



COUNTY ADVISORY BULLETIN

CAB

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Bulletin 2021-05

August 2021

WIND AND SOLAR ELECTRIC GENERATION SITING AUTHORITY

APPLICABLE LEGISLATION: Substitute Senate Bill 52 (134th General Assembly)

Permits a board of county commissioners to prevent power siting board certification of certain wind and solar facilities; provides for one member of the board of county commissioners and one member of board of township trustees, or their designees, to be ad hoc members of the power siting board; establishes decommissioning requirements for certain wind and solar facilities.

O.R.C. SECTIONS AMENDED: 4906.01, 4906.02, and 4906.10

O.R.C. SECTIONS ENACTED: 303.57, 303.58, 303.59, 303.60, 303.61, 303.62, 4906.021, 4906.022, 4906.023, 4906.024, 4906.025, 4906.101, 4906.102, 4906.103, 4906.21, 4906.211, 4906.212, 4906.22, 4906.221, 4906.222, 4906.30, and 4906.31

LEAD SPONSORS: Senators Reineke and McColley

SENATE COSPONSORS: Brenner, Cirino, Huffman, M., Lang, O'Brien, Rulli, Schaffer, Schuring, Wilson

HOUSE COSPONSORS: Carruthers, Click, Creech, Cross, Hoops, Riedel, Seitz, Swearingen

EFFECTIVE DATE: October 11, 2021

BULLETIN SUMMARY

The Act establishes new procedures to increase local oversight and control of site selection for utility-scale wind and solar electric generation facilities before and during the Ohio Power Siting Board (OPSB) review process. The Act allows a board of county commissioners to prohibit the construction of utility-scale wind or solar facilities altogether, or to prohibit their construction in certain designated zones in the unincorporated area of the county. The designation of such zones is subject to an initiated petition for a referendum.

Before applying to the OPSB for a certificate to allow new construction or for an amendment to add significant capacity to an existing facility, the applicant wind or solar developer must hold a public meeting in the county. No later than 90 days after the public hearing, the board of county commissioners may adopt a resolution to prohibit the construction of the facility or to limit its geographic area. The decision of the commissioners may not be overruled by the OPSB.

The Act adds two voting members to the OPSB when a wind or solar project is being considered. These members are the president of the board of county commissioners and the chairperson of the board of township trustees in the project area, or their designees. A designee must be a resident of the affected political subdivision.

The Act also requires a wind or solar developer to submit a plan and cost estimate for the decommissioning of the facility. The developer must post a performance bond equal to the amount of the estimated cost.

Proposed wind projects that have been determined to be accepted and complete by the Power Siting Board no later than 30 days after the Act's effective date will not be subject to its provisions. The Act's requirements also do not apply to solar projects that have received a completed system impact study from the PJM Interconnection and have paid their fee for a facilities study.

BACKGROUND: OHIO POWER SITING BOARD AND PJM INTERCONNECTION

Companies that want to build utility-scale solar or wind facilities must obtain approval from the PJM Interconnection and from the Ohio Power Siting Board (OPSB). PJM Interconnection is a federally-regulated organization that coordinates the connection between electricity generation facilities and the interstate transmission grid in Ohio and all or part of twelve other states. The PJM application process for connecting new generation is designed to study the project's impact on the electric grid and the costs to establish a new connection while meeting reliability standards. The application process involves a series of engineering studies that become more detailed and expensive with each step. The costs for each study are paid for by the applicant, who may withdraw a proposal at any time.

- A Feasibility study estimates interconnection costs and construction time to provide initial feedback to the developer.
- A System Impact study performs more detailed analysis and more precise estimates for system upgrade costs and timing.
- The Interconnection Facilities study includes detailed design work for all required network transmission upgrades and attachment facilities.

In order to have a complete application that is ready for review by the OPSB, the developer must at least have a completed PJM System Impact study (Ohio Admin. Code 4906-4-05).

