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J.R. Lallo, Research Analyst

SUMMARY

County designations of restricted areas for utility facilities

- Allows a board of county commissioners to designate all or part of an unincorporated area of the county as a restricted area, prohibiting the construction of any or all of the following (collectively, known as “utility facilities”):
 - Economically significant wind farms;
 - Large wind farms;
 - Large solar facilities.
- Establishes a procedure for adopting a resolution establishing a restricted area, including notice requirements for a meeting at which the resolution will be discussed.
- Prohibits applications for a certificate, or material amendment, for a utility facility from the Power Siting Board (PSB) in a restricted area prohibiting the construction of that type of facility.
- Establishes a referendum and related requirements for the approval or rejection of a resolution of a board of county commissioners designating a restricted area.
- Defines “material amendment” as an amendment to an existing PSB certificate for a utility facility that does any of the following:
 - For a utility facility:
 - ❖ Changes the facility’s generation type from one type of utility facility to another;
 - ❖ Increases the facility’s nameplate capacity;
 - ❖ Changes the boundaries of the facility, unless the new boundaries are completely within the previous boundaries or the facility components outside the previous boundaries are underground.

- For a large wind farm or economically significant wind farm:
 - ❖ Increases the number of wind turbines;
 - ❖ Increases the height of a wind turbine.
- Specifies the addition of a battery storage system to a utility facility does not constitute a material amendment.

County approval regarding utility facilities

- Requires a person, before applying for a PSB certificate, or material amendment to an existing certificate, for placement of a utility facility in the unincorporated area of a county, to hold a public meeting in each county in which 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, no later than 90 days after receiving information about the utility facility at the public meeting, to adopt a resolution prohibiting its construction or limiting its geographic size.

PSB membership regarding utility facilities

- Requires that, for all applications pertaining to a certificate, or a material amendment to an existing certificate, for a utility facility, PSB must include two voting ad hoc members to represent the interests of the residents of the counties and townships in which the utility facility is to be located.
- Requires the voting ad hoc members 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.
- Stipulates that, if the utility facility is to be located in multiple townships or counties, a single voting ad hoc member will be chosen by a majority vote the boards of township trustees to represent all of those townships, and a single voting ad hoc member will be chosen by a majority vote of all the boards of county commissioners to represent all of those counties.
- Requires that a board of county commissioners and a board of township trustees designate one voting ad hoc PSB member each, not later than 30 days after receiving notice that an application to PSB for a certificate or amendment for a utility facility has been determined to be complete and accepted.

Ad hoc PSB member restrictions

- Prohibits, if a board of township trustees or board of county commissioners seeks to adopt a resolution to intervene in a power siting board case for which it is entitled to have a voting ad hoc member, the member who will serve as an ad hoc member from voting on the resolution to intervene unless they designate another as the ad hoc member.

- Prohibits present and former voting ad hoc PSB members from disclosing or using confidential information acquired in the course of official duties without appropriate authorization.
- Exempts voting ad hoc PSB members from limits on ex parte communications with any party to a PSB proceeding, but requires the ad hoc member and the party to disclose the date of the conversation and all participants in the conversation who are parties.

PSB certification process

- Requires PSB to notify boards of township trustees and boards of county commissioners that an application has been filed for a certificate, or a material amendment to an existing certificate, to construct a utility facility in their township or county.
- Prohibits PSB from granting a certificate, or material amendment, for a utility facility if the prospective applicant provided different information to the board of county commissioners for the public meeting regarding nameplate capacity, geographic area, and generation type than what PSB possesses.
- Prohibits PSB from granting a certificate, or a material amendment to an existing certificate, if the utility facility exceeds the limited boundaries set by the board of county commissioners by resolution.

Decommissioning requirements for wind and solar facilities

- Requires an applicant for a certificate, or a material amendment to an existing certificate, for a utility facility to submit a comprehensive decommissioning plan for the facility for PSB to review and approval 60 days before beginning construction.
- Requires the plan to be prepared by a professional engineer, designate the responsible parties for decommissioning, a schedule of decommissioning, and cost estimates.
- Requires the posting of a performance bond that meets certain requirements imposed by the act before construction may begin.

