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## Bill Analysis

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**Primary Sponsors:** Sens. Reineke and McColley

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### SUMMARY

#### Township approval regarding solar and wind facilities

- Creates processes under which township voters may approve or reject the placement of any economically significant solar facility (ESSF), large solar facility (LSF), economically significant wind farm (ESWF), or large wind farm (LWF).
- Establishes a referendum and related requirements for the approval or rejection of the placement, under a power siting board (PSB) certificate or existing certificate amendment, of a utility facility (LSF, ESWF, or LWF) in the unincorporated area of a township, initiated by the adoption of a board of township trustees' resolution allowing public input on the placement.
- Establishes a special election and related requirements for the approval or rejection of the placement under a PSB certificate or existing certificate amendment, of a utility facility in the unincorporated area of a township, initiated by the adoption of a board of township trustees' resolution requiring public input on the placement.
- Requires a person, before applying for a PSB certificate or existing certificate amendment for placement of a utility facility in the unincorporated area of a township, to notify the applicable board of township trustees of the intent to apply and certain information regarding the facility.
- Provides that the referendum or special election provisions regarding PSB certificates and amendments for placement of utility facilities to be used by a board of township trustees for the approval or rejection, under a building permit or existing permit amendment, of an ESSF in the unincorporated area of a township.
- Establishes prohibitions regarding township trustee participation in determinations regarding utility facility placement or an ESSF based on certain conflicts of interest.

## 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 safety distance recommended in the wind turbine manufacturer’s safety specifications for the wind turbines described in the certification application, or for comparable turbines, if:
    - ❖ The recommended safety distance is measured from the nearest adjacent property line; or
    - ❖ If the recommended safety distance is not so measured, the same safety distance as measured from the nearest adjacent property line at the time of the certification application.

### Applicability

- Applies the bill’s provision to the following:
  - Applications for a PSB certificate or an existing certificate amendment for a utility facility pending before the PSB on the bill’s effective date;
  - Applications for a building permit or existing permit amendment for an ESSF pending before a state or county building authority on the bill’s effective date.

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## TABLE OF CONTENTS

Township approval regarding solar and wind facilities .....	4
Pre-Power Siting Board (PSB) certification/amendment notice .....	4
Information included in notice .....	5
Provision of the information .....	6
Sharing with PSB .....	6
Provision of identical information; effect of failure .....	6

Referendum re: PSB certificate or amendment.....	6
Resolution allowing public input .....	6
Application of referendum .....	6
Referendum process.....	7
When a petition may be filed.....	7
When petition is received .....	7
Petition requirements .....	8
Voter action .....	8
Effect of rejection on certificate or amendment .....	8
Status of post-referendum modification.....	9
Special election re: PSB certification or amendment.....	9
Resolution requiring public input.....	9
Special election.....	9
Application of special election .....	9
Special election process .....	10
Effect of special election .....	10
Township approval of ESSF building permit or amendment .....	10
Prebuilding permit/amendment notice .....	10
Information included in the notice.....	10
Provision of the information .....	11
Sharing with building authority.....	11
Resolution permitting or requiring public input .....	11
Provision of identical information; effect of failure.....	11
Township trustee conflicts of interest .....	11
Wind turbine requirements.....	12
Safety specifications included in certificate application.....	12
Wind turbine setbacks .....	12
Applicability.....	13

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## DETAILED ANALYSIS

### Township approval regarding solar and wind facilities

The bill creates processes under which electors (colloquially known as voters, which will be used in this analysis) of the township may approve or reject the placement of any of the following in the township:<sup>1</sup>

- “Economically significant solar facility” (ESSF) which means solar panels 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 but less than fifty megawatts. The term also excludes one or more solar panels 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.
- “Economically significant wind farm” (ESWF) 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” (LSF) 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, for purposes of electric facilities addressed by the bill, is an electric generating facility and associated facilities designed for, or capable of, operation at fifty megawatts or more).
- “Large wind farm” (LWF) 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.