In order to begin the process and enter the PJM "new services queue," an applicant must demonstrate land control at the project site, typically through lease agreements lasting at three years. Historically, the majority of initial proposals for new generation facilities do not result in an Interconnection Service Agreement (ISA), the final outcome of the process that establishes the terms and conditions that govern the new interconnection. An executed ISA includes the

developer, the transmission equipment owner to which the facility will be connected, and the PJM.

In order to construct and operate a generation facility in the state of Ohio, a developer must obtain a certificate from the OPSB. The OPSB is a state agency that is comprised of voting members from six state agencies and one public member, and four non-voting legislative members. The Chairperson of the Public Utilities Commission serves as Chairperson of the OPSB. Its procedures and criteria for approval are established in ORC Chapter 4906 and elaborated in administrative rules.

As discussed below, the Act adds two “ad hoc” voting members from the project area – a county commissioner and a township trustee -- to the OPSB. Otherwise, the basic process for OPSB review is not changed by the bill. OPSB has prepared a [flowchart](#) of the standard application process that is available on its website. In summary, the OPSB process consists of six segments:

1. Pre-application phase

This includes an optional pre-application conference with OPSB staff, a pre-application letter to OPSB describing the project, and an applicant-hosted public informational meeting near the project site. The public informational meeting must take place no more than 90 days prior to the submission of a formal application to the OPSB. The applicant must also send a letter to each property owner and affected tenant describing the certification process, how to participate, and how to request notifications of the Board-facilitated public hearing.

2. Application submission and staff review of application completeness

After the application is submitted, OPSB staff members have 90 days to review its content and ensure that it contains the required information. A typical application is about 1,500 pages in length. If an application is deemed incomplete, staff will notify the applicant in a formal letter so the deficiencies can be corrected. If the application is complete, the process moves to the investigation phase.

3. Investigation

First, an administrative law judge sets the hearing dates and deadlines for parties to intervene in the case, and the applicant provides formal notice to landowners and appropriate government entities. Staff conducts an investigation of the project that includes site visits and a review of public comments. A staff report with findings and recommendations is due 15 days prior to the scheduled public hearing.

4. Hearings

The board conducts two formal hearings. The first is a public hearing, approximately two weeks after the staff report is issued, during which members of the public may offer sworn testimony to the board. Several weeks later, the board holds an evidentiary hearing where the applicant, OPSB staff, and any other formal parties may provide expert testimony.

5. Decision

The parties have an opportunity to file final briefs and reply briefs after the hearing. The administrative law judge drafts a final recommendation to the board based on all of the evidence on the record. The OPSB may approve, deny, or approve the project with conditions.

6. Rehearing/Appeal (if needed)

Parties to a case may request a rehearing within 30 days of the board's decision. A party that disagrees with the board's decision may appeal the case to the Ohio Supreme Court within 60 days after the decision on rehearing.

OPSB continues to monitor a project during the construction and operation. The applicant must establish a complaint resolution process to address concerns resulting from project construction and operation and must report quarterly to the board about this process. More information is available on the OPSB website, <https://opsb.ohio.gov/wps/portal/gov/opsb/home>.

SCOPE AND DEFINITIONS

Revised Code Sections: 303.57, 4906.01

The Act applies to electric generation facilities that meet the criteria for an “economically significant wind farm,” a “large wind farm,” or a “large solar farm.” These types of facilities are defined as follows:

- "Economically significant wind farm" means wind turbines and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of five or more megawatts but less than fifty megawatts. The term excludes any such wind farm in operation on June 24, 2008. The term also excludes one or more wind turbines and associated facilities that are primarily dedicated to providing electricity to a single customer at a single location and that are designed for, or capable of, operation at an aggregate capacity of less than twenty megawatts, as measured at the customer's point of interconnection to the electrical grid (ORC 4906.13).
- "Large solar farm" means an electric generating plant that consists of solar panels and associated facilities with a single interconnection to the electrical grid that is a "major utility facility" under OPSB jurisdiction, designed for, or capable of, operation at a capacity of 50 megawatts or more.
- "Large wind farm" means an electric generating plant that consists of wind turbines and associated facilities with a single interconnection to the electrical grid that is a "major utility facility" under OPSB jurisdiction, designed for, or capable of, operation at a capacity of 50 megawatts or more.