Applicability to pending certificates for utility facilities

- States that, for an application for a certificate, or a material amendment to an existing certificate, for a utility facility that has been filed with PSB, but has not been found to be in compliance with the application requirements and accepted, as of the act's effective date (October 11, 2021), the PSB shall include voting ad hoc members.

Applicability to pending certificates for wind farms

- States that the act applies to any application for an economically significant wind farm or large wind farm that has been filed with PSB, but has not has been found to be in compliance with the application requirements and has not been accepted, by November 10, 2021 (30 days after the act's effective date).

- States that any application for such a wind farm is subject to review and approval by the board of county commissioners of the county in which the utility facility is to be located and the board has until January 10, 2022, to prohibit its construction or limit its size.

Applicability to pending certificates for large solar facilities

- States that applications for a certificate or material amendment to an existing certificate for a large solar facility are not subject to the act’s provisions if, as of October 11, 2021:
 - The facility is in the PJM Interconnection and Regional Transmission Organization, L.L.C. (PJM), New Services Queue;
 - The application has been found to be in compliance with the application requirements by the PSB Chairperson (or the Chairperson’s designee) and has been accepted by PSB; and
 - The applicant has received a completed system impact study from PJM and has paid the filing fee for the facilities study to PJM.
- States that if a large solar facility meets the above requirements and has multiple positions in the New Services Queue under the same legal entity as an applicant, all the queue positions in effect on October 11, 2021, are exempt from the act.
- States that if, after October 11, 2021, the applicant files an additional new service request with PJM pertaining to the facility, the application is subject to review by the board of county commissioners of the county in which the facility is to be located.
- States that if a large solar facility submits a new queue position for an increase in capacity interconnection rights after October 11, 2021, in order to participate in PJM’s capacity market which does not increase the facility’s nameplate capacity, the change does not subject the facility to the act.

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DETAILED ANALYSIS

Restricted areas

The act creates a process under which a board of county commissioners may designate all or part of the unincorporated area of a county as a restricted area to prohibit the construction of a “utility facility,” which is defined as 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 50 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 20 megawatts, as measured at the customer’s point of interconnection to the electrical grid.

¹ R.C. 303.57, 303.58, and 4906.01; R.C. 4906.13, not in the act.

- “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 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 also a major utility facility.

No utility facility within restricted areas

The act prohibits a person from filing an application for a certificate, or a material amendment to an existing certificate, to construct, operate, or maintain a utility facility in a restricted area, if such a facility is prohibited in that restricted area.² Likewise, the act prohibits the Power Siting Board (PSB) from accepting a filing for, or granting, such a certificate or a material amendment to such an existing certificate.³

Material amendment

The act defines a “material amendment” to mean an amendment to an existing PSB certificate that does any of the following:⁴

- For a utility facility:
 - Changes the facility’s generation type from one type of utility facility to another;
 - Increases the facility’s nameplate capacity; or
 - Changes the boundaries of the facility, unless the new boundaries are completely within the previous boundaries or the facility components outside the previous boundaries are underground.
- For a large wind farm or economically significant wind farm:
 - Increases the number of wind turbines; or
 - Increases the height of a wind turbine.

Material amendments do not include the addition of a battery storage system to a utility facility.⁵

Procedure to designate a restricted area

A board of county commissioners may adopt a resolution designating one or more restricted areas, and fixing their boundaries, at a regular meeting of the board or at a special meeting called for the purpose of discussing such a resolution. Any resolution designating a

² R.C. 303.60.

³ R.C. 303.60 and 4906.101.

⁴ R.C. 303.57(C)(1).