### Pre-Power Siting Board (PSB) certification/amendment notice

At least 30 days before applying for a certificate, or an amendment to an existing certificate, from the Power Siting Board (PSB) for the construction, operation, or maintenance of a utility facility (which is an ESWF, LWF, or LSF) to be located (in whole or in part) in the

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<sup>1</sup> R.C. 519.215(A) to (C) and 4906.01(G) and (H).

unincorporated area of a township, the person intending to apply must provide notice to the board of township trustees that the person intends to make such an application.<sup>2</sup>

### **Information included in notice**

In addition to stating the intent to apply for certification, the notice must include the following, as applicable:

- The person intending to apply for a certificate must provide the following information to the board of trustees:
  - With respect to an economically significant wind farm or a large wind farm, information about:
    - ❖ The location of the proposed wind farm;
    - ❖ The geographical size of the wind farm;
    - ❖ A list of all leaseholders at the time notice is provided, including their names and addresses;
    - ❖ The number of wind turbines to be constructed;
    - ❖ The proposed height of each wind turbine as measured from each wind turbine tower's base to the tip of the blade at its highest point;
    - ❖ The diameter of each wind turbine base; and
    - ❖ The proposed location of the wind turbines.
  - With respect to a large solar facility, information about:
    - ❖ The location of the proposed facility;
    - ❖ The geographical size of the facility;
    - ❖ A list of all leaseholders at the time notice is provided, including their names and addresses;
    - ❖ The number of solar panels to be constructed; and
    - ❖ The proposed location of the solar panels.
- The person intending to apply for an amendment making any change or modification to an existing certificate must provide information regarding that change or modification to the board of trustees.<sup>3</sup>

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<sup>2</sup> R.C. 519.215(D) and 519.219(A).

<sup>3</sup> R.C. 519.219(B).

## **Provision of the information**

The person giving the notice must provide all information in written form, but also may choose to present the information to the board of township trustees at a regularly scheduled board meeting or a special meeting called for that purpose, if the person requests it.

If the person providing the information only provides it in written form, the board of township trustees must acknowledge its receipt in the minutes of its next regularly scheduled meeting or special meeting.<sup>4</sup>

## **Sharing with PSB**

As part of a PSB application or existing certificate amendment, the applicant must provide a copy of all of the information provided to the township board of trustees to the power siting board.<sup>5</sup>

## **Provision of identical information; effect of failure**

If a person makes a PSB application or existing certificate amendment for a utility facility subject to the notice, the application must provide information about the facility that is identical to the information provided in the notice. If the information contained in the application is not identical to the information provided in the notice, no certificate or amendment shall be granted by the power siting board.<sup>6</sup>

## **Referendum re: PSB certificate or amendment**

### **Resolution allowing public input**

On receipt of a notice to file an application for a PSB certificate or amendment to an existing certificate (see “**Pre-Power Siting Board (PSB) certification/amendment notice**,” above), for a utility facility, the board of township trustees may adopt a resolution allowing public input to PSB regarding the certificate or amendment. The resolution grants the township voters the right to petition for a referendum described under “**Referendum process**” (below). The resolution must be adopted not later than 30 days after the township board of trustees receives the notice. The resolution may contain a statement explaining the board’s decision. If the board adopts the resolution, it must provide a copy of the resolution to the person who gave the notice and to PSB.<sup>7</sup>

### ***Application of referendum***

The bill conditions the certificate, or any amendment to the existing certificate, PSB issued for a utility facility described in the notice (see “**Pre-Power Siting Board (PSB) certification/amendment notice**,” above) upon the right of referendum the bill grants

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<sup>4</sup> R.C. 519.219(C).

<sup>5</sup> R.C. 519.219(D).

<sup>6</sup> R.C. 4906.30.

<sup>7</sup> R.C. 519.2111.

to township voters in that area. Certificates or amendments become effective 90 days from the day of issuance, unless a referendum petition is filed with the board of elections.<sup>8</sup>

Despite any amendment triggering the requirement that a certificate be subject to the referendum as described above, the bill also specifies that, with respect to an LWF, amendments that do the following are the only ones that make the certificate subject to the referendum:

- 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.

With respect to an LSF, amendments that add more, or change the location of, solar panels are the only changes that make the certificate subject to the referendum.<sup>9</sup>

## **Referendum process**

### ***When a petition may be filed***

The bill provides that a referendum petition may only be filed in one of the following circumstances:

- The board of township trustees adopted a resolution allowing public input regarding the certificate or amendment (see "**Resolution allowing public input**," above);
- The board of township trustees is unable to adopt a resolution allowing public input or requiring public input because of conflicts of interest (see "**Township trustee conflicts of interest**," below).<sup>10</sup>

### ***When petition is received***

If a timely referendum petition regarding a utility facility 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>11</sup>

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<sup>8</sup> R.C. 519.217(A), 4906.10, 4906.101(A), 4906.20, 4906.201(A), and 4906.203(A).

<sup>9</sup> R.C. 4906.101(A)(2).

