

RATE OF RETURN:

What Will Ohio's Electric Utilities Get for Campaign Cash?

Introduction

Senate Bill 58, introduced in 2013 by Senator Bill Seitz (R-Cincinnati) and currently before the Senate Public Utilities committee, aims to undo significant portions of Ohio's energy efficiency and renewable energy laws that were adopted in 2008. The efficiency standards in Ohio law have been shown to have saved billions of dollars for electricity users, and have created thousands of jobs for Ohioans. SB 58 would reverse these achievements and raise energy costs for Ohioans, in addition to creating large benefits for the utility companies. Aggressive giving to the campaigns of candidates for Statehouse and the parties that support them may be part of a coordinated strategy to enact these changes, which will cost consumers and enrich utility companies by an estimated nearly \$4 billion over the next few years.

History

SB 221, Ohio's landmark energy legislation, was passed in May, 2008 with bipartisan support and signed into law by Governor Ted Strickland. The law required Ohio utilities to identify and implement ways to help customers use 22.2% less electricity by 2025. The law also encouraged Ohio's use of renewable energy and set annual benchmarks (progressively rising to 12.5% by 2025) for the amount of the state's total electric supply that must come from renewable sources. The law also required that at least half of that renewable energy must be generated in Ohio.

The law is already paying dividends. A recent study by researchers at Ohio State University found that, since taking effect, Ohio's law has reduced electricity use by 2.6%, saving consumers over \$4 billion, and created over 3,200 jobs from 2008 to 2012.¹

In the face of overwhelming public and bipartisan political support, Ohio's regulated utilities reluctantly agreed to the legislation. But many of them — led by First Energy of Akron — almost immediately began plotting to undo it. Over the next five years, these companies made millions of dollars in political contributions, the overwhelming majority of which went to Republican state legislative and gubernatorial candidates, as well as to the Ohio Republican party. As soon as the state fell under one-party Republican control in January of 2011, the utilities and their legislative champion — Senator Bill

¹ Ohio State University Center for Resilience, "Economic Analysis of Ohio's Renewable and Energy Efficiency Standards," November 18, 2013.

Seitz of Cincinnati — pushed to roll-back the requirements of SB 221. Though unsuccessful during the 129th General Assembly, Seitz renewed his efforts early in 2013 at the beginning of the 130th General Assembly.

Senate Bill 58 (SB 58) is the product of that effort.

SB 58 Overview

The legislation, as currently pending before the Senate Public Utilities Committee, allows the largest industrial users of electricity – who, combined, are estimated to consume as much as 40% of the state's electric load² – to "opt out" of the law's efficiency requirements, while continuing to enjoy savings as a result of the efforts of other customers. The bill further caps — at 2013 levels — the amount utilities can spend on efficiency, greatly expands the definition of what counts as "efficiency" (including, for example, such things as low-flush toilets and power plant upgrades that date back to 2006), and allows utilities to keep for themselves a much larger share of customer savings that result from energy efficiency.

With respect to renewable energy, the bill eliminates the in-state requirement that half of a utility's renewable energy come from Ohio sources. Indeed, the legislation specifically allows Ohio utility companies to purchase hydropower from Canada. The bill further eliminates mandatory penalties against utilities that fail to meet renewable energy benchmarks.

One of the more controversial provisions of SB 58 is the expansion of the so-called "shared savings" allowance that utilities can collect. Under current law, an electric utility can keep for itself 13% of the savings customers realize from energy efficiency. SB 58 would raise the utility's share to 33.3%. And the legislation would also allow companies to pocket this amount *even before* meeting their annual efficiency benchmarks, eliminating an additional incentive to exceed the targets.

And if the financial windfall utility companies would receive from the increase in their share of efficiency savings isn't bad enough, SB 58 would also allow them to stick customers with the increased tax bill the companies would get as a result.

According to Ohio's Consumers' Counsel, "the 33% and the tax effect together mean that customers forgo more than half of the energy efficiency benefits by paying them as profits to the utility." According to an estimate from the Environmental Law and Policy Center, the "shared savings" provision alone is estimated to result in over \$1.1 billion in additional revenue for the utilities compared to current law. 4

² Testimony by Trish Demeter, Ohio Environmental Council, to the Senate Public Utilities Committee, October 2, 2013.

³ Testimony by Bruce Weston, Ohio Consumers' Counsel, to the Senate Public Utilities Committee, October 9, 2013.