⁵ R.C. 303.57(C)(2).

restricted area must include a map of the restricted area, and texts sufficient to identify the boundaries of the restricted area. A copy of the resolution, texts, and maps must be filed with the county recorder's office.⁶

At least 30 days prior to a meeting at which such a resolution will be discussed, the board must do the following:⁷

- Provide public notice of the date and time of the meeting by one publication in a newspaper of general circulation within the county;
- Publicly post a map showing the boundaries of the proposed restricted area at all public libraries within the county; and
- 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 act requires the board to repeat the "30-day" steps described above before the board may modify a previously adopted resolution creating a restricted area.⁸

Effect of adoption of resolution on existing applications

The act provides that the adoption of a resolution creating a restricted area has no effect on the construction of a utility facility that has already been presented to the board of county commissioners, if the board did not adopt a resolution prohibiting the facility within the time required for such a resolution. (See "**Board of county commissioners' rejection or modification of project**" below.)⁹

Referendum re: designation of a restricted area

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

Referendum process

Petition certification

If a timely referendum petition regarding the designation of a restricted area is filed with the board of county commissioners, the board 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 question regarding the restricted area designation will be held. If the board of elections determines the petition is sufficient and valid, the question will be voted on

⁶ R.C. 303.58(B) and (D).

⁷ R.C. 303.58(C)(2).

⁸ R.C. 303.58(C)(3).

⁹ R.C. 303.58(E).

at a special election held during either the next primary or general election that occurs at least 120 days after the petition is filed with the board of county commissioners.

Petition requirements

The referendum petition must (1) be signed by the number of registered 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 and (2) request the board of county commissioners to submit the petition to the county board of elections. Each petition must contain a brief summary of the contents of the resolution designating the restricted area. The petition must contain the number and the full and correct title, if any, of the resolution. These requirements are in addition to current Ohio law governing petitions (R.C. 3501.38, not in the act).

The act also sets forth the basic form for a “Petition for Referendum on the Designation of a restricted area prohibiting the construction of utility facilities,” that includes, for example, the name or number of the resolution, if any, a brief summary of the resolution, the county name, a statement by the petition circulator relating to signature collection, 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 restricted area will not take effect unless it is approved by a majority of voters voting on it. If a majority of the voters approve the resolution, it will take effect immediately.

Post-voter approval actions

Within five working days after the resolution’s effective date, the board of county commissioners must file the resolution and all accompanying maps and texts with the county recorder and with the county or regional planning commission, if one exists. However, the failure to file with the recorder the resolution, maps, and texts, will not invalidate the resolution.¹⁰

County approval regarding utility facilities

Pre-PSB application public meeting and notice

At least 90, but no more than 300 days, before applying for a certificate, or a material 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 each county in which the utility facility is to be located. The prospective applicant must provide written notice regarding the meeting to the board of county commissioners of the county, as well as the boards of trustees of every

¹⁰ R.C. 303.59.

township in which the utility facility is to be located within that county, at least 14 days before the meeting is held.¹¹

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:

- 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 within that county.

Further, at the public meeting, the prospective applicant for a material amendment “that makes any change or modification to an existing certificate”¹² 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.¹³

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 a material amendment to an existing certificate, for a utility facility, the board of county commissioners may adopt a resolution that does either of the following:¹⁴

- 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.

If a resolution is not adopted within the time required, the application may proceed as filed with PSB. 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.¹⁵

¹¹ R.C. 303.61(A) and (B).

¹² It is not clear what this apparent modification (language in quotations) to the term “material amendment” means.

¹³ R.C. 303.61(C).

¹⁴ R.C. 303.62(A).

¹⁵ R.C. 303.63(B) and (C).

PSB membership regarding utility facilities

Voting ad hoc PSB members

The act requires PSB to include two voting ad hoc members in all cases involving an application for a certificate, or a material amendment to an existing certificate, for a utility facility. The voting ad hoc members represent the interests of the residents of the area (county and township) in which the utility facility is to be located. The voting ad hoc members must be designated not later than 30 days after a board of county commissioners or board of township trustees receives notification that an application has been found to be in compliance with the application requirements by the chairperson of PSB (or the chairperson's designee) and has been accepted by PSB. The voting ad hoc members must be:

- The chairperson of the board of township trustees of the township in which the utility facility is to be located, or the chairperson's designee; and
- The president of the board of county commissioners of the county in which the utility facility is to be located, or the president's designee.¹⁶

(See "**Designee requirements**," below regarding who can be a designee.)

