Statehouse Update

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Tuesday, February 18, 2020
Energy Stakeholders Dissect HB6, Pending Legislation

The state's controversial nuclear subsidy law remained a key focus Tuesday for attendees of the Manufacturers Education Council's energy-themed conference in Columbus.

Coming four months after the bill (HB 6) became effective, the organization's Ohio Energy Management Conference brought together energy stakeholders to examine the law's impact, ongoing energy trends and pending legislation that will further affect the sector.

The Public Utilities Commission of Ohio and the Air Quality Development Authority for months have worked to implement various facets of the bill, which provides up to $150 million in annual subsidies to nuclear plants beginning in 2021 and extended cost recovery for Ohio Valley Electric Corp. plants, among other provisions.

Billed by the MEC as "arguably the most significant energy development in Ohio" since deregulation, HB6 was prime for discussion – including a presentation by Brakey Energy analysts, who sought to break down its impact on commercial and industrial users.

One takeaway, presenters said, is that questions remain regarding how the PUCO will devise a rate structure to mitigate bill impacts for commercial and industrial customers that don't self-assess.

The company calculated a potential per kWh rate and per customer monthly rate based on annual revenue for that customer class and determined the per kWh rate "could result in charges for large C&I customers that the PUCO may deem 'abrupt or excessive.'"

"The per customer monthly rate shown could result in charges for very small C&I customers that the (Public Utilities Commission of Ohio) may deem abrupt or excessive," they added.

Others holding court on HB6 throughout the day included Senate Chief Legal Counsel Frank Strigari, Rep. Nino Vitale (R-Urbana) and the bill's lead cosponsor Rep. Jamie Callender (R-Concord).

Pending Legislation: In her presentation, Stephanie Kromer, director of energy and environmental policy for the Ohio Chamber of Commerce, singled out several pending energy bills as warranting a close watch.

Among them is a measure (HB 247) from Rep. Dick Stein (R-Norwalk) to expand utilities' reach behind the meter. That measure, for which a sub bill is expected later this year, has stirred up opposition from companies who argue it would give utilities a competitive advantage.

The chamber also named as worth following a measure (HB 401 & SB 234) to revise the wind farm siting process, a placeholder bill (HB 246) to "modernize" the Public Utilities Commission of Ohio and the Ohio Consumers' Counsel, and a critical infrastructure bill (SB 33) that is awaiting a House vote.

Other presentations from the conference can be found on the council's website.

Wednesday, February 19, 2020
Panel Expands Public Records Exemptions In Watershed Bill

A House panel moved one step closer to a vote on a priority Senate water quality bill Wednesday after making two changes to the measure.

But there's still no scheduled vote for the plan (SB 2), with House Energy & Natural Resources Committee Chair Rep. Nino Vitale saying he wants more time for members to digest the bill and its contents.

"When I do amendments or sub bills, I like to let those sit and see what comes up," Rep. Vitale (R-Urbana) said in an interview. "Let it sit for a week or two, make sure there's nothing we missed."
The measure – which creates a Statewide Watershed Planning and Management Program – cleared the Senate briskly last year prior to the state budget. But House lawmakers have proceeded cautiously, saying they wanted to make sure the plan gels with the governor's H2Ohio efforts and the House's own priority water bill (HB 7) which has received one Senate hearing.

The two amendments accepted by the committee both touch on the issue of public records. The first, from Rep. Brian Baldridge (R-Winchester), ensures information, data or other records contained within a nutrient management plan or used to develop, approve, implement, or review such a plan are not public record.

"I think there was some language in there (already to that effect), but this just kind of brings it to a head, states it in black and white this is not a public record," Rep. Baldridge said.

The second change, offered by Rep. Darrell Kick (R-Loudonville), exempts from public record laws data or records of a person's agriculture operations or conservation practices.

The Department of Agriculture may share those records with state agencies and higher education institutions for water quality research purposes only if they: are in aggregated form; lack identifying information; include a description of improvement practices and identify the watershed in question by its hydrologic unit code.

It also states it is the General Assembly's intent to "collaborate with organizations representing agriculture, conservation and the environment and institutes of higher education engaged in water quality research to establish a certification program for farmers that utilize practices designed to minimize impacts to water quality."

The added language tasks the director of the Department of Agriculture with ensuring assistance and available funding are provided for farmers who participate in that certification program. Farming and environmental groups for months have been working toward such a program through the Ohio Agriculture Conservation Initiative.

