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OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 201*
135th General Assembly

Bill Analysis

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Version: As Reported by Senate Energy and Public Utilities

Primary Sponsors: Reps. Hillyer and Demetriou

Larry Gunter, Jr., Research Analyst

Kathleen A. Luikart, Research Analyst

SUMMARY

- Prohibits a state agency, township, or county from restricting the use or sale of a motor vehicle based on the energy source used to power the motor vehicle
- Prohibits the Ohio Environmental Protection Agency or any other state agency from adopting any motor vehicle emissions standards that are established by California as a result of California having received a waiver to adopt stricter standards than those required by the federal Clean Air Act (“California emissions standard”).

Definition changes

- Changes the current law definition of “infrastructure development” to mean constructing, upgrading, extending, or any other investment in, or associated with, natural gas company (company) owned transmission or distribution facilities.
- Excepts from the definition of “infrastructure development” facilities for which investment is designed to provide natural gas service to a site or economic development project (EDP) supported by JobsOhio, any JobsOhio network or regional partner, or the Department of Development (DEV).
- Changes the current law definition of “infrastructure development costs” (ID costs) to mean costs associated with an investment in “infrastructure development” (defined above) to which either of the following apply:

* This analysis was prepared before the report of the Senate Energy and Public Utilities Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

- The investment is for any deposit required by the company, 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.
- The investment is designed to provide natural gas service to a site or EDP supported by JobsOhio, any JobsOhio network or regional partner, or DEV (this type of investment is specifically excluded from the "infrastructure development" definition).
- Provides that ID costs include all of the following:
 - Planning, development and construction costs, including costs incurred prior to the approval of an EDP by the Public Utilities Commission (PUCO) under the bill;
 - Costs associated with establishing or upgrading any connections with any source of supply to serve an EDP, including interstate or intrastate pipelines, regardless of the facilities' ownership;
 - A return on all ID costs equal to the company's return on equity authorized in the company's most recently approved rate case under continuing law (in rate cases, return on equity is usually a higher return than overall rate of return, and is usually a component used to calculate the overall rate of return, which is what Ohio law requires to be approved in rate cases).

Infrastructure development rider

- With respect to an application for an infrastructure development rider (IDR) to recover prudently incurred ID costs of one or more EDPs, the bill does the following:
 - Prohibits PUCO from accepting an application for "ID costs" (instead of an IDR application) for an investment designed to provide natural gas service to a site or EDP supported by JobsOhio, any JobsOhio network or regional partner, or DEV, unless the company has obtained notification from one of those entities or the DEV Director that the EDP should be considered.
 - Prohibits PUCO from approving an EDP application that includes ID costs for an investment designed to provide natural gas service to a site or EDP supported by JobsOhio, any JobsOhio network or regional partner, or DEV filed beyond six years from the bill's effective date.
 - Allows, notwithstanding the prohibition, recovery of ID costs for any approved EDP filed within six years of the bill's effective date to continue until all costs eligible for recovery under the bill are recovered.

Regulatory deferrals and carrying costs

- Requires PUCO, upon request by a company, to approve a regulatory deferral, including carrying costs calculated as follows, for the IDR revenue requirement any year when approved customer charges exceed, or are expected to exceed, \$1.50 per customer:
 - At the company's cost of long-term debt approved in its most recent rate case;

- If the company does not have a PUCO-approved cost of long-term debt, it must propose a rate for the carrying cost and may propose a rate or methodology for calculating carrying costs that differs from the company's cost of long-term debt approved in its most recent rate case.
- Limits what may be considered a part of the cost contributing to the excess in customer charges to new costs from that year and excludes costs from previous years from contributing to that amount.
- Requires PUCO to permit the company to collect any deferred and unrecovered ID costs in the subsequent year and continuing thereafter, not to exceed five years, if the IDR rate does not exceed the \$1.50 per customer limit in continuing law.
- Specifies that once costs have been applied to an approved regulatory deferral, the costs remain as part of the deferral and may not be reallocated to a future deferral application.
- Requires PUCO to permit carrying costs to accrue until the entirety of the regulatory deferral and all carrying costs have been recovered, or until the deferral is terminated either by PUCO order, court order, or by the end date in the approved deferral.
- Permits PUCO to grant a deferral for any number of years up to five years, after PUCO approves the deferral.
- Prohibits any remaining unrecovered costs from being subject to a future deferral, a rate case, or other cost recovery mechanism after the deferral period granted by PUCO has ended.
- Permits PUCO to approve the collection of any ID costs that are not funded by a disbursement from the All Ohio Future Fund under continuing law or through another approved rider or rate mechanism under law governing rate case applications.
- Permits a company that is prohibited under the provisions described in the dot point immediately above from recovering ID costs for a particular site or project in an IDR to recover ID costs for other sites or EDPs under an investment designed to provide natural gas service to a site or EDP supported by JobsOhio, any JobsOhio network or regional partner, or DEV that do not satisfy the requirements in the dot point immediately above.

