



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Maura McClelland

H.B. 604

132nd General Assembly
(As Introduced)

Reps. Strahorn, Antonio, Holmes, Ashford, Boggs, Patterson, Miller, Brown, Craig, O'Brien, West, K. Smith

BILL SUMMARY

Wind-turbine setback

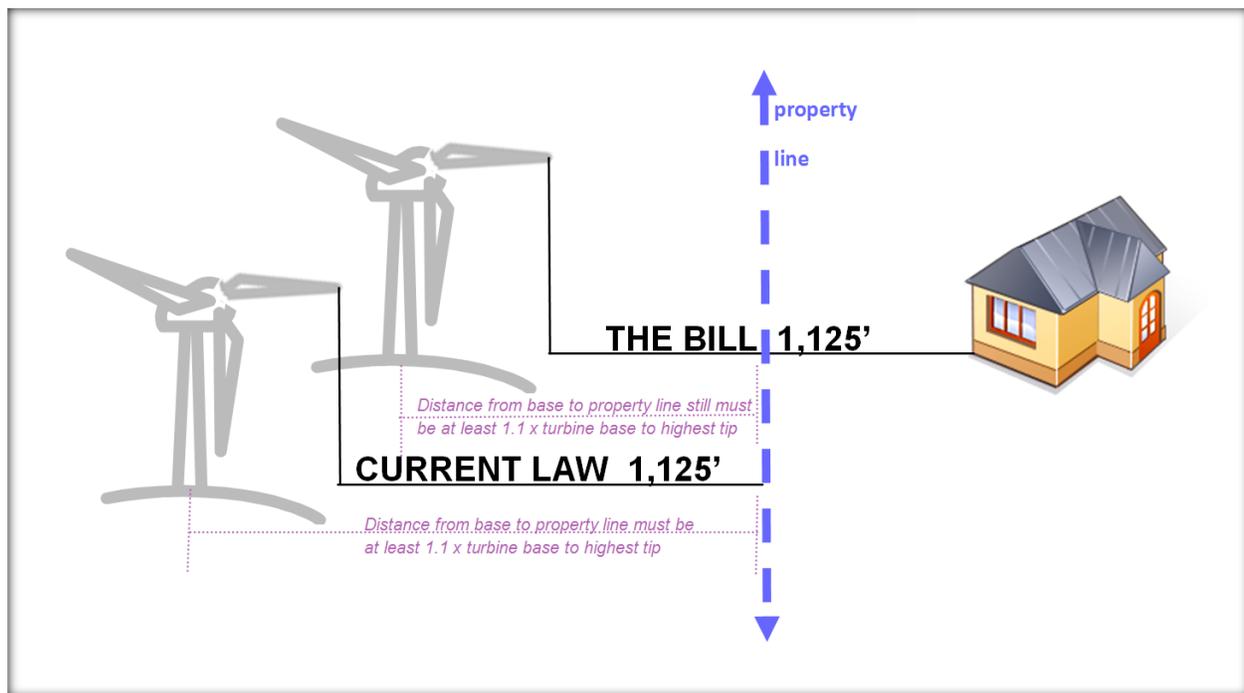
- Returns the wind-turbine setback to what it was before Am. Sub. H.B. 483 of the 130th General Assembly (specifically, changing the measurement point for the 1,125-foot setback from the *property line* of the nearest adjacent property to the *exterior of the nearest habitable residential structure*, if any, located on adjacent property).
- Changes the setback waiver provision to permit an owner of a parcel that abuts a parcel where a wind turbine is located to waive the setback requirement, rather than current law's requirement that all owners of property adjacent to the wind farm property make the waiver.

Qualified energy project tax exemption

- Makes permanent the real and tangible personal property tax exemption for a qualified energy project and repeals certain deadlines required to qualify for the tax exemption.

CONTENT AND OPERATION

Changing the measurement point for the wind-turbine setback



The bill returns the wind-turbine setback to what it was before Am. Sub. H.B. 483 of the 130th General Assembly. Specifically, the bill changes the measurement point for the 1,125-foot setback from the *property line* of the nearest adjacent property to the *exterior of the nearest habitable residential structure*, if any, located on adjacent property at the time of the certification application.

Under continuing law, there are two minimum setbacks for wind turbines: (1) the 1,125-foot-minimum setback (or in certain cases, a 750-foot-minimum-grandfathered setback) measured from the turbine *blade*, affected by the bill as discussed above, and (2) a setback measured from the turbine *base*, unchanged by the bill. The setback measured from the turbine base requires a minimum setback distance from the turbine's base to the wind farm property line of at least 1.1 multiplied by the distance from the turbine's base to the tip of the highest blade.¹ The above diagram illustrates both setback requirements and the changes made by the bill to the setback under (1).

¹ R.C. 4906.20 and 4906.201.

