

Law Bulletin



THE OHIO STATE UNIVERSITY
COLLEGE OF FOOD, AGRICULTURAL,
AND ENVIRONMENTAL SCIENCES

Law you need to know from OSU Extension's Farm Office

October 2021

Utility-Scale Wind and Solar Facility Siting: Ohio's New Law

*Peggy Kirk Hall, Associate Professor & Field Specialist
OSU Extension Agricultural & Resource Law Program*

*Eric Romich, Associate Professor & Field Specialist
OSU Extension Community Development Program*

Ohio is experiencing significant growth in the development of utility-scale solar generation facilities. As of September 2021, there were 44 solar project applications submitted to the Ohio Power Siting Board (OPSB). Combined, the 44 utility-scale solar projects represent over 75,000 acres of development that would convert the land use from primarily agricultural to utility-scale electric generation. This solar energy development in Ohio comes on the heels of a surge in wind energy development over the last decade.

Converting thousands of acres of rural land to a large scale solar or wind energy facility can have a significant effect on the local community. Even so, Ohio law has not historically allowed counties and townships to play a substantial role in the utility siting process, raising an important question: should local governments and residents have a stronger voice in determining whether and where to site large scale solar and wind facilities in their communities? This question was at the heart of newly enacted Senate Bill 52, which becomes effective on October 11, 2021.

In S.B. 52, the Ohio legislature amended existing utility siting laws, giving local communities a voice in the siting process. The new law authorizes counties to designate restricted areas where solar and wind developments may not locate. It also creates referendum procedures that allow county residents to vote on restricted area designations. Local communities will have advance notice, a public hearing, and a right to reject a proposed project, and county and township officials will have a seat at the table for facility review and approval by the Ohio Power Siting Board. In this law bulletin, we explain each of these components of Ohio's new law. We tackle the third component on decommissioning in a separate law bulletin, "Decommissioning Large Wind and Solar Utilities: Ohio's New Law."

The Three Parts of Senate Bill 52

Effective October 11, 2021

1	2	3
Restricted area designations and referenda	Local involvement in project reviews	Decommissioning plans and bonding requirements

What types of facilities does the new law address?

For the most part, S.B. 52 will apply to applications for wind and solar utility facilities that surpass a certain size and send energy through a single point of connection to the electric grid. “Material amendments” to existing wind and solar facilities are also included. The bill clarifies the types of facilities that it affects with several key definitions:

- “Economically significant wind farms,” which means wind turbines and associated facilities with a single interconnection to the electrical grid designed for or capable of operation at an aggregate capacity of 5 or more megawatts but less than 50 megawatts, excluding wind farms in operation on June 24, 2008, and wind turbines providing electricity to a single customer at a single location capable of operating at an aggregate capacity of less than 20 megawatts.
- “Large wind farms,” which means electric generating plants that consist of wind turbines and associated facilities with a single interconnection to the electrical grid that is also a “major utility facility.”
- “Large solar facilities,” which means electric generating plants that consist of solar panels and associated facilities with a single interconnection to the electrical grid that is also a major utility facility.
- The term “major utility facility” means an electric generating plant and associated facilities designed for or capable of operation at a capacity of 50 megawatts or more and includes certain electric transmission lines and gas pipelines.
- A “material amendment” to a facility application is an increase in the number or height of wind turbines for a large wind farm or economically significant wind farm, or changes to a utility facility’s generation type, changes to its boundaries beyond the original boundaries, or increases in its nameplate capacity.

County restricted area designations

The new law allows a county to determine areas that are “off limits” to large wind and solar projects and material amendments to existing projects. The purpose for allowing a county to make a restricted area designation is to help prevent conflicts over siting solar and wind facilities in areas where a facility is not wanted. Note, however, that the law does not contain any standards or criteria for designating restricted areas.

The new provisions in Ohio Revised Code (ORC) Sections 303.58 and 303.59 give authority to a board of county commissioners to designate “restricted areas” in the county where construction of an economically significant wind farm, large wind farm, or large solar facility would be prohibited. At least 30 days before a meeting to discuss designation of the areas, the board of county commissioners must give public notice in a county newspaper notice and provide notice by first class mailing to all townships, school districts, and municipalities within the proposed restricted areas. The commissioners must also submit a map that shows the boundaries of proposed restricted areas for public view at all county libraries. Persons may attend the commissioner meeting and provide comments on a restricted area proposal.

If approved, a restricted area designation is effective 30 days after the approval. Once a designation is effective, the Ohio Power Siting Board may not accept an application for a certificate to build or operate a solar or wind

utility facility within the designated restricted area. A restricted area designation does not apply to an application already submitted to and not rejected by the commissioners.