EDP application

- Permits a company to file an application with PUCO for approval of an EDP for which the company will incur ID costs.
- Removes the specification under current law that a company that has a project application for SiteOhio certification can also apply for an EDP.
- Specifies that applications for EDP approval must contain a description of certain items required under current law, but "to the extent applicable."

- Specifies only that PUCO may approve an EDP that involves ID costs described as an investment for any deposit required by the company, as defined in the line-extension provision of the company’s tariff, less any contribution in aid of construction received from the EDP owner or developer, but only if the ID costs:
 - Exclude a return on all ID costs equal to the company’s return on equity authorized in the company’s most recently approved rate case under continuing law; and
 - Are projected to generate a return on investment that is less than the most recently authorized return on equity.

PUCO annual report

- Requires PUCO to annually submit a report to the General Assembly, in accordance with continuing law, describing the following:
 - The number of “applications for ID costs” (not applications for IDRs) and how many of those were approved;
 - The amount approved for recovery through each company IDR and the total amount approved for recovery through all IDRs for all companies;
 - The number of approved EDPs on which all construction has been completed;
 - A list containing the construction status of all approved EDPs, including those that have not begun construction, or if construction has begun but not completed, a description of any structures on which construction has been completed.

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DETAILED ANALYSIS

Motor vehicle energy source and emissions standards

The bill prohibits a state agency, township, or county from restricting the use or sale of a motor vehicle based on the energy source used to power the motor vehicle, including an energy source used for propulsion or used for powering other functions of the motor vehicle.

It also prohibits the Ohio Environmental Protection Agency or any other state agency from adopting any motor vehicle emissions standards that are established by California as a result of California having [received a waiver](#) to adopt stricter standards than those required by the federal Clean Air Act (“California emissions standard”). The federal Clean Air Act (with the U.S. EPA’s approval) allows California to enact stricter emissions standards for new motor vehicles. Federal law prohibits any other state from enacting stricter emissions standards on their own. However, a state may elect to voluntarily opt-in to the California standards.¹

Beginning in 1990, the California Air Resources Board (“CARB”) adopted stricter emissions standards (low-emission vehicle (“LEV”) regulations) requiring automobile manufacturers to introduce “progressively cleaner light- and medium-duty vehicles with more durable emission controls from the 1994 through 2003 model years.” Since then, CARB has continued to adopt stricter motor vehicle greenhouse gas emissions standards, including (1) creating tiers of exhaust emission standards for increasingly more stringent categories of low-emission vehicles, (2) requiring motor vehicle sales to phase-in a progressively cleaner mix of vehicles from year to year, and (3) a requirement that a specified percentage of passenger cars and light-duty trucks be zero-emission vehicles (“ZEVs”) with no exhaust or evaporative emissions.²

The [most recent changes](#) in 2022 to California’s emissions standard generally require:³

1. All California sales of new passenger cars and trucks to be ZEVs (i.e., electricity or hydrogen) by 2035;
2. All California sales of new medium and heavy-duty vehicles to be ZEVs by 2045;⁴

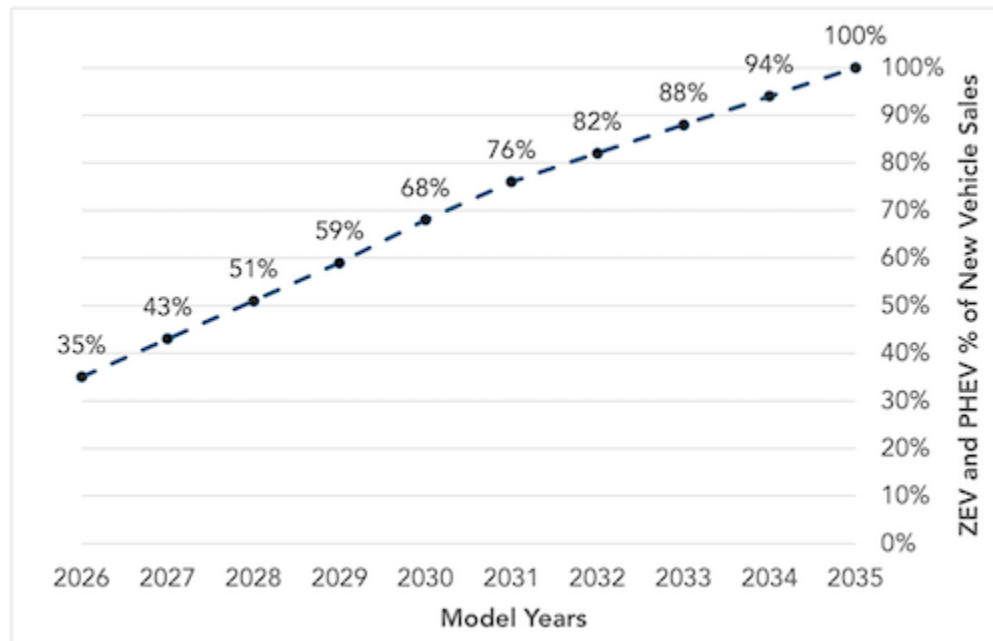
¹ See Clean Air Act, Section 219; 42 United States Code (U.S.C.) §7589.