<sup>10</sup> R.C. 519.217(B).

<sup>11</sup> R.C. 519.217(D).

### ***Petition requirements***

The referendum petition must be signed by the number of qualified voters residing in the unincorporated area of the township equal to at least 8% of the total votes cast for all candidates for governor in that area at the most recent general election at which a governor was elected. Each petition must contain a brief description of the utility facility 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 or solar panel would be placed under the certificate or amendment. These requirements are in addition to current Ohio law governing petitions. The petition must also include a copy of either (1) the resolution allowing public input regarding the certificate or amendment or (2) a certification from the board of township trustees that it is unable to adopt a resolution allowing public input or requiring public input because of conflicts of interest. The bill also sets forth the basic form for a “Petition for Referendum of Utility Facility Certificate or Amendment,” that includes, for example, the description of the utility facility, 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>12</sup>

### ***Voter action***

The certificate or amendment 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 subject to PSB modifications discussed below.<sup>13</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 utility facility is to be located in the unincorporated area of a single township, the certificate or amendment is invalid;
- If the utility facility is to be located in the unincorporated area of more than one township, one of the following applies:
  - If less than all of the townships reject the certificate or amendment, PSB must modify it to exclude the area of each township whose voters 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>14</sup>

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<sup>12</sup> R.C. 519.214(C) to (D).

<sup>13</sup> R.C. 519.217(E), 4906.101(B), and 4906.203(B).

<sup>14</sup> R.C. 4906.101(B) and 4906.203(B).

## **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 utility facility to no longer need PSB certification, the certificate is invalid.<sup>15</sup>

## **Special election re: PSB certification or amendment**

### **Resolution requiring public input**

On receipt of notice to file an application for a PSB certificate or amendment to an existing certificate (see “**Pre-Power Siting Board (PSB) certification/amendment notice,**” above), for a utility facility, the board of township trustees may adopt a resolution requiring public input. A resolution must require that any such certificate, if issued, or any such amendment, if approved, be submitted to the voters of the unincorporated area of the township for approval or rejection at a special election (see “**Special election,**” below).

The resolution must be adopted not later than 30 days after the board of township trustees receives the notice of the certificate or amendment application and must state the reason for the board of township trustees’ opposition to the certificate or amendment. Those reasons may include the following:

- Conflict with the township’s zoning plan, as created under continuing law;
- Potential issues arising from the cumulative effect of multiple wind or solar projects on the environment or quality of life of township residents;
- Potential issues arising from the amount of nonresident leaseholders;
- Failure to publicly record all leaseholders at the time the notice of the certificate or amendment application is received;
- Resident concerns about the proposed construction;
- Any other issue that the board of township trustees deems material.

Upon adoption of the resolution, the board of township trustees must provide a copy of the resolution to the person who gave the notice of the certificate or amendment application and to PSB.<sup>16</sup>

## **Special election**

### ***Application of special election***

If PSB issues a certificate to, or approves any amendment to an existing certificate for a utility facility, to be located in whole or in part in the unincorporated area of a township and

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<sup>15</sup> R.C. 4906.101(C) and (D) and 4906.203(C) and (D).

<sup>16</sup> R.C. 519.2113.

the township board of trustees adopted a resolution requiring public input regarding it, the certificate or amendment must be submitted to the voters of the unincorporated area of the township for approval or rejection.<sup>17</sup>

### ***Special election process***

Once PSB issues the certificate or approval of the amendment, it must certify the issue, for placement on the ballot, to the board of elections. The board of elections must then submit the certificate or amendment to the voters 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 ninety days after the board of elections receives the certified issue.<sup>18</sup>

### ***Effect of special election***

The certificate or amendment cannot take effect unless approved by a majority of the voters voting on it. If approved by a majority of the electors voting on it, the certificate shall take immediate effect. The bill, however, provides that the certificate or amendment taking immediate effect is subject to PSB modification provisions under the bill (see “**Effect of rejection on certificate or amendment,**” above), if applicable. It is not clear how applicable those modification provisions are since they apply regarding the referendum and not this special election.<sup>19</sup>

## **Township approval of ESSF building permit or amendment Prebuilding permit/amendment notice**

At least 30 days before applying for a building permit, or an amendment to an existing permit, for an ESSF to be located in whole or in part in the unincorporated area of a township, the person intending to apply must provide notice to the board of township trustees that the person intends to make such an application.