County referendum on restricted area designations

Something we've learned from Ohio's recent solar and wind development is that it can divide a community into those who do and those who don't support constructing solar and wind facilities in an area. The new law grants residents an opportunity to express their opinions through a referendum process. If the county commissioners designate a restricted area, the residents may file a petition for referendum. The county commissioners must then submit the designation of the restricted area to a vote of the electors in the county.

Circulators of a petition for a referendum must present it to the board of county commissioners within 30 days of the adoption of the restricted area designation. At least 8% of the total vote cast in the county's most recent election for governor must sign the petition, which must follow the form outlined in ORC 303.59. The county commissioners and board of elections must verify the petition and, if verified, submit the restricted area designation to the electors for approval or rejection at the next general or a special election. A restricted area designation is not effective while it is subject to referendum or if it is rejected by the voters. If a majority of the vote is in favor of a restricted area, the designation becomes effective immediately.

Public meetings and county review of proposed facilities

Local officials and residents have often expressed frustration that they are the last to know of a proposed solar or wind facility locating in the community. Under the new law, the local community will learn of a proposed development early through mandated public meeting procedures. The utility project developer must hold a public meeting in each county where the facility will be located within 90 to 300 days before applying for or making a material amendment to an application for a certificate from the Ohio Power Siting Board. Additionally, the new law grants the county commissioners the power to prohibit or limit the project.

Under ORC 303.61 and 303.62, a project developer must give a 14-day advance written notice of the public meeting to the county commissioners and township trustees of each county and township where the facility would be located. At the meeting, the project developer must present information about the type of utility facility, its maximum nameplate capacity, and a map of its geographic boundaries and submit the information to the board of county commissioners. Up to 90 days after the public meeting, the county commissioners may adopt a resolution that prohibits the construction of the facility or limits its boundaries to a smaller part of the proposed location. The law does not contain standards or criteria the commissioners must consider before prohibiting a project. If the county commissioners do not prohibit the facility within 90 days of the meeting, the applicant may proceed with the application.

The Ohio Power Siting Board (OPSB) may not accept or grant a certificate for a project that the county commissioners prohibit. If a facility crosses county boundaries and one county prohibits the facility but another county does not, the OPSB must exclude the portion of the project located in the county that prohibited the



project. Additionally, ORC 4906.30 requires the project application submitted to the OPSB to mirror the information submitted to the county. If the nameplate capacity, geographic area, or type of generation differs from information provided the county, the OPSB cannot approve the project certificate.

OPSB notice of accepted application to county

After holding a local public meeting for a proposed project that the commissioners do not prohibit, the next step in the process for a project developer is to submit an application containing information required by OPSB regulations. The OPSB conducts a compliance review to determine whether the application meets all requirements and is complete. If the application is complete, the OPSB issues a letter of completeness, which allows the application to proceed with project review by the OPSB.

To inform the local community of an application's progress, the new law requires the OPSB within three days of issuing a letter of completeness for an application to notify each board of county commissioners and board of township trustees where the facility would be located. Each county and township must also receive a complete copy of the application from the OPSB in paper, electronic, or a web link format.

Local “ad hoc” members on the Ohio Power Siting Board review committee

The new law also addresses concerns over lack of local input into the application review process. The law appoints local officials to the OPSB committee that reviews an application for a certificate. ORC 4906.021 designates the chair of the township trustees and the president of the board of county commissioners in the township and county of the project's proposed location as ad hoc members of the OPSB, or their designees. The OPSB must appoint the local officials within 30 days of sending the county a letter of completeness for a facility application.

The local ad hoc members will participate in the review and approval process for the project application and will have voting rights. However, ad hoc members may not disclose confidential information learned during the OPSB review process. The law also contains limitations on appointments of ad hoc members with financial interests or conflicts of interests with the project.

What about solar and wind projects already in process before the new law?

The legislature created “safe harbors” or “grandfathered” certain projects that were already in existence before S.B. 52. Some or all provisions of the new law might not apply to these pre-existing applications, depending on how far along they were in the approval process upon S.B. 52’s effective date of October 11, 2021.

Wind projects. The new law “*fully grandfathers*” an application for or material amendment to a certificate for a wind facility if the OPSB issued a letter of completeness within 30 days of the new law’s effective date of October 11, 2021. If an application for a wind facility was in process but not yet accepted as complete by the OPSB within 30 days of the law’s effective date, the county commissioners have the authority to review the application and may adopt a resolution prohibiting its construction or limiting its boundaries but must do so within 90 days of October 11, 2021. An application is “*partially grandfathered*” if an application has been submitted to OPSB but the agency has not yet issued a letter of completeness. In that case, the only provisions of S.B. 52 that apply to the application are those requiring the agency to appoint the local “ad hoc” members to the application review committee.