² See California Air Resources Board (CARB) website, “Low-Emission Vehicle Program,” ww2.arb.ca.gov/our-work/programs/low-emission-vehicle-program/about; Cal.Health & Safety Code §43800–43806; and 13 California Code of Regulations §1950-1978.

³ See CARB website, “Going Zero,” ww2.arb.ca.gov/going-zero.

⁴ See Executive Department, State of California, Executive Order N-79-20, www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-Climate.pdf.

3. Required percentages of new vehicle sales, beginning in 2026, to be ZEVs or plug-in hybrid electric vehicles (PHEVs), as shown in the chart below.⁵



[According to CARB's website, as of May 13, 2022, 17 other states](#) have adopted California's LEV criteria pollutant and greenhouse gas emission regulations, and all but two of those states have adopted California's ZEV regulations⁶ under the Clean Air Act.⁷

Infrastructure development rider (IDR) overview

The bill makes changes to the law governing the application for and approval of infrastructure development riders (IDRs) for natural gas companies and how such companies may recover infrastructure development costs (ID costs). The bill amends the definitions of "infrastructure development" and "infrastructure development costs."

Current law allows a natural gas company (company) to file an application with the Public Utilities Commission (PUCO) for approval of an IDR to recover prudently incurred ID costs of one or more approved economic development projects (EDPs). PUCO may approve a maximum of one IDR per company.

⁵ See CARB website, "Advanced Clean Cars II," ww2.arb.ca.gov/our-work/programs/advanced-clean-cars-program/advanced-clean-cars-ii.

⁶ See CARB website, "States that have Adopted California's Vehicle Standards under Section 177 of the Federal Clean Air Act," ww2.arb.ca.gov/resources/documents/states-have-adopted-californias-vehicle-standards-under-section-177-federal.

⁷ See Clean Air Act, Section 177; 42 U.S.C. §7507.

Under continuing law, a company may not recover more than \$1.50 from any single customer in Ohio for all approved EDPs and for which recovery was authorized under an IDR. The company must recover the same amount from every customer.

Further, under continuing law, any property installed or constructed by a company to provide natural gas service to an approved EDP must be considered used and useful in rendering public utility service for purposes of ratemaking law.⁸

Definition changes

Infrastructure development

Under the bill, “infrastructure development” is defined as “constructing, upgrading, extending, or any other investment in, or associated with, transmission or distribution facilities . . . that a natural gas company owns and operates.” This differs from current law that defines “infrastructure development” as “constructing extensions of transmission or distribution facilities a natural gas company owns and operates.”⁹

The bill excepts from the “infrastructure development” definition “costs associated with establishing or upgrading any connections with any source of supply to serve an EDP, including interstate or intrastate pipelines, regardless of ownership of the facilities.” However, as detailed below, these excepted costs are among the costs *included* as ID costs.¹⁰ It is not clear how this exclusion will work when the definition of ID costs refers to infrastructure development.

Infrastructure development costs (ID costs)

The bill amends current law to define ID costs as *costs associated with an investment* in infrastructure development rather than as *an investment* in infrastructure development. Under the bill, one of the following must apply to ID costs:

- The investment is for any deposit required by the company, 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 (a provision in the current law definition); or
- The investment is designed to provide natural gas service to a site or EDP that is supported by JobsOhio, any JobsOhio network or regional partner, or the Department of Development (a provision added by the bill).¹¹

The bill also specifies that ID costs include all of the following:

⁸ R.C. 4929.161(A) and (B), 4929.162(A) and (B), and 4929.166.

⁹ R.C. 4929.16(A).