### ***Information included in the notice***

The person must also provide the following information with the notice regarding an application for a building permit:

- The location of the proposed solar facility;
- The geographical size of the solar facility;
- A list of all leaseholders at the time notice is provided, including their names and addresses;
- The number of solar panels to be constructed;
- The proposed location of the solar panels.

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<sup>17</sup> R.C. 519.2115(A).

<sup>18</sup> R.C. 519.2115(B).

<sup>19</sup> R.C. 519.2115(C).

With regard to any change or modification to an existing permit, the person must include with the notice all information regarding that change or modification to the board of trustees.<sup>20</sup>

### ***Provision of the information***

The person giving the notice must provide all information in written form, but also may choose to present the information to the board of township trustees at a regularly scheduled board meeting or a special meeting called for that purpose, if the person requests it.

If the person providing the information only provides it in written form, the board of township trustees must acknowledge its receipt in the minutes of its next regularly scheduled meeting or special meeting.<sup>21</sup>

### ***Sharing with building authority***

As part of a building permit or amendment, the applicant must provide a copy of all of the information provided to the township board of trustees to the relevant state or local building authority.<sup>22</sup>

### ***Resolution permitting or requiring public input***

The bill provides that if a state or county building authority issues a building permit to, or approves any amendment to an existing permit for, an ESSF to be located in whole or in part in the unincorporated area of a township, the township board of trustees may adopt a resolution allowing public input or requiring public input, granting voters the right to referendum or a special election regarding the permit or amendment. The bill provides that a permit, or amendment to a permit, subject to such a resolution must be treated, to the extent practicable, as if it is a certificate or amendment by PSB for a utility facility under the bill.<sup>23</sup>

### ***Provision of identical information; effect of failure***

If a person makes an application to a state or local building authority for a building permit or an existing permit amendment for an ESSF subject to the notice, the application must provide information about the ESSF that is identical to the information provided in the notice. If the information contained in the application is not identical to the information provided in the notice, no permit or amendment shall be granted by the building authority.<sup>24</sup>

## **Township trustee conflicts of interest**

The bill prohibits a member of a board of township trustees who is party to a lease agreement regarding, or has granted an easement to the developer of a utility facility, or who holds any beneficial interest in such a facility, from voting on a resolution allowing public input,

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<sup>20</sup> R.C. 519.2119(A) and (B).

<sup>21</sup> R.C. 519.2119(C).

<sup>22</sup> R.C. 519.2119(D).

<sup>23</sup> R.C. 519.2121.

<sup>24</sup> R.C. 519.2123.

or a resolution requiring public input, regarding a PSB certificate or existing certificate amendment of the utility facility. The same prohibition applies regarding a building permit or existing permit amendment for an ESSF.

The bill further prohibits a member of a board of township trustees who has an immediate family member who is party to a lease agreement or has granted an easement to the developer of a utility facility, or who holds any beneficial interest in such a facility, from voting on a resolution allowing public input or requiring public input.

If, because of the prohibitions, one or more members of the board of township trustees is unable to adopt a resolution allowing public input or requiring public input, the township voters have the right to petition for a referendum, and the certificate or amendment must be submitted to the voters of the unincorporated area of the township for approval or rejection.<sup>25</sup>

## Wind turbine requirements

### Safety specifications included in certificate application

Under the bill, PSB rules must require a wind farm (which may be an ESWF or LWF) 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>26</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 safety distance, in case of fire or thunderstorms, recommended in the wind turbine manufacturer's safety specifications for the wind turbines described in the certification application, or those of a comparable design if no specifications exist for the turbines in the application:
  - If the recommended distance *is* measured from nearest adjacent property line, as measured from that property line; or

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<sup>25</sup> R.C. 519.2117. It is not clear what is meant by "one or more members of the board . . . is unable to adopt a resolution . . ." because the board itself, and not the individual members separately, can adopt a resolution. A corrective amendment may be necessary to clarify the intent.

<sup>26</sup> R.C. 4906.20(B)(1)(b).

- If the recommended distance *is not* measured from the nearest adjacent property line, the same distance, but measured from the nearest adjacent property line at the time of the certification application.<sup>27</sup>

## Applicability

The bill states that its provisions apply to the following:

- Application for a PSB certificate or an existing certificate amendment for a utility facility pending before PSB on the bill's effective date;
- Application for a building or an existing permit amendment for an ESSF pending before a state or county building authority on the bill's effective date.

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## HISTORY

Action	Date
Introduced	02-09-21

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S0052-I-134/ts

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<sup>27</sup> R.C. 4906.20(B)(2)(a).