A facility that meets any of these definitions is considered a “utility facility” and is subject to the Act's provisions if the developer files a new application with the OPSB or an application for a “material amendment.” A material amendment means any of the following:

- Changes to the facility's generation type from one type of utility facility to another;

- Increases to the facility's nameplate capacity;
- Changes to the boundaries of the facility, unless the new boundaries of the facility are completely within the previous boundaries of the facility or the facility components outside of the previous boundary are underground.

Material amendments do not include the addition of a battery storage system to a utility facility.

For large wind farms and economically significant wind farms, a request to increase the number of wind turbines or the height of a wind turbine is also considered a material amendment.

DESIGNATION OF RESTRICTED AREAS

Revised Code Section: 303.58

A board of county commissioners may prohibit the construction of an economically significant wind farm, large wind farm, or large solar facility throughout the unincorporated areas of the county. Alternatively, the commissioners may designate one or more restricted areas within the county where wind and solar development cannot take place. The resolution may be adopted at a regular meeting of the board or at a special meeting called for this purpose. A resolution designating a restricted area must include a map of the restricted area and a description sufficient to identify all of its boundaries. A copy of the resolution and any accompanying texts and maps must be filed with the office of the county recorder of the county. The resolution becomes effective 30 days after its adoption unless it the board receives a petition for a referendum with a sufficient number of signatures.

At least 30 days prior to the meeting at which a resolution to designate a restricted area will be discussed, the board must do all of the following:

- provide public notice of the date and time of the meeting in one publication in a newspaper of general circulation within the county;
- post a map showing the boundaries of the proposed restricted area at all public libraries within the county;
- provide written notice of the meeting by first class mail to all school districts, municipal corporations, and boards of township trustees located in whole, or in part, within the boundaries of the proposed restricted area.

The Power Siting Board may not accept an application or grant a certificate for a new project or material amendment to a project located in a designated restricted area (ORC 303.60 and 4609.101). The same procedures must be followed if the board later modifies a previously adopted resolution establishing a restricted area. A resolution to designate a restricted area does not apply retroactively to an application previously presented to the commissioners at a mandatory public hearing and for which the board failed to prohibit the project within the 90-day window for a response (see "Mandatory Public Hearing For a Proposed Project and County Response" Section Below).

REFERENDUM ON DESIGNATION OF A RESTRICTED AREA

Revised Code Section: 303.59

Voters may gather signatures for an initiated petition for a county-wide referendum to challenge the designation of a restricted area. To be valid, the petition must be signed by at least eight percent of the number of registered electors that voted in the county at the most recent gubernatorial election. The petition must be submitted to the commissioners no later than 30 days after they adopted the resolution designating the restricted area. The election must be held on the date of a primary or general election.

Each petition must contain the number and the full and correct title, if any, of the resolution, motion, or application, including the name by which the resolution is known and a brief summary of its contents. In addition to meeting the requirements of ORC section 303.59, the petition is governed by the rules specified in ORC section 3501.38.

The Act prescribes the form of the petition and the circulator's statement, which are shown in full in Appendix 1 to this bulletin.

The circulators must initially file the petition with the board of county commissioners, which must certify the petition to the board of elections within two weeks after receiving it. The board of elections must receive the petition at least 90 days prior to the election at which the question is to be voted on. The board of elections must determine the sufficiency and validity of each petition certified to it by a board of county commissioners. If the board of elections determines that a petition is sufficient and valid, the question will be placed on the ballot on the date at which the next primary or general election that occurs at least one 120 days after the date the petition is filed with the board of county commissioners, regardless of whether the election on the date includes the nomination or election of any candidates.

The resolution cannot go into effect until the referendum vote is held. Upon certification by the board of elections that the resolution has been approved by the voters, it takes immediate effect.

Within five working days after the resolution's effective date, the board of county commissioners must file the text of the resolution and maps of the restricted area in the office of the county recorder and with the county or regional planning commission, if one exists. The failure to file any resolution, or any text and maps, or duplicates of any of these documents, with the office of the county recorder as required by law does not invalidate the resolution.