⁴ According to an internal memo entitled "Analysis of impact of SB 58 on Shared Savings amounts in Ohio from 2013-2025," from John Paul Jewell to Nick McDaniel and Rob Kelter of the Environmental Law and Policy Center, October 29, 2013.

One of the major anticipated effects of SB 58 is an increase in electric rates for Ohio consumers, estimated to cost the typical Ohio household \$528 in higher bills over a three year period. The total impact to consumers could be as much as nearly \$4 billion over 12 years, according to the aforementioned Ohio State University study, commissioned by the Advanced Energy Economy Ohio Institute. The OSU analysis found that electric rates would be 3.7% higher after ten years, the use of renewable energy would be 76% less, and nearly 6,500 new jobs would never be created if the law were modified as proposed in the legislation.

A proposed amendment to SB 58 is currently being circulated that would change some of the bill's provisions, such as retaining the in-state requirement for renewables, but allowing any power "deliverable" to Ohio from a regional network to qualify, retaining the possibility that Canadian renewable energy could be counted toward the requirement. The amendment would also modify the shared savings provision, cutting it according to experts to just under a billion dollars. Regardless of these small modifications, SB 58 continues to kill Ohio jobs, raise electricity rates and equates to a huge giveaway to the utilities. Not only will Ohioans pay more for their energy, but also a larger percentage of profits from the efficiency programs would go to the utilities instead of back to consumers.

If SB58 represents such a bad deal for electric consumers, including some of Ohio's largest employers, why do the electric utilities think they have a shot at undoing the law?

The answer may lie in an examination of campaign contributions by these companies to individuals and organizations that are in a position to enact changes to the law.

Campaign Giving by Ohio's Four Electric Utilities

Innovation Ohio examined the political contributions made by the staff and political action committees (PACs) of the state's four electric utilities to candidates for Governor and the Ohio General Assembly, as well as those they made to the Republican and Democratic parties. Specifically, IO reviewed contributions made from May, 2008 to July, 2013 by individuals identifying one of the four electric utilities as their employer as well as from the political action committees set up by these companies to contribute to state campaigns⁷. Contributions to local political parties and candidates were not considered, nor were contributions to candidates for statewide office that do no play a role in the lawmaking process.

In other words, we looked at utility campaign contributions to parties and to office-holders who either play a role in regulating the energy industry, or who have a leadership role in bringing legislation to a vote in the General Assembly.

⁵ Ohio Plain Dealer, *Ohio Senate should kill electric-utility sweetheart bill masquerading as reform: editorial,* December 1, 2013.

⁶ Op. cit. Ohio State University Center for Resilience.

⁷ Data on individual contributions were obtained via the Ohio Secretary of State Contributions Search tool, using the four electric utilities and their subsidiaries in the Employee/Occupation Field dating back to May 1, 2008. Data on giving by Political Action Committees was obtained via the Ohio Secretary of State's PAC Expenditures Search tool, using the name(s) of each company's PAC in the PAC name field. Contributions between May 1, 2008 and July 31, 2013 were reviewed, but Ohio law only requires the July 31, 2013 filing to include data up to June 30, 2013.

Combined, we found that employees and PACs of the state's four electric utilities contributed nearly \$2.7 million to candidates for the state legislature, governor and statewide political party organizations since the passage of SB 221. Table 1 indicates how that spending was distributed.

Table 1 - Electric Utility Contributions to Statehouse Campaigns, Parties since May, 2008

	First Energy		AEP		Duke		DP&L	Total		
Candidates for Legislature	\$	933,185	\$	671,438	\$	253,035	\$ 111,937	\$	1,969,595	
Statewide Political Parties	\$	309,950	\$	25,867	\$	8,515	\$ 12,000	\$	356,332	
Candidates for Governor	\$	99,125	\$	142,903	\$	75,585	\$ 16,050	\$	333,663	
	\$ 1,342,260		\$	840,209	\$	337,135	\$ 139,987	\$	2,659,591	

Of that amount, \$1.37 million, or 52%, went to current members of the Ohio House and Senate. Our analysis finds that while more money in total was directed at the state's 99 House members, on average, sitting Senators received far more. The average Senator has received \$17,546 from utilities compared to \$8,019 taken in by House members. Republican members saw average contributions of \$13,389, or nearly three times that of their Democratic colleagues who received just \$5,232.

Table 2 outlines how campaign spending on the campaigns of current members of the Ohio legislature was distributed across the four companies, between legislative chambers and by political party.

