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S.B. 52*
134th General Assembly

Bill Analysis

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Version: As Reported by Senate Energy and Public Utilities

Primary Sponsors: Sens. Reineke and McColley

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SUMMARY

Energy development districts

- Allows a board of county commissioners to designate all or part of the unincorporated area of the county as an energy development district (EDD) to allow for the construction of any or all of the following (collectively, known as “utility facilities”):
 - Economically significant wind farms;
 - Large wind farms;
 - Large solar facilities.
- Prohibits the construction of utility facilities outside of an EDD designated for the construction of that type of facility in a county in which one or more EDDs have been established.
- Establishes a referendum and related requirements for the approval or rejection of the designation of an EDD by a board of county commissioners.

County bans on solar and wind facilities

- Allows a board of county commissioners to prohibit the construction of any or all of the following:
 - Economically significant wind farms;
 - Large wind farms;

* This analysis was prepared before the Report of the Senate Energy and Public Utilities Committee appeared in the Senate Journal. Please note, the legislative history may be incomplete.

- Large solar facilities.

County approval regarding utility facilities

- Requires a person, before applying for a Power Siting Board (PSB) certificate, or existing certificate amendment, for placement of a utility facility in the unincorporated area of a county, to hold a public meeting in the county where the facility is to be located.
- Requires the prospective applicant to provide certain information at the public meeting and to the board of county commissioners regarding the utility facility that is the subject of the application.
- Allows a board of county commissioners, after receiving information about the utility facility, to adopt a resolution prohibiting its construction or limiting its geographic size.

PSB membership regarding utility facilities

- Requires that, for all applications pertaining to an application for a certificate or for an amendment to an existing certificate for a utility facility, the power siting board must include two ad hoc members to represent the interests of the residents of the area in which the utility facility is to be located.
- Provides that the ad hoc members are to be the chairperson of the board of township trustees and the president of the board of county commissioners of the township and county in which the utility facility is to be located, or their designees.
- Provides that, if the utility facility is to be located in multiple townships or counties, a single ad hoc member will be chosen by a majority vote of all the boards of township trustees to represent those boards and a single ad hoc member will be chosen by a majority vote of all the boards of county commissioners to represent those boards.
- Prevents any person with a conflict of interest from serving as an ad hoc commissioner.

PSB certification process

- Requires PSB to notify boards of township trustees and the boards of county commissioners that an application has been filed for a certificate, or an amendment to an existing certificate, to construct a utility facility in their county or township.
- Provides that PSB cannot grant a certificate or amendment for a utility facility if the prospective applicant provided to the board of county commissioners for the public meeting different information regarding nameplate capacity, geographic area, and generation type than what PSB possesses.
- Provides that PSB cannot grant a certificate or an amendment, if the utility facility exceeds the limited boundaries set by the board of county commissioners by resolution.
- Provides for PSB to take certain actions regarding a certificate or amendment following a county action to prohibit, or limit the area of placement of, a utility facility.

Applicability

- Provides that the bill applies to any application that has been filed with, but has not been determined to be complete and accepted by PSB, as of the effective date of the bill.
- Provides that any application not determined to be complete and accepted by the power siting board prior to the effective date of the bill is subject to review and approval by the board of county commissioners of the county in which the utility facility is to be located.

DETAILED ANALYSIS

Energy development districts

The bill creates a process in which a board of county commissioners may designate an Energy Development District (EDD) to allow for the construction of a utility facility, which is any or all of the following:¹

- “Economically significant wind farm” defined as 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.
- “Large solar facility” 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” (which is an electric generating facility and associated facilities designed for, or capable of, operation at fifty 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 also a major utility facility.

Build within EDDs

The bill prohibits the construction of any utility facility within the unincorporated area of a county outside of an EDD, if that county’s board of county commissioners has designated one or more EDDs.²

¹ R.C. 303.57, 303.59, and 4906.01; R.C. 4906.32, not in the bill.

² R.C. 303.58.