MANDATORY PUBLIC HEARING FOR A PROPOSED PROJECT AND COUNTY RESPONSE

Revised Code Sections: 303.61, 303.62, and 4906.102

The project developer must hold a public meeting in each county where a utility facility is to be located in whole or part within the unincorporated area of the county. These requirements for a public meeting and prior notification also apply to the owner of a facility intending to apply for a material amendment that makes any change or modification to an existing certificate.

The meeting must be held at least 90 days, but not more than 300 days, prior to submitting an application or a material amendment to the OPSB. The applicant must provide written notice to the commissioners and to the affected boards of township trustees at least 14 days prior to the

meeting. The applicant must provide information in writing to the commissioners, including a map with the boundaries of the proposed project and the project's nameplate generation capacity.

At the public meeting, the project developer must provide the following information:

- whether the utility facility will be an economically significant wind farm, a large wind farm, or a large solar facility;
- the maximum nameplate capacity of the utility facility;
- a map of the proposed geographic boundaries of the project within that county.

No later than 90 days after the public meeting, the board of county commissioners may adopt a resolution to prohibit the construction of the utility facility or limit its boundaries. If new boundaries are established, they must be within the limits proposed by the developer, and they cannot be enlarged during the OPSB process (ORC 4906.303). If no resolution is adopted, the application may proceed as proposed. The adoption of a resolution does not preclude the developer from filing another proposal for consideration by the commissioners at a later date.

The OPSB cannot grant a certificate for the construction, operation, and maintenance of, or a material amendment to an existing certificate, for a utility facility if the county commissioners have adopted a resolution prohibiting the project under this procedure. If the utility facility is to be located in multiple counties and less than all of the boards of county commissioners adopt a resolution prohibiting the construction of a utility facility, the OPSB must modify the certificate or material amendment to exclude the area of each county whose board of county commissioners rejected the certificate or material amendment.

The Act does not modify commissioners' authority to negotiate a tax abatement through an Alternative Energy Zone (AEZ) PILOT payment under ORC section 5727.75, if one is requested. Developers should be encouraged to share information with the commissioners and the county auditor in order to develop accurate financial scenarios. Traditionally, counties have used the discussion about the tax exemption to encourage developers to work with commissioners and the county engineer to address related concerns about the site, such as screening, drainage, and a Road Use Maintenance Agreement (RUMA). For further information on AEZs, please consult [County Advisory Bulletin 2014-04](#) and the June 2021 CCAO [webinar](#), "Alternative Energy Zone Exemptions for Wind or Solar Utility Projects."

IDENTICAL INFORMATION SUBMITTED TO THE COUNTY AND OPSB

Revised Code Section: 4906.30

The OPSB cannot grant a certificate for the construction, operation, and maintenance of, or a material amendment to an existing certificate for a utility facility, if the information in the application differs in any of the following respects from that submitted to the county in advance of the public meeting:

- a nameplate capacity exceeding that which was provided to the county commissioners;

- a geographic area that is not completely within the boundaries provided to the county commissioners or within the limited boundaries established by resolution of the county commissioners; or,
- a type of generation that is different than that which was provided to the county commissioners.

AD HOC MEMBERSHIP ON THE POWER SITING BOARD

Revised Code Sections: 4906.02, 4906.021, 4906.022, 4906.023, 4906.024, 4906.025

The Act creates two “ad hoc” voting members of the OPSB for the purpose of hearing a project proposal or material amendment. These ad hoc members are the chairperson of the board of township trustees from the affected township, and the president of the board of county commissioners, or their designees. A designee must reside in the affected township or county and may be another elected official.

If a utility facility is to be located in multiple townships, a single ad hoc member to represent the townships will be chosen by a majority vote of all of the boards of township trustees of the townships in which the utility facility is to be located. Similarly, if a utility facility is to be located in multiple counties, a single ad hoc member to represent the counties will be chosen by a majority vote of all of the boards of county commissioners of the counties in which the utility facility is to be located. The ad hoc members must be appointed no later than 30 days after the OPSB notifies the county that the project application is accepted and complete.

