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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 401  
133<sup>rd</sup> General Assembly

## Bill Analysis

[Click here for H.B. 401's Fiscal Note](#)

**Version:** As Introduced

**Primary Sponsor:** Rep. Reineke

Rocky Hernandez, Attorney

UPDATED VERSION\*

## SUMMARY

### Referendum on certain wind farms

- Requires the Power Siting Board (PSB) to condition, upon the right of referendum established under the bill, a certificate or amendment to a certificate, if the certificate or amendment is for an economically significant wind farm or large wind farm to be located in the unincorporated area of a township.
- Makes PSB certificates or amendments to existing certificates for such economically significant wind farms or large wind farms take effect on the 90th day after issuance, unless a referendum petition is filed regarding the certificate or amendment under the bill.
- Provides that amendments to an existing certificate may be subject to the referendum under the bill, if they do the following:
  - Add more wind turbines;
  - Increase the height of a wind turbine as measured from the wind turbine tower's base to the tip of the blade at its highest point;
  - Increase the diameter of a wind turbine tower's base;
  - Change the location of any wind turbine.

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\* This analysis clarifies the Power Siting Board rule requirement to include wind turbine manufacturer safety specifications and setback recommendations in a wind farm certification application or certificate amendment.

## Referendum process

- Establishes the referendum process as follows:
  - Specifies that a referendum petition must be signed by a number of qualified electors residing in the unincorporated area of the township that is equal to not less than 8.0% of the total votes cast for all candidates for governor in the unincorporated area of the township at the most recent gubernatorial election.
  - Requires the referendum petition to contain a brief description of the wind farm authorized by the certificate or amendment that is sufficient to identify the certificate.
  - Requires the description to include the PSB certificate number and identification of each unincorporated township and county in which a wind turbine would be placed under the certificate or amendment.
  - Specifies that the petition must meet the general requirements for petitions in Ohio elections law.
  - Sets forth the basic form for a “Petition for Referendum of Wind Farm Certificate or Amendment,” that includes, for example, the description of the wind farm, the township name, a statement by the petition circulator, and the statement that election falsification is a fifth degree felony.
- Requires the board of elections to do the following upon receiving the referendum petition:
  - Notify the board of township trustees that a referendum petition has been filed and if the board of elections has determined it to be sufficient and valid;
  - If the petition is sufficient and valid, submit the certificate or amendment to the electors of the unincorporated area of the township for approval or rejection at a special election held on the day of the next primary or general election occurring at least 90 days after the board receives the petition.
- States that the certificate or amendment may not take effect unless a majority of the electors voting on it approves it.
- Specifies that a certificate or amendment is invalid:
  - If the certificate or amendment is for a wind farm to be located in an unincorporated area of a single township and it is rejected in the referendum.
  - If the certificate or amendment is for a wind farm to be located in an unincorporated area of more than one township and all the townships with electors voting on the referendum reject the certificate or amendment.
- If the certificate or amendment is for a wind farm to be located in an unincorporated area of more than one township and not all of the townships with electors voting on the referendum reject the certificate or amendment, requires the PSB to modify the certificate or amendment (which shall not be considered an amendment to the

certificate) to exclude the area of the townships whose electors rejected the certificate or amendment.

- Prohibits the PSB from making any other changes to the certificate or amendment for multi-township wind farms for which not all the electors reject the certificate or amendment, except for township-area modifications described above.
- Invalidates a certificate that if, after a modification, PSB certification is no longer needed under Ohio law.
- Specifies that, if approved, the certificate takes immediate effect, unless it is modified because not all electors of certain areas of the township or multiple townships rejected the certificate.

## **Large wind farm**

- Labels, for purposes of application of the bill's referendum provisions and changed setbacks, under the term "large wind farm," any electric generating plant consisting of 50 megawatts or more of wind turbines and associated facilities with a single interconnection to the electrical grid (such facilities are subject to the current law setbacks and will be subject to the bill's referendum provisions and changed setbacks).

## **Wind turbine requirements**

### **Safety specifications included in certification application**

- Requires PSB rules to require applications for a certificate or an amendment to an existing certificate to include a copy of the wind turbine manufacturer's safety specifications, including the manufacturer's recommended setback distances for the wind turbines described in the application.

### **Wind turbine setbacks**

- Requires the setback measurement for wind turbines of economically significant wind farms and large wind farms to be the greater of one of the following measurements:
  - The current law provision for setbacks, which is the horizontal distance (1) from the turbine's base to the wind farm property line equal to 1.1 times the total height of the wind turbine as measured from its base to the tip of its highest blade and (2) equal to at least 1,125 feet from the tip of the nearest blade at 90 degrees to the property line of the nearest adjacent property at the time of the certification application;
  - The setback distance recommended in the wind turbine manufacturer's safety specifications for the wind turbines described in the certification application, if the distance is measured from the property line of the nearest adjacent property, or the same safety specification distance as measured from the property line of the nearest adjacent property at the time of the certification application.