The bill prohibits the Power Siting Board (PSB) from granting a certificate, or an amendment to an existing certificate, for the construction, operation, and maintenance of any utility facility to be located outside of an EDD in a county where one or more EDDs have been designated by the board of county commissioners. PSB may only grant a certificate or amendment if the utility facility is of the type permitted within the EDD and if the utility will not extend beyond the boundaries of the district.³

Procedure to designate an EDD

A board of county commissioners may adopt a resolution designating an EDD at a regular meeting of a special meeting called for the purpose for adopting such a resolution. Any resolution designating an EDD shall fix the boundaries of the district within the unincorporated area of the county and must include a map of the EDD, as well as texts sufficient to identify the boundaries of the EDD.⁴

Within five days of adopting the resolution, the board of county commissioners must file the resolution and all accompanying maps and texts with the county recorder and with the county of regional planning office, if one exists. However, the failure to file the resolution, maps, and texts, will not invalidate the resolution.⁵

Referendum re: designation of an EDD

The bill conditions the designation of an EDD upon the right of referendum the bill grants county voters. A resolution designating an EDD becomes effective 30 days from the day it is adopted, unless a referendum petition is filed with the board of county commissioners.

Referendum process

When petition is received

If a timely referendum petition regarding the designation of an EDD is filed with the board of county commissioners, it must certify the petition to the county board of elections (1) within two weeks after receiving it and (2) not less than 90 days before the election at which the EDD designation will be held. If the board of elections determines the petition is sufficient and valid, it will submit the EDD designation question for a vote at a special election held during either the next primary or general election held at least 120 days after the petition is filed. At least 120 days must pass between the board of elections receiving the petition and the vote.

Petition requirements

The referendum petition must be signed by the number of qualified voters residing in the county equal to at least 8% of the total votes cast for all candidates for governor in that county at the most recent general election at which a governor was elected. Each petition must

³ R.C. 4906.101.

⁴ R.C. 303.59(B) to (C).

⁵ R.C. 303.59 (D) and 303.60.

contain a brief summary of the contents of the resolution designating the EDD. The petition must contain the number and the full and correct title, if any, of the resolution designating the EDD. These requirements are in addition to current Ohio law governing petitions.

The bill also sets forth the basic form for a “Petition for Referendum on the Designation of an Energy Development District,” that includes, for example, the name or number of the resolution, if any, the county name, a statement by the petition circulator, and the statement that election falsification is a fifth degree felony. The form actually used must substantially follow this basic form.

Voter action

The resolution designating the EDD will not take effect unless it is approved by a majority of voters voting on it. If a majority of the voters approve the certificate or amendment, it will take effect immediately.⁶

County bans on solar and wind facilities

The bill allows a board of county commissioners to adopt a resolution prohibiting the construction of any or all of the following:⁷

- An economically significant wind farm;
- A large solar facility;
- A large wind farm.

If a board of county commissioners adopts such a resolution, no person can file an application for a certificate, or an amendment to an existing certificate, from PSB to construct, operate, or maintain any utility facility prohibited by the resolution.⁸

County approval regarding utility facilities

Pre-PSB application public meeting and notice

At least 90 days, but no more than nine months, before applying for a certificate, or an amendment to an existing certificate, from PSB for a utility facility to be located (in whole or in part) in the unincorporated area of a county, the person intending to apply for the certificate or amendment must hold a public meeting in that county. The prospective applicant must provide written notice regarding the meeting to the board of county commissioners, as well as the boards of trustees of every township within the county in which the utility facility is to be located at least 14 days before the meeting is held.⁹

⁶ R.C. 303.60.

⁷ R.C. 303.61(A).

⁸ R.C. 303.61(B).

⁹ R.C. 303.62(A) and (B).

Information provided at meeting

At the public meeting, the prospective applicant must provide the following information, and also must provide it in written form to the board of county commissioners:¹⁰

- Whether the utility facility is:
 - 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 with that county.

Further, at the public meeting, the prospective applicant intending to apply for an amendment that makes any change or modification to an existing certificate must comply with the above requirements for the pre-PSB application public meeting and notice when providing information regarding that change or modification to the board of county commissioners.

Board of county commissioners' rejection or modification of project

Not later than 90 days after the public meeting regarding the proposed application for a PSB certificate, or an amendment to an existing certificate, for a utility facility, a board of county commissioners may adopt a resolution that does either of the following:¹¹

- Prohibits the construction of the proposed utility facility;
- Limits the boundaries of the proposed utility facility to a smaller geographic area of the county, completely within the area proposed by the applicant.

