As Introduced

133rd General Assembly
Regular Session
2019-2020

H. B. No. 401

Representative Reineke
Cosponsors: Representatives Riedel, Stein, Seitz, Hambley, Jones, Smith, T., Cross, Lipps, Lang, Swearingen, Perales, Richardson

A BILL

To amend sections 4906.10, 4906.13, 4906.20, and 4906.201; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 519.214 (519.215); and to enact new section 519.214 and sections 4906.101 and 4906.203 of the Revised Code to require inclusion of safety specifications in wind farm certificate applications, to modify wind turbine setbacks, and to permit a township referendum vote on certain wind farm certificates.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4906.10, 4906.13, 4906.20, and 4906.201 be amended; section 519.214 (519.215) be amended for the purpose of adopting a new section number as indicated in parentheses; and new section 519.214 and sections 4906.101 and 4906.203 of the Revised Code be enacted to read as follows:

Sec. 519.214. (A)(1) If the power siting board issues a certificate to, or approves an amendment described in division (A)(2) of this section to an existing certificate for, an
economically significant wind farm or a large wind farm as those terms are defined in section 4906.13 of the Revised Code, to be located in whole or in part in the unincorporated area of a township, the certificate or amendment shall become effective on the ninetieth day after the day it is issued, unless, not later than that day, a referendum petition is filed with the board of elections to require the certificate or amendment to be submitted to the electors of the unincorporated area of the township for approval or rejection.

(2) Amendments to an existing certificate that do the following are subject to division (A)(1) of this section:

(a) Add more wind turbines;

(b) 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;

(c) Increase the diameter of a wind turbine tower's base;

(d) Change the location of any wind turbine.

(B)(1) A referendum petition submitted under division (A) of this section shall be signed by a number of qualified electors residing in the unincorporated area of the township equal to not less than eight per cent of the total votes cast for all candidates for governor in the unincorporated area of the township at the most recent general election at which a governor was elected.

(2) Each part petition shall contain a brief description of the wind farm the certificate or amendment authorizes that is sufficient to identify the certificate. The description shall include the certificate number and identification of each unincorporated township and county in which a wind turbine would
be placed under the certificate or amendment. In addition to the requirements of this section, the requirements of section 3501.38 of the Revised Code shall apply to the petition.

(3) The form of the petition shall be substantially as follows:

"PETITION FOR REFERENDUM OF WIND FARM CERTIFICATE OR AMENDMENT

A proposal to approve or reject the wind farm certificate or amendment issued for ........... (description of wind farm) in the unincorporated area of ........... Township, ........... County, Ohio, adopted on ........... (date) by the Board of Township Trustees of ........... Township, ........... County, Ohio.

We, the undersigned, being electors residing in the unincorporated area of ........... Township, equal to not less than eight per cent of the total vote cast for all candidates for governor in the area at the preceding general election at which a governor was elected, request the Board of Elections to submit this proposal to the electors of the unincorporated area of ........... Township for approval or rejection at a special election to be held on the day of the primary or general election to be held on ........... (date), pursuant to section 519.214 of the Revised Code.

.......... Signature

.......... Residence address

.......... Date of signing

STATEMENT OF CIRCULATOR

I, .......... (name of circulator), declare under penalty
of election falsification that I reside at the address appearing below my signature; that I am the circulator of the foregoing part petition containing ........ (number) signatures; that I have witnessed the affixing of every signature; that all signers were to the best of my knowledge and belief qualified to sign; and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

.......... (Signature of circulator)

.......... (Circulator's residence address)

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE."

(C) Upon receiving the referendum petition, the board of elections shall notify the board of township trustees that the petition has been filed. If the board of elections determines that the referendum petition is sufficient and valid, the board shall notify the board of township trustees of that fact and shall 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 ninety days after the board receives the petition.

(D) The certificate or amendment shall not take effect unless it is approved by a majority of the electors voting on it. If the certificate or amendment is approved by a majority of the electors voting on it, the certificate shall take immediate effect, subject to modification under section 4906.101 or 4906.203 of the Revised Code, as applicable.
Sec. 519.214 519.215. Township zoning commissions, boards of township trustees, and township boards of zoning appeals shall comply with section 5502.031 of the Revised Code.

Sec. 4906.10. (A) The power siting board shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the major utility facility as the board considers appropriate. The certificate shall be subject to section 4906.101 of the Revised Code and conditioned upon the facility being in compliance with standards and rules adopted under section 4561.32 and Chapters 3704., 3734., and 6111. of the Revised Code. An applicant may withdraw an application if the board grants a certificate on terms, conditions, or modifications other than those proposed by the applicant in the application.

