

EYE ON ENERGY & ENVIRONMENT

After a busy six months of budget and legislative work, the General Assembly recessed for the summer in the early hours on June 29. A slew of energy and environmental bills were introduced, and some of them passed, in the first quarter of the 134th General Assembly. During this time, the Ohio Chamber has tracked 39 bills, pertaining to energy or environmental policy, and weighed in on 14 of them.



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Energy Update

One of the Ohio Chamber's top priorities over the past six months was to, "support comprehensive reforms to Ohio's energy policy that both balances a diverse portfolio of energy sources and provides for reliable, affordable sources of energy," and to, "remove barriers to entry and push back against new barriers to entry for all energy sources." HB 128, HB 201 and HR 13 & SR 41 were all supported by the Ohio Chamber and passed out of the legislature. The Ohio Chamber was also actively involved in SB 52, which significantly alters the current siting process for utility-scale wind and solar projects.

Energy Update cont.

HOUSE BILL 128

The Ohio Chamber testified in support of a bill, House Bill 128, to repeal and replace House Bill 6 from the 133rd General Assembly. At the heart of HB 6 was the \$150 million a year nuclear payment that was allocated to the Davis Besse and Perry nuclear power plants. We now have a clearer picture of the financial situation and understand that the nuclear plants may be able to stay operational without the subsidy. Certain customers will see a refund on their utility bills because HB 128 removes the decoupling mechanism that was implemented in HB 6. With the removal of energy efficiency mandates, the HB 6 decoupling provision is no longer needed to recover lost revenues.



HB 128 also modifies the significantly excessive earnings test (SEET) changes that were not part of HB 6 but were enacted as part of HB 166 from the 133rd General Assembly. The SEET ensures that customers receive a refund in the event an electric distribution utility's earnings are significantly excessive. HB 128 returns SEET to its original state.

HOUSE BILL 201

House Bill 201 creates safeguards for commercial and residential energy users' access to natural gas by preventing local governments from limiting or banning the fuel source. More importantly, HB 201 protects customers' ability to choose what mix of energy sources works best for their needs.

Local level go-it-alone policies could undermine the entire state's competitive standing and hinder our state's diverse portfolio of energy sources because we constantly compete against other states, many of which are in the process of passing legislation similar to HB 201. The Ohio Chamber has been a consistent proponent when it comes to advocating for energy policies that promote a diverse portfolio regulated at the state-level. HB 201 would stop the development of a cumbersome patchwork of local ordinances that would deter investment opportunities in our state by sending mixed messages to companies looking to invest in Ohio about the importance of affordable and abundant natural gas.

Energy Update cont.

HOUSE RESOLUTION 13 & SENATE RESOLUTION 41

House Resolution 13 and Senate Resolution 41 urge Michigan Gov. Gretchen Whitmer, and the director of the Michigan Department of Natural Resources to keep Enbridge Line 5 operational. Line 5 is an oil pipeline that rests on the bottom of the Straits of Mackinac and carries light crude oil, light synthetic crude and natural gas liquid. To ensure the safety of Lakes Michigan and Huron, a project was approved by former Michigan Gov. Rick Snyder, to allow Enbridge to create a tunnel to house the pipeline under the lakebed and prevent any environmental issues from occurring.



The Ohio Chamber meets with the Ontario Government Office of Investment & Trade at the Ohio Chamber headquarters.

After pushback from activists, the newly elected Gov. Whitmer and Attorney General Dana Nessel blocked the tunnel plans and sought to decommission Line 5 altogether.

Shutting down Line 5 would not only be devastating to Ohio and Michigan's economy, but it would also negatively affect the economy from a regional perspective. For decades, Line 5 has safely delivered over 500,000 barrels per day of crude supply to refineries in northwest Ohio, Michigan, Pennsylvania and Ontario, Canada. This represents approximately 42% of regional refineries' crude manufacturing capacity. Without Line 5, the Midwest would face significant fuel supply constraints, which would likely result in significantly higher fuel costs and fuel availability concerns. Also, if the pipeline is taken offline, refineries could be forced to eliminate more than 1,200 well-paying jobs.

Ohio businesses, employees and families depend on Line 5, and are counting on construction of the Great Lakes Tunnel to protect the Great Lakes and local economies all while keeping energy prices affordable for consumers.

SENATE BILL 52

The first iteration of Senate Bill 52 created new barriers to entry for solar and wind projects by subjecting them to a new layer of local government regulation at the township level while also subjecting these projects to township-by-township referenda. This version of SB 52, the Ohio Chamber strongly opposed.

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Energy Update cont.

HB 201 CONTINUED.

Following multiple meetings with the bill sponsors, SB 52 was changed drastically. In the most current version, county commissioners have the power to determine whether they welcome renewable development to their county. Developers must



Gov. DeWine poses with Stephanie Kromer, Director of Energy & Environmental Policy for the Ohio Chamber after the passage of HB 201.

present a proposal to the county commissioners before they file at the OPSB which must include the type of generation, maximum number of megawatts and the boundaries/general footprint of the project area. This would trigger a 90-day window in which commissioners would have three options: do nothing, which would deem the project approved; pass a resolution barring the project; or pass a resolution limiting the geographic area of the project. The county commissioners could also pass a resolution closing the county to wind or solar development or projects are prohibited, subject to referenda.