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## DETAILED ANALYSIS

### Referendum on certain wind farms

#### PSB certificate or amendment subject to referendum

The bill conditions a certificate, or an amendment to an existing certificate, the Power Sitting Board (PSB) issues for the construction, operation, or maintenance of an economically significant wind farm or large wind farm (“wind farm”) to be located (in whole or in part) in the unincorporated area of a township upon the right of referendum the bill grants to electors (colloquially known as voters) in that area. Amendments to existing certificates that do any of the following are subject to the referendum: (1) add wind turbines, (2) increase the height of a wind turbine as measured from its base to the tip of its blade at the highest point, (3) increase the diameter of a wind turbine tower’s base, or (4) relocates a wind turbine. Certificates or amendments become effective 90 days from the day of issuance, unless a referendum petition is filed with the board of elections.<sup>1</sup>

Under continuing law, an “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 5 or more megawatts (MW) but less than 50 MW. Such wind farms do not include (1) those wind turbines/facilities meeting the definition that were in operation on June 24, 2008, and (2) those wind turbines/facilities 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 20 MW, as measured at the customer’s point of interconnection to the electrical grid.

The bill also labels, for purposes of application of the bill’s referendum provisions and changed setbacks, under the term “large wind farm,” any electric generating plant that is a major utility facility (consisting of 50 MW or more) of wind turbines with a single interconnection to the electrical grid (such facilities are subject to the current law setbacks).<sup>2</sup>

#### Effect of rejection on certificate or amendment

If the certificate or amendment is rejected at the referendum, one of the following applies:

- If the wind farm is to be located in the unincorporated area of a single township, the certificate or amendment is invalid;
- If the wind farm is to be located in the unincorporated area of more than one township, one of the following applies:

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<sup>1</sup> R.C. 519.214(A), 4906.10, 4906.101(A), 4906.20, 4906.201(A), and 4906.203(A).

<sup>2</sup> R.C. 4906.13(A), 4906.20, and 4906.201; R.C. 4906.01(B)(1), not in the bill.

- If less than all of the townships reject the certificate or amendment, PSB must modify it to exclude the area of each township whose electors rejected it but must not make any other changes to it;
- If all of the townships reject the certificate or amendment, the certificate is invalid.<sup>3</sup>

### **Status of post-referendum modification**

If a modification is made to an amendment or certificate by PSB after rejection at the referendum by less than all of the townships, that modification will not be considered an amendment to the existing certificate. Additionally, if that modification would cause the wind farm to no longer need PSB certification, the certificate is invalid.<sup>4</sup>

## **Referendum process**

### **When petition is received**

If a timely referendum petition regarding a wind farm certificate or amendment is filed with the board of elections, it must notify the board of township trustees that a petition has been filed. If the board of elections determines the petition is sufficient and valid, it will notify the township trustees, and submit the certificate or amendment for a vote during a special election held during either the next primary or general election. At least 90 days must pass between the board of elections receiving the petition and the vote.<sup>5</sup>

### **Petition requirements**

The referendum petition must be signed by the number of qualified electors residing in the unincorporated area of the township equal to at least 8.0% of the total votes cast for all candidates for governor in that area at the most recent general election where a governor was elected. Each petition must contain a brief description of the wind farm the certificate or amendment authorizes that is sufficient to identify the certificate. The description must at least contain the certificate number and in which unincorporated township and county a wind turbine would be placed under the certificate or amendment. These requirements are in addition to current Ohio law governing petitions. The bill also sets forth the basic form for a "Petition for Referendum of Wind Farm Certificate or Amendment," that includes, for example, the description of the wind farm, the township 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.<sup>6</sup>

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<sup>3</sup> R.C. 4906.101(B) and 4906.203(B).

<sup>4</sup> R.C. 4906.101(C) and (D) and 4906.203(C) and (D).

<sup>5</sup> R.C. 519.214(C).

<sup>6</sup> R.C. 519.214(B)(1) to (3). The basic petition form also includes a line on which to record the date the board of township trustees adopted a policy or possibly a resolution to circulate and file a referendum petition. However, the bill does not require the board to adopt a resolution as part of the referendum petition process. An amendment may be needed to clarify the bill's intent.

## Voter action

The certificate or amendment will not take effect unless it is approved by a majority of electors voting on it. If a majority of the electors approve the certificate or amendment, it will take effect immediately subject to PSB modifications as described above.<sup>7</sup>

## Wind turbine requirements

### Safety specifications included in certificate application

Under the bill, PSB rules must require a wind farm certification application, or an amendment to an existing certificate, to include a copy of the wind turbine manufacturer's safety specifications. The manufacturer's recommended setback distances for wind turbines described in the application must also be included.<sup>8</sup>

### Wind turbine setbacks

The bill alters the minimum setback requirements for wind turbines of wind farms. The bill requires the setback measurement to be the greater of one of the following measurements:

- The current law provision for setbacks, which is the horizontal distance (1) from the turbine's base to the wind farm property line equal to 1.1 times the total height of the wind turbine as measured from its base to the tip of its highest blade and (2) equal to at least 1,125 feet from the tip of the nearest blade at 90 degrees to the property line of the nearest adjacent property at the time of the certification application;
- One of the following regarding the setback distance recommended in the wind turbine manufacturer's safety specifications for the wind turbines described in the certification application:
  - If the recommended setback distance *is required* to be measured from the property line of the nearest adjacent property, as measured from that property line; or
  - If the recommended setback distance *is not required* to be measured from the property line of the nearest adjacent property, the same setback distance, but measured from the property line of the nearest adjacent property at the time of the certification application.<sup>9</sup>

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<sup>7</sup> R.C. 519.214(C) and (D), 4906.101(B), and 4906.203(B).

<sup>8</sup> R.C. 4906.20(B)(1)(b).

<sup>9</sup> R.C. 4906.20(B)(2)(a).

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## HISTORY

Action	Date
Introduced	11-06-19

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