¹⁰ R.C. 4929.16(A) and (B)(2)(b).

¹¹ R.C. 4929.16(B)(1)(a) and (b).

- Planning, development, and construction costs including costs incurred prior to the approval of an EDP;¹²
- Costs associated with establishing or upgrading any connections with any source of supply to serve an EDP, including interstate or intrastate pipelines, regardless of ownership of the facilities;¹³
- A return on all ID costs, with such return equal to the company's return on equity authorized in the company's most recently approved rate case under the utility ratemaking law.¹⁴ (The return on equity generally is greater than the rate of return. Ongoing utility ratemaking law requires PUCO to determine and order a fair and reasonable rate of return for a utility in its rate case. The law does not require PUCO to determine and order a return on equity.¹⁵)

The bill repeals the current law provision that ID costs include any allowance for funds used during construction, if applicable.¹⁶

JobsOhio or Department of Development supported projects

In the case of investments that are designed to provide natural gas service to a site or EDP that is supported by JobsOhio, any JobsOhio network or regional partner, or the Department of Development (DEV), the bill prohibits PUCO from accepting a company's application for ID costs unless the company has obtained a notification by JobsOhio, any JobsOhio network or regional partner, or the Director of Development that the project should be considered.¹⁷ The application under R.C. 4929.161 is for an IDR, which, if approved, may include authorization to recover ID costs. It is not clear whether this prohibition applies to an IDR application or somehow creates a new ID costs application separate from the IDR. If it is meant to apply to an IDR application, it is not clear whether it is intended to prohibit PUCO from accepting the IDR application or just the ID costs within the IDR application.

Although not specified in the bill, the company could possibly submit a copy of the notification with the application. Current law requires an EDP application to include a description of the support by an "economic development entity," which among other entities includes JobsOhio or any JobsOhio network or regional partner and DEV.¹⁸

¹² R.C. 4929.16(B)(2)(a).

¹³ R.C. 4929.16(B)(2)(b).

¹⁴ R.C. 4929.16(B)(2)(c); R.C. 4909.18, not in the bill.

¹⁵ R.C. 4909.15 and 4909.18, not in the bill.

¹⁶ R.C. 4929.16(B).

¹⁷ R.C. 4929.161(C).

¹⁸ R.C. 4929.163(C)(4).

Six-year period for EDP approvals

The bill effectively limits how long ID costs for such JobsOhio or DEV supported projects may be recovered to a period of six years. Specifically, the bill prohibits PUCO from approving an application for an EDP that includes such ID costs that is filed beyond six years after the bill's effective date.

However, for any approved EDPs filed within six years of the bill's effective date, the bill requires the recovery of ID costs to continue until all costs eligible for recovery under the IDR and economic development provisions are recovered, notwithstanding the prohibition described above.¹⁹ This continued cost recovery is not limited to JobsOhio or DEV supported projects.

Regulatory deferrals and carrying costs

If requested by a company, PUCO must approve a regulatory deferral for the IDR revenue requirement in any year in which the approved customer charge exceeds or is expected to exceed the \$1.50 monthly per customer charge limitation under an IDR. Under the bill, only new costs from that year may be considered a part of the cost contributing to the excess in customer charges, and no costs from previous years can contribute to that amount.²⁰

The bill permits PUCO to grant deferrals for a period not to exceed five years after PUCO approves the deferral. Deferrals granted by PUCO may be approved for a period of less than five years. The bill prohibits any remaining unrecovered costs from being subject to a future deferral, a rate case, or other cost recovery mechanism after the deferral period granted by PUCO has ended.²¹

Under the bill, a deferral includes carrying costs at the company's long-term debt approved in the company's most recent rate case. If the company does not have a PUCO-approved cost of long-term debt, the company must propose a rate for the carrying cost. And, the company may propose a rate or methodology for calculating carrying costs that differs from the company's cost of long-term debt approved in its most recent rate case.²²

The bill specifies that PUCO must permit the company to collect any deferred and unrecovered ID costs in the subsequent year (presumably the year after the deferral approval year) and continuing thereafter so long as the IDR rate does not exceed the maximum \$1.50 monthly per customer charge for an IDR. Collection of such deferred or unrecovered costs are subject to the five-year limit described above. Under the bill, once costs have been applied to

¹⁹ R.C. 4929.16(B)(1)(b) and 4929.161(C) and (D).

²⁰ R.C. 4929.162(C)(1).

²¹ R.C. 4929.162(C)(5).