A resolution to prohibit or limit a utility facility does not prevent a prospective applicant from filing another proposal for consideration by the board of county commissioners at a later date.¹²

PSB membership regarding utility facilities

Ad hoc PSB members

The bill provides that, in all cases involving an application for a certificate, or an amendment to an existing certificate, for a utility facility, PSB shall include two ad hoc members to represent the interests of the residents of the area in which the utility facility is to be located. The ad hoc members shall be:¹³

¹⁰ R.C. 303.62(C).

¹¹ R.C. 303.63(A).

¹² R.C. 303.63(B).

¹³ R.C. 4906.021(B) to (C).

- The chairperson of the board of township trustees of the township where the utility facility is to be located or the chairperson's designee; and
- The president of the board of county commissioners of the county where the utility facility is to be located or the president's designee.

If the utility facility is to be located in multiple townships, a single ad hoc member to represent the townships shall 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. Likewise, if a utility facility is to be located in multiple counties, a single ad hoc member to represent the counties shall 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 bill provides that no person shall serve as an ad hoc PSB member if the person:¹⁴

- Is party to a lease agreement with, or has granted an easement to, the developer of a utility facility;
- Holds any other beneficial interest in a utility facility;
- Has an immediate family member who is party to a lease agreement with, or has granted an easement to, the developer of the utility facility;
- Has an immediate family member who holds any beneficial interest in a utility facility.

If an individual has a conflict of interest, as just described, the individual cannot serve as an ad hoc member of PSB and a new ad hoc member must be appointed as provided above.¹⁵

The bill defines an "immediate family member" to mean a person's:¹⁶

- Spouse;
- Brother or sister, of the whole or the half, blood, or by marriage;
- Children, including adopted children; and
- Parents.

PSB certification process

Copies of PSB certificate applications for townships and counties

The bill requires that PSB provide full and complete copies of an application for a certificate, or an amendment to an existing certificate, to the boards of county commissioners and the boards of township trustees of all counties and townships in which a utility facility is to be located. The application must be provided no later than three days after the application is

¹⁴ R.C. 4906.021(D).

¹⁵ R.C. 4906.021(C)(2).

¹⁶ R.C. 4906.021(A).

determined to be complete and is accepted by PSB.¹⁷ The copies may be provided in any of the following formats:¹⁸

- Paper copy;
- Electronic format;
- An electronic communication containing a link to the application, if posted on PSB’s website.

Situations in which PSB certificate/amendment cannot be issued

PSB cannot grant a certificate, or an amendment to an existing certificate, for a utility facility, if any of the following apply regarding the information the prospective applicant provides to the board of county commissioners for the Pre-PSB application public meeting:

- The nameplate capacity exceeds what was provided;
- The geographic area is not completely within the boundaries provided;
- The type of generation is different than what was provided.

Additionally, PSB cannot grant a certificate or an amendment, if the facility exceeds the limited boundaries set by the board of county commissioners by resolution (see “**Board of county commissioners’ rejection or modification of project**” above).¹⁹

PSB action following county prohibition or limitation

The bill prohibits PSB from granting a certificate, or an amendment to an existing certificate, either a proposed or as modified by PSB, to a utility facility to be located in a county where the board of county commissioners has adopted a resolution prohibiting the construction of that type of utility facility. If a utility facility is to be located in multiple counties and less than all of the boards of county commissioners have adopted such a resolution, PSB is required to modify the certificate or amendment to exclude all of the areas where such construction is prohibited.²⁰

Likewise, if a board of county commissioners has adopted a resolution limiting the boundaries of the proposed utility facility to a smaller geographic area within the area proposed by the applicant, PSB cannot grant a certificate or amendment to a utility facility that includes any area outside of the area approved by the board of county commissioners.²¹

¹⁷ R.C. 4906.31(A).

¹⁸ R.C. 4906.31(B).

¹⁹ R.C. 4906.30(B).

²⁰ R.C. 4906.102.

²¹ R.C. 4906.103.

Applicability

The bill states that its provisions apply to any application that has been filed with, but has not been determined to be complete and accepted by, PSB as of to the bill's effective date. Any application not determined to be complete and accepted by the power siting board prior to the bill's effective date shall be 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 ninety days after that effective date to review the application and to adopt a resolution prohibiting the construction of the utility facility or limiting its boundaries (see "**Board of county commissioners' rejection or modification of project**" above).²²

HISTORY

Action	Date
Introduced	02-09-21
Reported, S. Energy & Public Utilities	---

S0052-RS-134/ec

²² Section 3.