Solar projects. Grandfathering of large solar facilities depends on their status in the OPSB application process and the PJM Interconnection process. The PJM is a regional transmission organization that operates a competitive wholesale electricity market and manages the high-voltage electricity grid across 13 states, including Ohio. PJM is responsible for facilitating a long-term regional planning process to ensure energy grid improvements provide reliability and economic benefits across the entire system. Solar projects that want to connect to the electricity grid in Ohio must first obtain PJM interconnection approval.

“*Full grandfathering.*” None of the provisions of S.B. 52 apply to an application or amended application for a certificate from OPSB if each of the following conditions exists:

1. The OPSB conducted a compliance review, determined the application meets requirements, and issued the applicant a letter of completeness.
2. As of October 11, 2021, the applicant has:
 - a. Submitted a proposal to PJM and received a completed system impact study from PJM which includes detailed cost estimates for system upgrades and a comprehensive development timeline.
 - b. Paid the facilities study fee to PJM to complete detailed design work for all required network transmission upgrades and attachment facilities.

In addition, any large solar facility that meets the above requirements is exempt from the provisions of S.B. 52 if it has multiple positions under the same legal entity in the PJM new services queue and all queue positions are in effect as of October 11, 2021. But if, after October 11, 2021, an applicant files an additional new service request with PJM for a facility that is already in the PJM new services queue, the board of county commissioners may review the applicant’s application to the OPSB. A facility may, however, submit a new queue position to increase its capacity interconnection rights to participate in PJM’s capacity market after October 11, 2021 and still be grandfathered from the new law as long as the change does not increase the facility’s original nameplate capacity.

“Partial grandfathering.” An application is “partially grandfathered” if an application has been submitted to OPSB but the agency has not yet issued a letter of completeness. In that case, the only provisions of S.B. 52 that apply to the application are those requiring the agency to appoint the local “ad hoc” members to the application review committee.

Decommissioning plans

A final important component of S.B. 52 is its focus on the end point of a wind or solar facility. The new law requires a developer to make plans for dismantling the project at the end of its life. For a review of the decommissioning provisions in S.B. 52, refer to our law bulletin, [“Decommissioning Large Wind and Solar Utilities: Ohio’s New Law.”](#) available in our Energy Law Library on the Farm Office website.

Where to find the laws

All information about [Senate Bill 52](#) is available on the Ohio Legislature’s website at <https://www.legislature.ohio.gov>. Search for Senate Bill number 52 of the 134th General Assembly.

[Chapter 303](#) of the Ohio Revised Code contains the new authorities for counties at <https://codes.ohio.gov/ohio-revised-code/chapter-303>, which includes:

- County wind and solar generation restriction definitions, [ORC § 303.57](#)
- Restricted area resolution by county commissioners, [ORC § 303.58](#)
- Restricted area resolution effective date; referendum, [ORC § 303.59](#)
- Power siting board certificate or amendment prohibited in restricted area, [ORC § 303.60](#)
- Public meeting before power siting board application for certificate or amendment, [ORC § 303.61](#)
- County commissioner prohibition or limitation resolution after public meeting, [ORC § 303.62](#)

[Chapter 4906](#) of the Ohio Revised Code contains the new law at <https://codes.ohio.gov/ohio-revised-code/chapter-4906>, which includes:

- Power siting board organization, [ORC § 4906.02](#)
- Ad hoc member requirement, qualifications, [ORC § 4906.021](#)
- Ad hoc member designation, [ORC § 4906.022](#)
- Limit on ad hoc member of intervening county, [ORC § 4906.023](#)
- Ex parte communication exemption and requirements for ad hoc members [ORC § 4906.024](#)
- Ad hoc member confidentiality requirements [ORC § 4906.025](#)
- Power siting board application provided to township and county, [ORC § 4906.31](#)

FOR MORE INFORMATION FROM OSU EXTENSION



Visit The Farm Office website and our Energy Law Library at armoffice.osu.edu.

Visit the Energize Ohio website at go.osu.edu/farmenergy.

CFAES provides research and related educational programs to clientele on a nondiscriminatory basis. For more information, visit cfaesdiversity.osu.edu.

For an accessible format of this publication, visit cfaes.osu.edu/accessibility.