²² R.C. 4929.162(C)(1) and (2).

an approved regulatory deferral, the costs remain as part of the deferral and may not be reallocated to a future deferral application.²³

PUCO must permit carrying costs to accrue until the entirety of the regulatory deferral and all carrying costs have been recovered or until the termination of the deferral either by PUCO order, court order, or by the end date in the approved deferral.²⁴

EDP application

Ongoing law allows a company to file an application with PUCO for approval of an EDP prior to beginning the project and specifies certain descriptions that an application must contain such as descriptions of the EDP, ID costs to be expended, and support for the EDP. The bill allows applications for an EDP *for which the company will incur ID costs* and specifies that applications shall contain the above descriptions *to the extent applicable*. The bill repeals the provision allowing applications for a project for which an application for certification under the SiteOhio Program has been made.²⁵

Under the bill, PUCO must approve an EDP that involves certain ID costs, if the costs are projected to generate a return on the company's investment that is less than the most recently authorized return on equity. This provision applies to ID costs that (1) are an investment for any deposit required by the company, as defined in the line-extension provision of the company's tariff, less any contribution in aid of construction from the owner or developer of the project as described in division (B)(1)(a) of R.C. 4929.16 and (2) exclude the return on all ID costs, with such return equal to the company's return on equity authorized in the company's most recently approved rate case, as set forth in division (B)(2)(c) of R.C. 4929.16. The bill does not specify how the return on all ID costs equal to the most recently approved return on equity must be excluded from ID costs yet PUCO must approve an EDP with ID costs projected to generate a return on investment less than the most recently approved return on equity. Possibly, this confusion could be clarified in PUCO rules regarding project approval.²⁶

The bill does not specify the process for determining the company's projected return on investment and determining whether it is less than the most recently authorized return on equity and thus making the project eligible for PUCO approval. Possibly, this could be addressed in rules setting the criteria for project approval that, under ongoing law, PUCO must adopt.²⁷

The bill specifies when projects involving ID costs described in division (B)(1)(a) of R.C. 4929.16 may be approved, but the bill does not specify what action PUCO must take regarding ID costs described in division (B)(1)(b) of R.C. 4929.16. These are ID costs associated with

²³ R.C. 4929.162(C)(3).

²⁴ R.C. 4929.162(C)(4).

²⁵ R.C. 4929.163.

²⁶ R.C. 4929.16(B)(1)(a) and (B)(2)(c) and 4929.163(D); R.C. 4909.18, not in the bill.

²⁷ R.C. 4929.163(D).

establishing or upgrading any connections with any source of supply to serve an EDP regardless of ownership of the facilities. Possibly, they could be approved according to PUCO rules regarding project approval, but without the condition placed on division (B)(1)(a) projects.

Collection of unfunded ID costs

The bill permits PUCO, for an applicant's EDP, to approve the collection of any ID costs that are not funded through a disbursement from the All Ohio Future Fund under continuing law or through another rider or rate mechanism approved under the utility ratemaking law.²⁸

Although the bill is not completely clear, if a company may not recover costs for a particular site or project in an IDR because the costs have been funded through an All Ohio Future Fund disbursement or another rider or rate mechanism, the company may recover ID costs for other sites or EDPs that are not funded by these sources.²⁹ The bill refers to a prohibition in division (D)(1) of R.C. 4929.162 regarding infrastructure development cost recovery approval, but the bill does not expressly include any prohibition in that division.

PUCO annual report

The bill requires PUCO to submit an annual report to the General Assembly that describes all of the following:

- The number of "ID cost applications" filed and the number of "ID cost applications" approved for:
 - ID costs that are an investment for any deposit required by the company, as defined in the line-extension provision of the company's tariff, less any contribution in aid of construction from the owner or developer of the project; and
 - ID costs associated with establishing or upgrading any connections with any source of supply to serve an EDP regardless of ownership of the facilities;
- The monetary amount approved for recovery through each company IDR and the total monetary amount approved for recovery through all IDRs for all companies;
- The number of approved EDPs on which all construction has been completed;
- A list containing the construction status of all approved EDPs, including:
 - If construction has not been commenced; or
 - If construction has commenced, but not completed, a description of any structures on which construction has been completed.

²⁸ R.C. 4929.162(D)(1).

²⁹ R.C. 4929.162(D)(2).

The report must be filed in accordance with ongoing law governing the process for submitting reports to the General Assembly.³⁰

HISTORY

Action	Date
Introduced	06-06-23
Reported, H. Transportation	10-04-23
Passed House (70-23)	11-15-23
Reported, S. Energy and Public Utilities	--

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³⁰ R.C. 4929.162(B); R.C. 101.68, not in the bill.