Ad hoc members may not serve if they or their immediate family members have a financial interest in the project, including a lease, easement, or other beneficial interest. The Act defines “immediate family member” as a person's: spouse, brother or sister of the whole, or of the half, by blood or by marriage; children, including adopted children; and, parents. A person is also prohibited from being an ad hoc member if the person’s immediate family member has intervened in the OPSB proceeding for which the ad hoc member is included. If an ad hoc member is unable to serve because of any of these circumstances, a new ad hoc member must be appointed according to the same procedures.

A county board of commissioners or township board of trustees may be an official intervenor in the OPSB process but a county commissioner or township trustee serving as an ad hoc member on the OPSB cannot vote on resolutions related to intervention in the OPSB process. Ad hoc members are exempt from limitations on *ex parte* communications, but they are required to disclose all such communications (dates and individuals) that occur subsequent to the date of their appointment with any party that is an official intervenor.

Ad hoc members are prohibited from disclosing information that has been designated as confidential during the OPSB process without appropriate authorization. This prohibition applies during and after their service on the OPSB board. Information may be considered confidential because of statutory law or because the ad hoc member received notice designating the information as confidential and both of the following circumstances apply:

- the status of the proceedings, or the circumstances under which the information was received, warrants its confidentiality; and,

- preserving its confidentiality is necessary to the proper conduct of governmental activities.

FACILITY DECOMMISSIONING REQUIREMENTS

Revised Code Sections: 4906.21, 4906.2111, 4906.212, 4906.22, 4906.221, 4906.222

At least 60 days prior to beginning the construction of a utility facility, a project applicant must submit a comprehensive decommissioning plan for review and approval by the OPSB. The plan must be prepared by a registered professional engineer. The plan must contain the following elements:

- a list of all parties responsible for decommissioning;
- a schedule of decommissioning activities, not to extend beyond twelve months from the date the utility facility ceases operation;
- an estimate of the full costs of decommissioning the utility facility, including the proper disposal of all facility components and restoration of the land on which the facility is located to its pre-construction condition, without considering the salvage value of any materials from the facility.

The cost of decommissioning must be recalculated every five years by an engineer retained by the applicant. The applicant must post a performance bond for the cost of decommissioning. The amount of the bond must be increased if the five-year estimate shows increased costs, but the amount cannot be lowered below the original estimate. The OPSB is the obligee of the bond.

NOTICE OF COMPLETE AND ACCEPTED APPLICATION

Revised Code Section: 4906.31

No later than three days after an application for a certificate, or a material amendment to an existing certificate, for a utility facility is found to be in compliance with all requirements and is accepted by the OPSB, and the filing fee is paid by the applicant, the OPSB must provide a full and complete copy of an application to each board of trustees and each board of county commissioners in which the facility is to be located.

The copy of the application may be provided in paper or electronic form, or via an electronic communication containing a link to the application, if posted on the board's website.

SAFE HARBOR FOR WIND PROJECTS

Temporary Law: Section 3 of the Act.

An application for a certificate, or a material amendment to an existing certificate, for a wind farm that has been deemed complete and accepted by the OPSB not later than 30 days after the Act's effective date is not subject to its provisions.

An application or a material amendment for a wind farm that is not deemed complete and accepted by the OPSB within 30 days after the Act's effective date is subject to review by the board of county commissioners of the county in which the utility facility is to be located. The board of county commissioners has 90 days after the effective date of the Act to review the application and to adopt a resolution prohibiting the construction of the wind farm or limiting its boundaries as set forth in ORC section 303.62.

SAFE HARBOR FOR SOLAR PROJECTS

The provisions of the Act do not apply to any application for a certificate, or material amendment to an existing certificate, for a large solar facility that is in the PJM Interconnection and Regional Transmission Organization, L.L.C., new services queue at the time the application is found to be complete and accepted by the OPSB as of the effective date of the Act, and both of the following conditions are met:

- the applicant has received a completed system impact study from PJM for the large solar facility; and,
- the applicant has paid the fee for the facilities study to PJM.