In testimony, several parties voiced support for the public records language, including Gail Hesse, great lakes water program director for the National Wildlife Federation.

"We need information about trends in the adoption of conservation practices – information that is critical to understanding progress toward water quality improvements," Ms. Hesse said. "We can do this if we aggregate that data and we remove any potential obstacles for farmer participation in programs."

Lake Erie Foundation Vice President Matt Fisher reappeared before the committee to urge passage. Partly driving that support, he said, is the group's opposition to the Lake Erie Bill of Rights – the Toledo charter language enabling citizens to sue on behalf of the lake.

"The most significant amendment is the requirement of confidentiality of information from farmers," he said. "As we have said before, we are 100% against the Lake Erie Bill of Rights, and we will not make progress if farmers do not feel confident that they can provide their data without some type of legal action if the data indicates some level of likelihood of run off."

The panel also fielded comments from Heather Raymond, water quality initiative director for Ohio State University's College of Food, Agricultural and Environmental Sciences. She urged at a minimum that H2Ohio-funded projects to be tracked by the Hydrologic Unit Code 12 scale. She said county-level tracking is insufficient since counties can cross multiple watersheds.

"We agree that confidentiality is important to encourage enrollment into H2Ohio programs but also agree that aggregated information – we proposed on the HUC 12 scale – can be shared by the director with institutions of higher education such as ours," Ms. Raymond

**DeWine Urges Patience On Water Quality Program**

Gov. Mike DeWine cautioned farmers Wednesday that results from the state's new H2Ohio programs won't occur overnight. Addressing those gathered for the Ohio Farm Bureau's Ag Day at the Capital, the governor and Department of Agriculture Director Dorothy Pelanda highlighted their ongoing water quality efforts under the program, along with an array of other topics.

Both leaders said they've been encouraged by the turnout at recent stakeholder meetings, where hundreds of farmers have come to question ODA scientists on specifics of the continuing H2Ohio rollout.
"We're getting great turnouts at meetings by farmers in northeast Ohio," Gov. DeWine told reporters after the event. "There's a great deal of interest. Farmers were part of putting this program together…. They have to be part of the solution."

He said success in the short term will be judged not by a decrease in algal blooms but by the yearly increase in the number of farming acres utilizing best farming practices. The more that figure increases, he said, the more long-term success Ohio's water quality will experience.

"We're going to have to see significant progress every year," Gov. DeWine said. "I think the key is we're going to have to be patient. I'm not by nature a patient person, but we didn't get into this problem overnight, we're not going to get out of it overnight."

He thanked lawmakers present for supporting H2Ohio in the budget (HB 166) and promised them he'll ask for more of the same during the next budget cycle as he looks to build on H2Ohio's early work.

Gov. DeWine later said he's not concerned the long-term results might make it more difficult to demonstrate to lawmakers in the near-term the need for more funding.

"As long as we can continue to show we have more and more acres who utilize best farming practices I think everyone understands that is the key to dealing with the algae bloom problem in Lake Erie," he said. "Now that doesn’t mean you're going to instantly not have algae blooms. Some of this is really dependent on the particular weather of that particular year."

He also addressed the Environmental Protection Agency's recent work to craft a total maximum daily load limit – or TMDL – for Lake Erie. The preceding administration's reluctance to pursue that course of action sparked several rounds of litigation.

"I was not governor when these decisions were made in the past," Gov. DeWine said.

He added that he believes his administration would have taken criticism from stakeholders for pursuing a TMDL if it had not already put its H2Ohio plan into motion.

**Attorney General’s Opinion**

No. 2020-001. Requested by Licking County Prosecuting Attorney William C. Hayes. SYLLABUS:

A person who serves as a real estate appraiser in the unclassified service with the county auditor's office, and who, pursuant to the person's job duties, is not able to abstain from appraising certain property within the county, may not serve simultaneously as a member of the board of zoning appeals for a township within the same county.

**Thursday, February 20, 2020**

**Yost Announces Facial Recognition System Proposals**

A task force convened by Attorney General Dave Yost released its plan Thursday for how the state should handle law enforcement use of facial recognition technology.

AG Yost said his office will review the panel's 13 recommendations and determine a path forward. In general, he said the technology can be used as an investigatory tool by law enforcement, but with limitations.