Table 2 - Distribution of utility contributions to current Ohio legislators

	House Republicans				House Total		Senate publicans	Senate Democrats			Senate Total		TOTAL
First Energy	\$	281,180	\$	93,295	\$	374,475	\$ 276,610	\$	43,075	\$	319,685	\$	694,160
AEP	\$	218,527	\$	64,490	\$	283,017	\$ 135,346	\$	14,050	\$	149,396	\$	432,413
Duke	\$	55,985	\$	32,525	\$	88,510	\$ 58,750	\$	9,250	\$	68,000	\$	156,510
DP&L	\$	43,455	\$	4,400	\$	47,855	\$ 41,432	\$	500	\$	41,932	\$	89,787
	\$	599,147	\$	194,710	\$	793,857	\$ 512,138	\$	66,875	\$	579,013	\$	1,372,870

First Energy, widely understood to be the main champion for SB58, has been the largest contributor to current state legislators, giving \$694,160 to their campaigns since the passage of SB 221, representing more than half of the giving of all four companies. SB 58 got its start in the Senate Public Utilities committee, so perhaps not surprisingly, members of that committee were the recipients of fully 64% of all giving by First Energy employees and political action committees in the chamber. That giving was directed in the favor of committee Republicans, who took in \$173,500 – or 84% – compared to just \$32,000 to committee Democrats.

AEP focused its giving, particularly in the House, on members who serve in leadership, and who, as a result, play a role in determining which legislation will move in the Chamber -- including SB 58 when it emerges from the Senate as early as this week. House leaders received 47% of the company's contributions to the campaigns of current House members. Duke Energy and Dayton Power & Light were much less aggressive in their political giving, awarding just \$156,510 and \$89,787 to state lawmakers, respectively. Those companies, like their two more generous peers, split their giving between the two chambers, but focused primarily on majority Republicans.

Table 3 highlights total giving, by employees and political action committees of all four electric utilities, to members of the Ohio Senate since May, 2008.

Table 3 - Contributions to Senate Members

Member	Amount	Party	Member	Amount	Party
Jones ^C	\$96,350	GOP	Obhof ^L	\$9,850	GOP
Faber ^L	\$66,756	GOP	Schiavoni ^L	\$9,575	DEM
Coley ^C	\$46,000	GOP	Sawyer ^c	\$8,500	DEM
Seitz ^C	\$38,800	GOP	Eklund ^c	\$7,500	GOP
Widener ^L	\$34,925	GOP	Gentile ^c	\$7,000	DEM
Patton ^{C,L}	\$27,550	GOP	Uecker ^c	\$6,250	GOP
Balderson ^C	\$26,950	GOP	Beagle	\$6,000	GOP
Bacon	\$22,800	GOP	Schaffer	\$6,000	GOP
LaRose ^C	\$22,000	GOP	Burke	\$5,750	GOP
Hughes	\$21,500	GOP	Peterson	\$3,500	GOP
Hite ^C	\$18,585	GOP	Oelslager	\$1,000	GOP
Jordan	\$17,600	GOP	Brown	\$0	DEM
Kearney ^L	\$15,000	DEM	Manning	\$0	GOP
Gardner	\$14,000	GOP	Skindell	\$0	DEM
Smith ^C	\$13,550	DEM	Tavares	\$0	DEM
Cafaro ^{C,L}	\$13,250	DEM	Turner	\$0	DEM
Lehner	\$12,472	GOP			

<u>Key</u>: C=member of Senate Public Utilities Committee; L=member of Senate Leadership