If the utility facility is to be located in multiple townships, a single ad hoc member must be chosen by a majority vote of the boards of township trustees of all of the townships in which it is to be located to represent those townships. Likewise, if a utility facility is to be located in multiple counties, a single ad hoc member must be chosen by a majority vote of the boards of county commissioners of all the counties in which it is to be located to represent those counties.¹⁷

The act prohibits a person from serving as an ad hoc PSB member if the person:¹⁸

- 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; or
- Has an immediate family member who has intervened in the PSB proceeding for which the ad hoc member is included.

¹⁶ R.C. 4906.02(A)(2), 4906.021(B), (C)(1), and (E), and 4906.022.

¹⁷ R.C. 4906.021(C)(2) and (3).

¹⁸ R.C. 4906.021(D)(1).

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.¹⁹

The act defines an “immediate family member” to mean a person’s:²⁰

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

Limitations and restrictions on voting ad hoc PSB members

Designee requirements

A designee tapped to serve as a voting ad hoc PSB member must be a resident of the same political subdivision as the designator or another elected official from that subdivision.²¹

Intervenor actions

If a board of township trustees or board of county commissioners seeks to adopt a resolution to intervene in a PSB case for which it is entitled to have a voting ad hoc member, the member of that body who will serve as a voting ad hoc member cannot vote on the resolution to intervene, unless the member designates another ad hoc member, consistent with the requirements described above.”²²

Ex parte communications

A voting ad hoc member of PSB is exempt from all limitations on ex parte communications. However, if an ad hoc member communicates with a party, including any intervening party, to a PSB proceeding, the ad hoc member and the party must disclose to PSB the date of the conversation and all participants in the conversation who are parties to the case.²³

Confidentiality

No present or former voting ad hoc member may disclose or use, without appropriate authorization, information acquired in the course of official duties that is confidential because of the following:²⁴

- Statutory law; or

¹⁹ R.C. 4906.021(C)(2).

²⁰ R.C. 4906.021(A).

²¹ R.C. 4906.021(E).

²² R.C. 4906.023

²³ R.C. 4906.024.

²⁴ R.C. 4906.025.

- Notice the ad hoc member received designating the information as confidential if 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.

PSB certification process

Copies of PSB certificate applications for townships and counties

The act requires that PSB provide full and complete copies of an application for a certificate, or a material 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 it has been found to be in compliance with the application requirements by the PSB Chairperson (or the Chairperson's designee) and has been accepted by PSB.²⁵ The copies may be provided in any of the following formats:²⁶

- Paper copy;
- Electronic format; or
- 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 a material 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 public meeting (see "**Pre-PSB application meeting and public notice**," above):

- The nameplate capacity exceeds what was provided;
- The geographic area is not completely within the boundaries originally provided to the board of county commissioners; or
- 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).²⁷

PSB action following county prohibition or limitation

The act prohibits PSB from granting a certificate, or a material amendment to an existing certificate, either as proposed or modified by PSB, to a utility facility to be located in a county in

²⁵ R.C. 4906.31(A).

²⁶ R.C. 4906.31(B).

²⁷ R.C. 4906.30(B).

which 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 not all of the boards of county commissioners have adopted a prohibition resolution, PSB must modify the certificate or amendment to exclude all areas in which such construction is prohibited.²⁸

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.²⁹ (See, **“Board of county commissioners’ rejection or modification of project,”** above discussing the prohibition or limitation of a utility facility project.)