"This is no substitute for police work," he said at a Columbus news conference. "Facial recognition technology is a tool to develop leads. It is the beginning of the investigatory process. It is not the conclusion of it. Nobody in Ohio should ever be arrested and charged based on a match or a potential match from facial recognition."

The task force was chaired by Sara Andrews, director of the Ohio Criminal Sentencing Commission, who said it reached the recommendations after "spirited conversations and constructive debates."

"Our goal is to balance people's privacy interests with the need for public safety," she said.

The advisory group was launched last year after concerns were raised about the state's use of the facial recognition database – which includes driver's license and state ID photos from Bureau of Motor Vehicles records along with mugshots from local agencies and the Department of Rehabilitation and Correction – and the state's policy of sharing information with federal and state agencies.
The panel's recommendations included that the General Assembly be encouraged to weigh in on the appropriate use of the technology, that access should be limited to trained professionals at the Bureau of Criminal Investigation and that the AG should declare a moratorium on the use of "live" facial recognition.

That recommendation follows the AG's office's determination that the system has not been misused in live dragnets. Asked why the task force didn't recommend completely banning live use, Ms. Andrews said that was an issue that they discussed, saying it was "one of the areas that we thought may be a good subject for the General Assembly to weigh in on."

Other recommendations included that specific standards be set out for when law enforcement can use facial recognition and define investigative purposes for its use. That standard should require reasonable suspicion that the person to be identified has committed a crime, that their actions could present a deadly threat or serious harm, or that it must be used to identify someone who cannot identify themselves.

The system should also have an image quality standard, the group said.

"I generally agree with the values that are set out in the report," AG Yost said. "I don't necessarily know that we're going to adopt every line as if it were a rule itself."

The attorney general said he hopes to work to create a better system to move images from the BMV's databases to the facial recognition system, but that process is "a lot harder than importing a set of photos off your iPhone to your laptop."

Asked about privacy concerns associated with the use of BMV photos of people who have not been accused of a crime in a law enforcement database, he said those photos are already being used by officers for law enforcement activities.

"Those photographs were taken for identification purposes. Everybody did it voluntarily when they went in and got a driver's licenses. They expect those photographs to be used by the police," he said. "I fail to understand why that would be a matter of concern since the photographs are all taken with the understanding of what they're actually going to be used for."

Overall, his office is looking to find a middle ground between public safety and privacy, he said.

"As we look at these tools, we're going to be looking at how to navigate between the competing virtues of privacy and public safety," he said. "We're going to be looking at civil liberties and law enforcement as being in tension."

Gary Daniels, chief lobbyist with the ACLU of Ohio, said the recommendations still don't go far enough to protect personal privacy. His organization still doesn't like the technology and thinks it should not be used by the government.

"Our concern is that the ramifications of facial recognition technology are too great, are too serious, are too worrisome for it to be used by government," he said in an interview. "What they say every single time with surveillance technology is we're just going to use it for these limited times over here, but every single time it spreads."

If the government is to use it, there should be clear laws and regulations governing how it should be used, he said. The General Assembly needs to weigh in and establish clear guardrails.

"What we are concerned about all along with this is that they are going to be used to spy on and track the whereabouts of everyday Ohioans as they go about their daily business," he said. "That slippery slope is extremely slippery when it comes to these types of things."

AG Yost said he expects a panel to continue to look at the issue regularly.

"I think it's important that we not remain static but that we continue to evaluate the uses and the safeguards for the technology," he said.

**Group Seeks Constitutional Change To Legislative Term Limits**

Speaker Larry Householder said Thursday's he's no fan of term limits, but hasn't yet formed an opinion on a new proposal that would curb some lawmakers' penchant for "seat swapping."

A group called Ohioans for Legislative Term Limits on Wednesday filed its proposal, a required summary, and 2,461 signatures with Attorney General Dave Yost's office. The plan would limit lawmakers to 16 total years of service in the
General Assembly regardless of chamber, meaning lawmakers could no longer switch between the House and Senate to continue serving after that time period.

Mr. Yost now has until March 2 to determine whether the summary is accurate and signature gathering can commence. The group would need to collect at least 442,958 valid signatures by July 1 – coming from 44 of the state's 88 counties – to land its plan on the November ballot but could target future ballots as well.

