the standard of culpability established under the federal Hazardous Materials Transportation Uniform Safety Act of 1990, and use the assessment considerations for civil penalties established under the federal Hazardous Materials Transportation Act.



## Transportation of household goods

(R.C. 4921.19)

The act eliminates several requirements with which PUCO had to comply when establishing the application fees for a certificate for the transportation of household goods. Under continuing law, the application fee must be based on the certificate holder's gross revenue in the prior year for the intrastate transportation of household goods. However, the act eliminates the requirements that PUCO:

- (1) Establish ranges of gross revenue and the fee for each range;
- (2) Set the fees sufficient to carry out its duties in regulating transportation of household goods and enforcing requirements;
- (3) Make changes to the fee structure as necessary to ensure that neither over- nor under-collection occurs; and
- (4) Take into consideration the revenue generated from the assessment of forfeitures.

## Lifeline telephone service (PARTIALLY VETOED)

(R.C. 4927.13)

The act makes several changes to the lifeline telephone service program. It eliminates the requirements that the service be touch-tone, flat-rate, and for a primary line. Lifeline continues to require monthly access service at a recurring discount to the monthly basic local exchange service rate.

The act also changes one of the paths for determining eligibility by removing the maximum income threshold established in Ohio law, which was 150% of federal poverty level, and replacing it with the threshold established by federal rules. Presently the rules establish the threshold at 135%. In practical terms, this restricts eligibility. For example, it lowers the maximum income for a family of four in 2017 from \$36,900 to \$33,210.<sup>142</sup> However, continuing law also permits eligibility if the customer participates in any federal or state low-income assistance program. The PUCO has specified in rules that Medicaid, SNAP/food stamps, SSI, SSDI, section 8 housing, home energy assistance

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<sup>142</sup> The calculations are based on 2017 U.S. Department of Health & Human Services guideline figures, available at <https://aspe.hhs.gov/poverty-guidelines>.



programs, the free school lunch program, TANF, and general or disability assistance all qualify for lifeline eligibility.<sup>143</sup>

Further, the act reduces the number of days, from 60 to 30, a customer has to respond to a lifeline service termination notice. During that time, a customer may submit acceptable documentation proving continued eligibility or dispute the carrier's findings regarding the termination.

The Governor vetoed a provision that would have obligated incumbent local exchange carriers required to provide lifeline service to do so "consistent with federal law" rather than throughout their traditional service areas for eligible residential customers.

### **Small hydroelectric facility**

(R.C. 4928.01 and 4928.64)

The act modifies the definition of renewable energy resources under the competitive retail electric service law to include power produced by a small hydroelectric facility, which is a facility that operates, or is rated to operate, at an aggregate capacity of less than six megawatts. Further, it adds small hydroelectric facilities to the definition of qualifying renewable energy resources for purposes of the renewable energy resource mandates of that law. Their addition makes the facilities eligible for renewable energy credits.

The act excludes small hydroelectric facilities from meeting the standards used to define a "hydroelectric facility."

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<sup>143</sup> O.A.C. 4901:1-6-19(H)(1).