The board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the board, unless it finds and determines all of the following:

(1) The basis of the need for the facility if the facility is an electric transmission line or gas pipeline;

(2) The nature of the probable environmental impact;

(3) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;

(4) In the case of an electric transmission line or generating facility, that the facility is consistent with
regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;

(5) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under section 4561.32 of the Revised Code. In determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of multi-modal planning and programs of the department of transportation under section 4561.341 of the Revised Code.

(6) That the facility will serve the public interest, convenience, and necessity;

(7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those divisions, what its impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929. of the Revised Code that is located within the site and alternative site of the proposed major utility facility. Rules adopted to evaluate impact under division (A)(7) of this section shall not require the compilation, creation, submission, or production of any information, document, or other data pertaining to land not located within the site and alternative site.

(8) That the facility incorporates maximum feasible water conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives.
(B) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon that modification, provided that the municipal corporations and counties, and persons residing therein, affected by the modification shall have been given reasonable notice thereof.

(C) A copy of the decision and any opinion issued therewith shall be served upon each party.

Sec. 4906.101. (A)(1) If the power siting board issues a certificate to, or approves an amendment described in division (A)(2) of this section to an existing certificate for, a large wind farm as defined in section 4906.13 of the Revised Code and the large wind farm is to be located in the unincorporated area of a township, the certificate or amendment shall be conditioned upon the right of referendum as provided in section 519.214 of the Revised Code.

(2) Amendments to an existing certificate that do the following are subject to division (A)(1) of this section:

(a) Add more wind turbines;

(b) 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;

(c) Increase the diameter of a wind turbine tower's base;

(d) Change the location of any wind turbine.

(B) If the certificate or amendment is rejected in a referendum under section 519.214 of the Revised Code, one of the following applies:

(1) If the large wind farm is to be located in the
unincorporated area of a single township, the certificate or amendment shall be invalid;

(2) If the large wind farm is to be located in the unincorporated area of more than one township, one of the following applies:

(a) If less than all of the townships with electors voting on the referendum reject the certificate or amendment, the power siting board shall modify the certificate or amendment to exclude the area of each township whose electors rejected the certificate or amendment and shall not make any other changes to the certificate or amendment.

(b) If all of the townships with electors voting on the referendum reject the certificate or amendment, the certificate is invalid.

(C) A modification under division (B)(2)(a) of this section shall not be considered an amendment to the certificate.

(D) If a certificate modification under division (B)(2)(a) of this section would cause the wind farm to no longer need certification from the power siting board, the certificate is invalid.

Sec. 4906.13. (A) As used in this section and sections 4906.101, 4906.20, 4906.203, and 4906.98 of the Revised Code, "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 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 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 a major utility facility as defined in section 4906.01 of the Revised Code.

(B) No public agency or political subdivision of this state may require any approval, consent, permit, certificate, or other condition for the construction or operation of a major utility facility or economically significant wind farm authorized by a certificate issued pursuant to Chapter 4906. of the Revised Code. Nothing herein shall prevent the application of state laws for the protection of employees engaged in the construction of such facility or wind farm nor of municipal regulations that do not pertain to the location or design of, or pollution control and abatement standards for, a major utility facility or economically significant wind farm for which a certificate has been granted under this chapter.

Sec. 4906.20. (A) No person shall commence to construct an economically significant wind farm in this state without first having obtained a certificate from the power siting board. An economically significant wind farm with respect to which such a certificate is required shall be constructed, operated, and maintained in conformity with that certificate and any terms, conditions, and modifications it contains. A certificate shall
be issued only pursuant to this section. The certificate may be transferred, subject to the approval of the board, to a person that agrees to comply with those terms, conditions, and modifications.

(B) The board shall adopt rules governing the certificating of economically significant wind farms under this section. Initial rules shall be adopted within one hundred twenty days after June 24, 2008.

(1) (a) The rules shall provide for an application process for certificating economically significant wind farms that is identical to the extent practicable to the process applicable to certificating major utility facilities under sections 4906.06, 4906.07, 4906.08, 4906.09, 4906.10, 4906.11, and 4906.12 of the Revised Code and shall prescribe a reasonable schedule of application filing fees structured in the manner of the schedule of filing fees required for major utility facilities.

(b) The rules shall require a certification application, 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.