Asked about the plan, Speaker Householder (R-Glenford) said he's yet to review the specifics and that "the devil's in the details."

"I certainly don't think we got a bargain when we got term limits in the state of Ohio," the speaker said.

He said he generally disfavors term limits based on his first tenure as speaker when, in 2001, he saw the effects of Ohio's current term limits set in. Voters in 1992 approved the state's current term limits, which prevent lawmakers from serving more than eight consecutive years in either chamber.

The speaker said he enjoyed seeing how lawmakers took a regional approach to working for their shared interests. Once term limits took effect, he said, that cooperation ceased as members competed for jobs in the other chamber.

"I took over as speaker and I just watched as things changed because suddenly you had members that looked out and said, gee, I may have to run against so-and-so for a Senate seat so I'm not going to work as hard as a delegation would or take a regional approach on legislation because that might be my competition down the road," he said. "That's just one effect term limits have had."

He believes the current system has also empowered the executive branch, which he said can use job offers in the administration to encourage policymakers to play ball.

"That's a carrot the governor can always offer," he said. "So, it's been pretty oppressive for the people of Ohio and I'll be interested to see what this says and how it's crafted."

The new proposal would amend Article II, Section 2 of the Ohio Constitution to prohibit anyone from taking or holding office in the General Assembly, either by election or appointment, for longer than 16 years.

The language bars legislative service if "the number of years in the term or unexpired term to which that person is elected or appointed when added to the years that person has served as either state senator or state representatives or in any combination of these two offices would exceed a total period of 16 years."

That limitation would only apply to service beginning or after Jan. 1, 2021.

The filing identifies the campaign committee as: Willa Evans of Cleveland, Brian Steel of Columbus, and Brian Dean of Waverly. The group is represented by well-known Columbus election attorney Don McTigue, who generally represents labor and Democratic causes.

Some lawmakers have been vocal in their desire to loosen the current restrictions, arguing the limits are ineffective and sap the legislature of needed experience. Under the current setup, lawmakers are prone to seat swapping between chambers in order to extend their Statehouse tenures.

Prior efforts to strengthen term limits have failed to gain traction, however, including a 2015 citizen plan that would have limited lifetime service to 12 years. Legislative efforts have met similar ends – including a similar 2018 proposal (HJR6, 132nd General Assembly) to cap total service at 16 years that failed to receive any hearings.

**Voting Constitutional Amendment Proposal Certified**

Attorney General Dave Yost announced Thursday he certified a resubmitted summary of a petition for a proposed constitutional amendment designed to ease voting.

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It also calls for the implementation of same-day registration to allow eligible Ohioans to register and cast a ballot during early voting and on Election Day. It would also require early voting locations to be open on the two weekends prior to Election Day.

The proposal also looks to ensure that military service members and overseas citizens receive their ballots in a timely fashion, that voters with disabilities have equal access to the ballot box and that election results are audited.

Once the initial signatures are verified by county boards of election, the Ballot Board will determine if the proposal is a single issue.

If it clears that hurdle, Ohioans for Secure and Fair Elections can begin to collect the nearly 443,000 valid petition signatures from registered voters needed to secure a place on the November ballot.

The group said it will officially launch its campaign next month.

"We are pleased to progress our campaign efforts forward, and we remain committed to protecting and ensuring the right to vote for all eligible Ohioans, campaign manager Toni Webb said in a statement. "The freedom to vote is a fundamental American right and more participation in our elections means a stronger democracy."

She said groups supporting the amendment include the Ohio Conference of the NAACP, the Ohio A. Philip Randolph Institute, the Ohio Environmental Council, the Ohio Organizing Collaborative, the Ohio Student Association, the Ohio Religious Action Center for Reform Judaism, and Northeast Ohio Voter Advocates.

The Ohio Student Association was the latest group to back the proposal.

"Ohio is strongest when we all participate in our democracy," Executive Director Prentiss Haney said in a statement. "We are not living up to this promise. Currently, one out of three Ohio voters that have been purged from the voter rolls is a young person that is now on the outside of our democracy looking in. We are simply better than that."

Friday, February 21, 2020

Power Siting Board Seeks New Approach To Rulemaking

Members of the Ohio Power Siting Board are revamping their rulemaking process with an eye toward garnering a wider array of feedback for a pending five-year rule review.

Chair Sam Randazzo announced the plan at the board's Thursday meeting, saying members want to provide more opportunity for input as they gear up for a formal rulemaking process expected to begin in April.