Table 4 – Contributions to House Members

Member	Amount	Party	Member	An	nount	Party	Member	An	nount	Party
Batchelder ^{LS}	\$ 199,44	5 GOP	Pelanda	\$	5,750	GOP	Phillips ^L	\$	2,000	DEM
Budish*	\$ 80,74	0 DEM	Strahorn ^c	\$	5,600	DEM	Terhar ^c	\$	2,000	GOP
Stautberg ^{CC}	\$ 59,60	7 GOP	Gerberry	\$	5,550	DEM	Ramos	\$	1,780	DEM
Huffman ^L	\$ 40,75	0 GOP	Heard ^L	\$	5,550	DEM	Hackett	\$	1,680	GOP
Grossman ^L	\$ 36,60	0 GOP	Letson	\$	5,250	DEM	Perales	\$	1,680	GOP
Gonzales ^c	\$ 33,52	5 GOP	DeVitis	\$	5,000	GOP	Smith, R	\$	1,650	GOP
Sears ^L	\$ 33,50	0 GOP	Slesnick	\$	5,000	DEM	Blair	\$	1,550	GOP
Hottinger	\$ 22,50	0 GOP	Maag	\$	4,500	GOP	O'Brien ^c	\$	1,515	DEM
Redfern	\$ 21,00	0 DEM	Thompson ^c	\$	4,150	GOP	Baker	\$	1,200	GOP
Amstutz ^C	\$ 19,50	0 GOP	Stinziano ^c	\$	4,000	DEM	Stebelton	\$	1,100	GOP
McGregor	\$ 16,62	5 GOP	Mallory, D	\$	3,950	DEM	Boose	\$	1,000	GOP
Roegner ^C	\$ 15,50	0 GOP	Pillich	\$	3,800	DEM	Henne	\$	1,000	GOP
Adams, J ^{L,C}	\$ 12,50	0 GOP	Conditt ^c	\$	3,250	GOP	McClain	\$	1,000	GOP

Hall	\$ 12,000	GOP	Slaby	\$ 3,000	GOP	Reece	\$ 1,000	DEM
Williams ^c	\$ 10,500	DEM	Adams, R	\$ 2,800	GOP	Sprague	\$ 1,000	GOP
Hagan, C ^C	\$ 9,250	GOP	Derickson	\$ 2,385	GOP	Brenner	\$ 500	GOP
Duffey ^c	\$ 8,500	GOP	Driehaus	\$ 2,275	DEM	Landis	\$ 500	GOP
Sykes	\$ 8,500	DEM	Buchy ^L	\$ 2,250	GOP	Scherer	\$ 500	GOP
Rosenberger ^C	\$ 8,350	GOP	Clyde	\$ 2,250	DEM	Foley	\$ 250	DEM
Wachtmann	\$ 8,000	GOP	Winburn	\$ 2,050	DEM	Brown, T	\$ 200	GOP
Beck	\$ 7,350	GOP	Anielski	\$ 2,000	GOP	Milkovich	\$ 200	DEM
Boyce ^C	\$ 7,250	DEM	Butler ^c	\$ 2,000	GOP	Celebrezze ^c	\$ 50	DEM
Curtin	\$ 6,600	DEM	Kunze	\$ 2,000	GOP			
Carney	\$ 6,050	DEM	Patmon	\$ 2,000	DEM			

Key: C = Member of House Public Utilities Committee (CC=Chairman); L = Member of House Leadership (LS=Speaker). Rep. Budish served as Speaker from 2009-2010 and Minority Leader in 2011 and 2012. Twenty-nine House members, including one member of Democratic leadership and five members of the Public Utilities committee received no contributions attributable to the electric utilities since May, 2008.

The \$2.7 million in contributions recorded since May, 2008 may represent just the start of an ambitious campaign to change the law. Campaign finance reports, submitted on July 31, only required the disclosure of political giving through June, 2013. But meetings with interested parties and committee hearings on SB58 only began in earnest late in the summer, with committee hearings commencing at the end of September. Since July – a time period not yet subject to campaign finance disclosures – legislators have held some 127 fundraisers. The total amount that utilities have contributed to Ohio lawmakers, Governor Kasich and the state political parties that support their campaigns will remain unknown until the next campaign reporting deadline on January 31, 2014.

We cannot know whether these millions of dollars in contributions from utilities to politicians and parties were made for the purpose of encouraging good government, or to influence the outcome of legislation. Nor can we know whether it was a coincidence that the bulk of the giving has gone to members of the very committee where SB 58 originated.

Conclusion

Senate Bill 58 creates a new \$4 billion windfall for Ohio's electric utilities – at the expense of Ohio consumers. The utilities, armed with a mountain of cash and an army of lobbyists⁹, have spent five years giving generously to the very people who could enact a change in the law that would benefit their bottom lines while costing Ohioans more on their electricity bills and jeopardize jobs in the state's emerging energy sector. Whether lawmakers will ultimately choose to represent the interests of Ohio consumers and workers or respond to the largesse of the state's electric utilities remains to be seen.

⁸ IO review of Gongwer News Service published notice of legislative fundraising events since 6/30/13.

⁹ According to the Joint Legislative Ethics Committee's Ohio Lobbying Activity Center, 44 individuals are currently registered to lobby on behalf of the state's four electric utilities, 26 of whom have filed disclosures indicating they are engaged to influence legislators about SB 58.