

CLIENT ALERT

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OHIO EXTENDS CLEAN ENERGY “PAYMENT IN LIEU OF TAX” PROGRAM FOR FOUR ADDITIONAL YEARS LEGISLATURE ADDS FLEXIBILITY ON IN-STATE WORKFORCE REQUIREMENT

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On June 30, 2023, the Ohio General Assembly passed the state operating budget ([HB 33](#)), which contains a 4-year extension of the Payment in Lieu of Tax (PILOT) statute, making the tool available until the end of 2028.¹ The legislation also revises the PILOT statute's eligibility rules to provide flexibility regarding the in-state workforce requirements. Governor DeWine signed the bill on July 3, 2023, and filed the bill on July 4, 2023, making the PILOT program changes effective on October 2, 2023.²

Background: In 2010, the Ohio General Assembly passed Senate Bill 232 to ensure a reasonable, predictable tax climate for clean energy generation facilities. The legislation created a new method of taxation for renewable energy projects if the local county commission approves. Under the PILOT statute, renewable energy project owners remit to the county a fixed annual amount per megawatt (MW) payment in lieu of real and personal property tax.

Solar projects pay \$7,000 per MW annually but had to employ at least 80% of Ohio residents while in construction. County commissioners may negotiate additional service payments, not exceeding \$9,000 per MW annually. Wind projects pay \$6,000 – \$9,000 per MW annually, depending on the percentage of Ohioans employed during construction—which must be at least 50%. (The higher the ratio of Ohio-domiciled employees, the lower a project's tax liability).

PILOT Extension: Originally passed with a sunset, the legislature has extended the law several times, but it was again set to expire at the end of 2024. HB 33 extends the PILOT by four years to ensure the tool remains available through December 31, 2028.³

Programmatic Updates:⁴ Utility-scale solar projects that apply to the Ohio Department of Development after the effective date will now be subject to an Ohio-domiciled worker requirement of 70% (reduced from 80%).⁵ HB 33 also clarifies that “full-time equivalent employee” hours only include employee hours devoted to “site preparation and protection, construction and installation, and material unloading and distribution;” superintendents, manufacturers' representatives, and other management types are not included in the 70% workforce calculation.⁶

The amended law also contributes to the long-term development of a skilled renewable energy construction workforce. To be eligible for the PILOT, projects with a capacity of 20 MW or greater must meet the prevailing wage and apprenticeship provisions of the federal Inflation Reduction Act (“IRA”).⁷ The language also creates an option for solar projects that already hold a PILOT certificate or apply for one before the provision's effective date to voluntarily avail themselves of the 70% domicile threshold if they meet these same wage and apprenticeship standards.⁸ Importantly, these provisions only apply to projects that seek the PILOT. Non-PILOT projects are not impacted.

Conclusion: Extending the PILOT and making these important workforce-related updates will ensure that project developers and investors will have greater long-term certainty, as delays in the regional interconnection queue and other factors have lengthened project development cycles and will further encourage development to meet continued demand for clean energy.

For assistance regarding clean energy projects in Ohio, please feel free to reach out to our Dickinson Wright team.

KEY CONTACTS



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¹ R.C. 5727.75 is referred as the PILOT Statute through this bulletin.

² Amendments to R.C. 5727.75 contained in HB 33 will be effective on the ninety-first day after being filed in the Ohio Secretary of State's office. See Art. 2 §(c) of the Ohio Constitution.

³ Note the language also indicates the extension could last until the later of that date or the tax year in which the U.S. Treasury Secretary determines annual greenhouse gas emission from the production of electricity in the U.S. are met. See R.C. 5727.75 (A)(7).

⁴ The enrolled version of the legislation passed by the General Assembly updated the definition of “Ohio-domiciled” to include union members who live in adjacent states but within 50 miles of the Ohio border. Governor DeWine line item vetoed the provision. See Item No. 14 and corresponding boxed text attached to the Governor's Veto Message.

⁵ R.C. 5727.75(F)(6).

⁶ R.C. 5727.75(A)(4).

⁷ R.C. 5727.75(E)(2)(d).

⁸ R.C. 5727.75(F)(6).

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