(2) Additionally, the rules shall prescribe reasonable regulations regarding any wind turbines and associated facilities of an economically significant wind farm, including, but not limited to, their location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement and including erosion control, aesthetics, recreational land use, wildlife protection, interconnection with power lines and with regional transmission organizations, independent transmission system operators, or similar
organizations, ice throw, sound and noise levels, blade shear,  
shadow flicker, decommissioning, and necessary cooperation for  
site visits and enforcement investigations.

(a) The rules also shall prescribe a minimum setback for a  
wind turbine of an economically significant wind farm. That  
minimum shall be equal to one of the following, whichever is  
greater:

(i) Equal to a horizontal distance, from the turbine's  
base to the property line of the wind farm property, equal to  
one and one-tenth times the total height of the turbine  
structure as measured from its base to the tip of its highest  
blade and be at least one thousand one hundred twenty-five feet  
in horizontal distance from the tip of the turbine's nearest  
blade at ninety degrees to the property line of the nearest  
adjacent property at the time of the certification application;

(ii) One of the following:

(I) 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;

(II) If the setback distance recommended in division (B)  
(2)(a)(ii)(I) of this section is not measured from the property  
line of the nearest adjacent property, that distance as measured  
from the property line of the nearest adjacent property at the  
time of the certification application.

(b)(i) For any existing certificates and amendments  
thereto, and existing certification applications that have been  
found by the chairperson to be in compliance with division (A)
of section 4906.06 of the Revised Code before the effective date of the amendment of this section by H.B. 59 of the 130th general assembly, September 29, 2013, the distance shall be seven hundred fifty feet instead of one thousand one hundred twenty-five feet.

(ii) Any amendment made to an existing certificate after the effective date of the amendment of this section by H.B. 483 of the 130th general assembly, September 15, 2014, shall be subject to the setback provision of this section as amended by that act. The amendments to this section by that act shall not be construed to limit or abridge any rights or remedies in equity or under the common law.

(c) The setback shall apply in all cases except those in which all owners of property adjacent to the wind farm property waive application of the setback to that property pursuant to a procedure the board shall establish by rule and except in which, in a particular case, the board determines that a setback greater than the minimum is necessary.

Sec. 4906.201. (A) An electric generating plant that consists of wind turbines and associated facilities with a single interconnection to the electrical grid that is designed for, or capable of, operation at an aggregate capacity of fifty megawatts or more. A large wind farm is subject to the minimum setback requirements established in rules adopted by the power siting board under division (B)(2) of section 4906.20 of the Revised Code.

(B)(1) For any existing certificates and amendments thereto, and existing certification applications that have been found by the chairperson to be in compliance with division (A) of section 4906.06 of the Revised Code before the effective date
of the amendment of this section by H.B. 59 of the 130th general assembly, September 29, 2013, the distance shall be seven hundred fifty feet instead of one thousand one hundred twenty-five feet.

(2) Any amendment made to an existing certificate after the effective date of the amendment of this section by H.B. 483 of the 130th general assembly, September 15, 2014, shall be subject to the setback provision of this section as amended by that act. The amendments to this section by that act shall not be construed to limit or abridge any rights or remedies in equity or under the common law.

Sec. 4906.203. (A)(1) If the power siting board issues a certificate under section 4906.20 of the Revised Code to, or approves an amendment to an existing certificate for, an economically significant wind farm to be located in the unincorporated area of a township, the certificate or amendment shall be conditioned upon the right of referendum as provided in section 519.214 of the Revised Code.

(2) Amendments to an existing certificate that do the following are subject to division (A)(1) of this section:

(a) Add more wind turbines;

(b) 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;

(c) Increase the diameter of a wind turbine tower's base;

(d) Change the location of any wind turbine.

(B) If the certificate or amendment is rejected in a referendum under section 519.214 of the Revised Code, one of the
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following applies:

(1) If the economically significant wind farm is to be located in the unincorporated area of a single township, the certificate or amendment is invalid.

(2) If the economically significant wind farm is to be located in the unincorporated area of more than one township, one of the following applies:

(a) If less than all of the townships with electors voting on the referendum reject the certificate or amendment, the power sitting board shall modify the certificate or amendment to exclude the area of each township whose electors rejected the certificate or amendment and shall not make any other changes to the certificate or amendment.

(b) If all of the townships with electors voting on the referendum reject the certificate or amendment, the certificate is invalid.

(C) A modification under division (B)(2)(a) of this section shall not be considered an amendment to the certificate.

(D) If a certificate modification under division (B)(2)(a) of this section would cause the wind farm to no longer need certification from the power sitting board, the certificate is invalid.

Section 2. That existing sections 519.214, 4906.10, 4906.13, 4906.20, and 4906.201 of the Revised Code are hereby repealed.