Substitute SB 52 also adds two voting ad-hoc members to the OPSB for considering wind and solar applications and material amendments. These seats would be occupied by a county commissioner and a township trustee from the boundaries of the project they would be overseeing. These changes resulted in an approach that better balances the need for more local input earlier in the process with the need for regulatory certainty.

RULE UPDATES

1507:9-1-05 (Simultaneous Operations):

This new rule will allow a framework of best practices for SimOps to allow for a producer to go back onto existing well pads and drill new wells while the existing wells continue to produce. An increase in efficiency through the best practices laid out in the new SimOps rule could grow production operations and, more importantly, encourage more sustainable operations with less surface disturbance.



Environment Update

BUDGET

Gov. Mike DeWine signed Ohio's biennial budget, House Bill 110, just after midnight on July 1, with 14 line-item vetoes. This final version of HB 110 included numerous major pro-business policy initiatives supported by the Ohio Chamber that will improve Ohio's business climate in the environmental space. Those provisions of interest to Ohio Chamber members include:

- \$350 million for brownfield remediation and \$150 million for a site revitalization program for non-brownfield sites
- \$170 million over the biennium for the H2Ohio initiative
 - \$50 million - Ohio Dept. of Natural Resources
 - \$98.6 million - Ohio Dept. of Agriculture
 - \$20 million - Ohio EPA
 - \$25 million - Lake Erie Commission
- Permanent ban on local efforts to ban or tax one-time use plastics

HOUSE BILL 175

House Bill 175 clarifies the Ohio EPA's definition and regulation of ephemeral streams and aligns it with the U.S. EPA's new classifications of what is considered "navigable water" that needs regulatory oversight.

Last year, the U.S. EPA and the Army Corps of Engineers announced a new definition for the Waters of the United States, or WOTUS, under the Navigable Waters Protection rule. The Ohio Chamber of Commerce submitted comments to the U.S. EPA supporting the agency's move to return sense and predictability to WOTUS determinations. Under the new definition, four categories were designated to clearly define a water of the United States:

1. Territorial seas and traditional navigable waters;
2. Perennial and intermittent tributaries to those waters;
3. Certain lakes, ponds and impoundments; and
4. Wetlands adjacent to jurisdictional waters.



The new rule also outlines what is not considered a WOTUS, which includes features that only contain water in direct response to rainfall, also known as ephemeral streams. Ephemeral streams are features that flow in direct response to rain or snow melt and receive little to no water from a spring or headwater. HB 175 redefines an ephemeral stream as an ephemeral feature to represent this classification of water more accurately since there is no permanent water flow. Due to this new categorization, ephemeral streams would no longer be subjected to a section 401 water quality certification. **CONTINUED ON NEXT PAGE.**

Environmental Update cont.

HB 201 CONTINUED

Not only would this be cost saving for business owners, but it would also create clarity as to what types of features must and mustn't be regulated.

HB 175 promotes environmental protection by limiting unnecessary government overreach while giving the business community the regulatory certainty they need to effectively operate.

OHIO CHAMBER JOINS THE OHIO WATER PARTNERSHIP

The Ohio Chamber of Commerce, as well as other business advocacy groups and environmental groups, participated in the official launch of the Ohio Water Partnership on April 20. From Fortune 500 companies to small businesses, the Ohio Water Partnership includes companies and business organizations of all sizes that recognize that the quality of Ohio's water affects their bottom line.

The Ohio Water Partnership's policy objectives are consensus-driven from the member companies or member organizations of the partnership. The organization will also raise awareness and educate Ohio's business community and elected officials regarding the importance of:

- Eliminating harmful algae blooms;
- Increasing Ohioans' access to clean, affordable drinking water;
- Encouraging funding for Ohio's water infrastructure, wastewater treatment and water supply systems, stormwater and sanitary collection, storage and treatment.



If you're interested in joining the Ohio Water Partnership, please [click here](#).

RULE COMMENT DEADLINES

July 19, 2021 – Beneficial use designations and biological criteria. Rule 3745-107 defines Ohio's use designations, including the biological criteria (biocriteria) used in setting aquatic life use designations. (Ohio EPA).

July 19, 2021 – Application of biological survey data to development of water quality-based effluent limitations. Rule 3745-2-03 is a new rule that will explain how biocriteria are used in the NPDES permit program. (Ohio EPA).

For additional information or to submit comments:

- By email: dsw_rulecomments@epa.ohio.gov
- If you would like further info about this rulemaking, please contact Ashley Ward at (614) 644-4852.

Upcoming Events



30TH ANNUAL ENVIRONMENTAL PERMITTING IN OHIO CONFERENCE

August 25-26th

Crown Plaza Columbus North-Worthington

6500 Doubletree Ave.

Columbus, OH 43229

SALT FORK POLICY CONFERENCE

September 8-10th

Salt Fork Lodge & Conference Center

14755 Cadiz Rd.

Lore City, OH 43755

ENERGY & ENVIRONMENT COMMITTEE MEETING

September 13

In-person & virtual options

Zoom Registration: bit.ly/eecommitteereg

Ohio Chamber of Commerce

34 S. Third St., Suite 100

Columbus, OH 43215

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