"We're going to have an open, transparent conversation before we begin the formal rulemaking process to better inform us how we can adapt the rules and put in play a proposed set of rules that give stakeholders a better opportunity to help us get across the goal line," Mr. Randazzo said.

The wide-ranging rules in question include Administrative Codes 4906-1 to 4906-7, which in part govern general operations of the board, including definitions, board meeting protocols, and fees and payments.

The rules also cover topics including case procedures, certificate applications for electric generation facilities, transmission facilities and gas pipelines, accelerated certificate applications, and enforcement investigations.

Before the formal process begins, Mr. Randazzo said, the board will host a series of informal stakeholder workshops in March and a written comment period with a focus on how to best:
  • Encourage public participation in the siting process.
  • Improve technical application requirements.
  • Enhance construction monitoring and compliance efforts.

Mr. Randazzo said that last question centers partly on the use of conditions within certifications granted by the board.

"Many certificates are issued with conditions," he said. "We want see what we can do to in order to document, formalize the review of the conditions and compliance with those conditions and embed that in the rules as part of this effort."
Informational stakeholder meetings are being scheduled March 10 for utilities, renewable energy developers and trade associations; March 11 for activists, local officials and statewide groups; and March 25 for siting review agencies, lawmakers and the governor's office. Members of the public may submit written comments to OPSB@puco.ohio.gov.

Mr. Randazzo said he hopes the rulemaking process will be completed in 12 months or less.

"The world changes around us, and we need to review rules to make sure we're keeping up with the times and they're relevant," Mr. Randazzo said.

The board's effort to improve public participation, in particular, is likely to generate plenty of feedback from wind farm opponents who continue arguing before lawmakers the current siting process leaves them without an adequate voice. That debate has continued to play out during recent hearings on a pair of measures to enable wind farms to be overturned via referendums (HB 401 & SB 234).

**Governor Mulls Bill To Support Beginning Farmers**

Gov. Mike DeWine told farmers this week he's inclined to support legislation that would make it easier for beginning farmers to enter the profession.

His remarks came when asked about a pending bipartisan bill (HB 183) that would create a nonrefundable income tax credit for individuals or businesses that sell or rent land, livestock or other assets to beginning farmers.

Speaking to a crowd of Ohio Farm Bureau members, Gov. DeWine said he would favor "anything we can do to help."

"We're not telling farmers they have to sell their property. We're not telling them what to do with their property," he said of the bill. "You want to give them an option so anyone who wants to stay farming we want them frankly to be able to stay farming."

The measure, cosponsored by Rep. Susan Manchester (R-Lakeview) and Rep. John Patterson (D-Jefferson), was reported by the House Agriculture & Rural Development Committee in November after five hearings and several amendments.

Among changes was an expansion of the proposed credit by removing prior language that disqualified a person for renting or selling to a family member.

"This is a family business," Gov. DeWine said. "Many times, it is multigenerational. It's a whole life."

"This is a great place to live," he added. "One of the reasons is we have farmland. It's just part of who we are."

Addressing the OFB alongside Department of Agriculture Director Dorothy Pelanda, the governor touched on a myriad of other issues in addition to his signature H2Ohio effort.

That included the ODA's #gotyourback campaign – an effort alongside the Department of Mental Health and Addiction Services aimed at providing resources for farmers grappling with mental illness.

Director Pelanda said she phoned former lawmaker Al Landis, who was instrumental in the launching the initial, but more narrowly tailored, program and floated the idea of expanding the program to include a wider focus on mental health.

"We realized farmers are by nature reticent," Director Pelanda said. "They're not going to reach out to us. We need to reach out to them."

"We will be able to provide advocates and resources by reaching out to the farmers through this new program," she said.

The two also addressed the administration's efforts to ensure as many rural residents are counted in the 2020 Census as possible.

"In a day and age where we're kind of divided sometimes as a country," Gov. DeWine said, "this is an area where I don't care what your political persuasion. Everyone in Ohio has an interest in counting everyone."

Ms. Pelanda said ODA will work to ensure rural residents understand the ramifications of an inaccurate count, including a potential downsizing of the state's congressional delegation and its federal assistance eligibility.
"I'm encouraged by the amount of organizations public and private working to make sure we have as accurate a count as possible," she said.

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