Applicability of the setback change

Wind farm size

The bill's setback change applies to any 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 at least five megawatts.²

Amendments to existing certificates for wind farms

The bill modifies continuing provisions that prescribe the setback for amendments to existing certificates for wind farms. The current provisions state that any amendment made to an existing certificate after September 15, 2014, must be subject to the setback in current law. The bill modifies these provisions to say that any amendment to an existing certificate after September 15, 2014, *and before the bill's effective date* must be subject to the setback in current law. So, an amendment made to an existing certificate between September 15, 2014, and the bill's effective date would be subject to the property-line setback. And an amendment made to an existing certificate after the bill's effective date would be subject to the residential-structure setback.³

Common law rights and remedies

The bill states that its changes must not be construed to limit or abridge any rights or remedies in equity under the common law.⁴

Parcel owner may waive setback requirements

The bill permits the owner of a parcel that abuts a parcel where a wind turbine is located to waive the application of the setback to that owner's parcel.⁵ "Parcel" is defined as a tract of real property as identified on the records of the auditor of the county in which the real property is located.⁶ This provision applies to all wind farms of at least five megawatts.⁷

² R.C. 4906.13(A), not in the bill, 4906.20(B)(2)(a), and 4906.201.

³ R.C. 4906.20(B)(2)(b)(ii) and (iii) and 4906.201(B)(2) and (3).

⁴ R.C. 4906.20(B)(2)(b)(iii) and 4906.201(B)(3).

⁵ R.C. 4906.20(B)(2)(c) and 4906.201(A).

⁶ R.C. 4906.20(C); R.C. 2329.66(A)(1)(c), not in the bill.

⁷ R.C. 4906.20(B)(2)(c) and 4906.201(A).



Current law requires all owners of property adjacent to the wind farm property to waive the setback requirement. Under continuing law, the Power Siting Board may, in a particular case, determine that it is necessary for a setback to be greater than the minimum.⁸

History of legislative changes affecting the wind-turbine setback

The following is a summary of the legislative changes that have affected the wind-turbine setback since its enactment:

Effective date	Bill	Action
June 24, 2008	Am. Sub. H.B. 562	Enacted the original setback, which applied only to wind farms of 5-50 megawatts: <ul style="list-style-type: none"> • 750 feet from the tip of the turbine's nearest blade at ninety degrees to the exterior of the nearest, habitable, residential structure; and • 1.1 times the total turbine height measured from its base to the tip of its highest blade.⁹
Sept. 10, 2012	Am. Sub. S.B. 315	Repealed provisions that made certificate approval expressly conditional on whether the wind farm would comply with (1) applicable rules, including the setback, and (2) certain airport rules for the height and location of structures. These provisions applied only to wind farms of 5-50 megawatts. ¹⁰
Sept. 29, 2013	Am. Sub. H.B. 59	<ul style="list-style-type: none"> • Changed the setback distance from 750 feet to 1,125 feet (but left the measurement point as the residential structure). • Made the 1,125 setback applicable to <i>all</i> wind farms over 5 megawatts (not just wind farms of 5-50 megawatts). • Grandfathered "existing certification applications" found to be in compliance with application rules before Sept. 23, 2013, which made those existing certificates and amendments subject to the 750-foot distance.¹¹

⁸ R.C. 4906.20(B)(2)(c) and 4906.201(A).

⁹ R.C. 4906.13(A), not in H.B. 604, and 4906.20(B).

¹⁰ R.C. 4906.13(A), not in H.B. 604, 4906.20(C), repealed by S.B. 315, and 4561.32, not in H.B. 604.

¹¹ R.C. 4906.20(B)(2) and 4906.201.



Effective date	Bill	Action
Sept. 15, 2014	Am. Sub. H.B. 483	<ul style="list-style-type: none"> • Changed the 1,125 foot measurement point from the residential structure to the property line. • Made amendments to existing certificates subject to the new setback.¹²

Qualified energy project tax exemption

The bill makes permanent the real and tangible personal property tax exemption available to electric companies and rural electric companies for qualified energy projects. The bill also removes various deadlines, including the deadlines by which the owner or lessee of a qualified energy project must apply for certification of the project from the Director of Development Services, apply for approval to commence construction, begin construction or installation, and place the project into service. Under current law, various deadlines are imposed in order for a project to qualify for the tax exemption. The bill also requires that if a project's certification is revoked, the project must be listed for taxation for the tax year following the tax year in which the revocation occurs and ensuing tax years. Current law states that a project that has its certification revoked is ineligible for further exemption.

Under continuing law, a "qualified energy project" means a project certified by the Director of Development Services as a project to provide electric power through the construction, installation, and use of an energy facility. An "energy facility" means wind turbines, solar panels, or other tangible personal property or buildings, structures, improvements, and fixtures used to generate electricity from renewable energy resources (wind, solar, biomass, etc.) or advanced energy (clean-coal technology, advanced nuclear, or cogeneration) that are owned by the same person. A "rural electric company" is any nonprofit corporation, organization, association, or cooperative engaged in supplying electricity to its members or persons owning an interest therein in an area that is mostly rural. An "electric company" is engaged in the business of generating, transmitting, or distributing electricity in Ohio for use by others (and does not include a rural electric company).¹³

¹² R.C. 4906.20(B)(2)(a) and (B)(2)(b)(ii) and 4906.201(B)(2).

¹³ R.C. 5727.75; R.C. 5727.01, not in the bill.



HISTORY

ACTION

DATE

Introduced

04-17-18

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