For any large solar facility that meets the requirements noted above, and has multiple positions in the PJM new services queue under the same legal entity as the applicant, all of the queue positions in effect as of the effective date of the Act are exempt from the Act's provisions unless the applicant files an additional new service request with PJM pertaining to the same facility that is in the new service queue. If a new application is filed, it is subject to review by the board of county commissioners of the county in which the facility is to be located.

If a large solar facility submits a new queue position for an increase in its capacity interconnection rights after the effective date of the Act, the change in capacity interconnection rights does not subject the facility to the provisions of the Act, provided that the change in rights occurs without increasing the facility nameplate capacity.

For all OPSB proceedings under which an application for a certificate, or a material amendment to an existing certificate, for an economically significant wind farm, large wind farm, or a large solar facility has not been found to be complete and accepted by the OPSB as of the Act's effective date, the board must include the voting ad hoc members required by ORC section 4906.02.

APPENDIX 1: PETITION LANGUAGE AND CIRCULATOR’S STATEMENT

The following petition language is found in ORC section 303.59:

The form of a petition calling for a referendum on the designation of a restricted area and the statement of the circulator shall be substantially as follows:

"PETITION FOR REFERENDUM ON THE DESIGNATION OF A RESTRICTED AREA PROHIBITING THE CONSTRUCTION OF UTILITY FACILITIES (if the proposal is identified by a particular name or number, or both, these should be inserted here)_____

A proposal to designate a restricted area prohibiting the construction of utility facilities in the unincorporated area of _____ county, Ohio, adopted _____(date) (followed by brief summary of the resolution).

To the board of county commissioners of _____ county, Ohio:
We, the undersigned, being electors residing in _____county, equal to not less than eight per cent of the total vote cast for all candidates for governor in the county at the preceding general election at which a governor was elected, request the board of county commissioners to submit this designation of a restricted area to the electors of _____ county, for approval or rejection at a special election to be held on the day of the primary or general election to be held on

_____ (date), pursuant to section 303.59 of the Revised Code.

- _____ Signature
- _____ Residence address
- _____ Date of signing

STATEMENT OF CIRCULATOR

I, _____ (name of circulator), declare under penalty of election falsification that I reside at the address appearing below my signature; that I am the circulator of the foregoing part petition containing _____ (number) signatures; that I have witnessed the affixing of every signature; that all signers were to the best of my knowledge and belief qualified to sign; and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

- _____ (Signature of circulator)
- _____ (Circulator's residence address)

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE."

APPENDIX 2: SUMMARY OF TIMELINES AND NOTICE REQUIREMENTS

<p>Designation of Restricted Areas by Board of County Commissioners</p> <p>ORC 303.58</p>	<p><u>Notice Required</u> The board of county commissioners must provide notice at least 30 days before a meeting where the resolution is considered</p> <ul style="list-style-type: none"> • one publication in a newspaper of general circulation • post map in libraries • written notice to schools, municipalities, and townships
<p>Petition for a Referendum on Designation of Restricted Areas</p> <p>ORC 303.59</p>	<p>Petitioners have 30 days to gather signatures after the date the resolution is adopted</p> <p>When a petition is received by the board of county commissioners, it must be certified to the board of elections within two weeks</p> <p>The board of elections must receive the petition at least 90 days prior to the election; the election must be a primary or general election held at least 120 days after the date the petition is filed with the commissioners</p> <p>If a resolution has been approved by the voters, it goes into immediate effect. The commissioners must file the text of the resolution and maps of the restricted area with the county recorder and the county or regional planning commission within five days after the resolution’s effective date</p>
<p>Mandatory Public Meeting on a Proposed Utility Project and County Response</p> <p>ORC 303.61, 303.62, 4906.102</p>	<p><u>Notice Required</u> The project applicant must provide notice to the board of county commissioners at least 14 days prior to the date of the meeting</p> <p>The meeting must be held between 90 and 300 days prior to submitting the application to the OPSB</p>