Decommissioning requirements for wind and solar facilities

Decommissioning plan

The act requires that, at least 60 days prior to beginning construction of a utility facility, the applicant for a certificate, or a material amendment to an existing certificate (or any subsequent person to whom the certificate is transferred) must submit a comprehensive decommissioning plan for review and approval by PSB.³⁰ The plan must be prepared by a professional engineer registered with the State Board of Registration for Professional Engineers and Surveyors. PSB may reject the engineer chosen by the applicant and require the applicant to choose another qualified engineer.³¹

The decommissioning plan must include:³²

- A list of all parties responsible for decommissioning;
- A schedule of decommissioning activities, not to extend beyond 12 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 state. The estimate cannot take into account the salvage value of any materials from the facility.

The act requires the applicant to recalculate the decommissioning cost estimate every five years. The recalculation must be done by an engineer retained by the applicant.³³

²⁸ R.C. 4906.102.

²⁹ R.C. 4906.103.

³⁰ Please note, R.C. 4906.21 (definition section) contains a technical error. R.C. 4906.232 should be “R.C. 4906.222.”

³¹ R.C. 4906.21 and 4906.211(A).

³² R.C. 4906.211(B).

³³ R.C. 4906.212.

Decommissioning performance bond

The act requires that, prior to beginning construction of a utility facility, the applicant must post a performance bond to ensure that funds are available for decommissioning the facility. PSB must be named as the obligee of the performance bond.³⁴

The performance bond must equal the estimate of the costs of decommissioning included in the decommissioning plan and must be updated every five years. If decommissioning costs are greater in the new estimate than they were in the preceding estimate, the performance bond must be increased proportionately. The performance bond can never decrease, even if the estimated cost of decommissioning decreases.³⁵

Applicability to utility facilities

The act states that PSB shall include voting ad hoc members for each application for a certificate, or a material amendment to an existing certificate, for a utility facility that has been filed with, but has not been found to be in compliance with the application requirements by the Chairperson of PSB (or the Chairperson's designee) and accepted by PSB as of the act's effective date, October 11, 2021.³⁶

Applicability to pending certificates for wind farms

The act states that its provisions apply to any application for a large wind farm or economically significant wind farm that has been filed with PSB, but has not been found to be in compliance with the application requirements by the PSB Chairperson (or the Chairperson's designee) and has not been accepted by PSB by November 10, 2021 (30 days after the act's effective date). Any such application not found to be in compliance and that has not been accepted 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 until January 10, 2022, to review the application and to adopt a resolution prohibiting the construction of the utility facility or limiting its boundaries.³⁷

Applicability to pending certificates for large solar facilities

The act states that an application for a certificate or material amendment to an existing certificate for a large solar facility is not subject to the act's provisions if:³⁸

- The facility is in the PJM Interconnection and Regional Transmission Organization, L.L.C. (PJM), New Services Queue at the time the application has been found to be in compliance with the application requirements by the PSB Chairperson (or the Chairperson's designee);

³⁴ R.C. 4906.22.

³⁵ R.C. 4906.221 and 4906.222.

³⁶ Section 5.

³⁷ Section 3.

³⁸ Section 4(A).

- The application has been accepted by PSB; and
- As of October 11, 2021, the applicant has received a completed system impact study from PJM for the facility and has paid the filing fee for the facilities study to PJM.

Additionally, the act states that if a large solar facility that meets the above requirements and has multiple positions in the New Services Queue under the same legal entity as the applicant, all the queue positions in effect on October 11, 2021, are exempt from the act.³⁹

However, if an applicant files an additional new service request with PJM pertaining to the facility after October 11, 2021, the application is subject to review by the board of county commissioners of the county in which the facility is to be located (see “**Board of county commissioners’ rejection or modification of project**” above).⁴⁰ But note, the act further provides that if, after that date, in order to participate in PJM’s capacity market, a large solar facility submits a new queue position for an increase in capacity interconnection rights, that change does not subject the facility to the act, but only if the change does not increase the facility’s nameplate capacity.⁴¹

HISTORY

Action	Date
Introduced	02-09-21
Reported, S. Energy & Public Utilities	06-02-21
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³⁹ Section 4(B).

⁴⁰ Section 4(C).

⁴¹ Section 4(D).