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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Legislative Budget
Office

H.B. 401
133rd General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 401's Bill Analysis](#)

Version: As Introduced

Primary Sponsor: Rep. Reineke

Local Impact Statement Procedure Required: No

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Highlights

- The bill makes Ohio Power Siting Board (OPSB) decisions regarding the construction of wind turbines subject to local referendum.
- If electors utilize the referendum process authorized by the bill, each participating precinct might incur minimal costs to conduct an election.
- Based on applications currently pending before the OPSB, the applicable local taxing jurisdictions will gain millions of dollars in annual revenue if the wind farms are placed into service. Any local referendum that rejects the OPSB's approval would reduce these prospective receipts. Such a result would be permissive for the township or townships involved, but would not be permissive for any other political subdivisions affected by the referendum results.

Detailed Analysis

H.B. 401 conditions a certificate, or an amendment to an existing certificate, the Ohio Power Siting Board (OPSB) issues for the construction, operation, or maintenance of an economically significant wind farm¹ or large wind farm ("wind farm") to be located (in whole or in part) in the unincorporated area of a township upon the right of referendum the bill grants to voters in that area. The bill defines a "large wind farm" as "an electric generating plant that

¹ Generally, a term for those wind farms with a nameplate capacity of at least 5 MW but less than 50 MW. However, H.B. 6 of the 133rd General Assembly enacted an exception for a wind farm with a capacity below 20 MW that supplies a single customer at a single location.

consists of wind turbines and associated facilities with a single interconnection to the electrical grid that is” designed for, or capable of, operation at a capacity of 50 megawatts (MW) or more.

The unincorporated area of a township could initiate a referendum if the OPSB approves an application for the construction of a wind farm. Additionally, the referendum process can be prompted by a wind farm that already received a certificate from OPSB, if the owner later obtains approval from OPSB for any of the following modifications:

- 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.

If the voters in an unincorporated township wish to hold a referendum, the bill specifies that a referendum petition must be signed by a number of qualified electors residing in the unincorporated area of the township that equals at least 8.0% of the total votes cast for all candidates for governor in the unincorporated area of the township at the most recent gubernatorial election. If the petition is sufficient and valid, the board of elections must submit the OPSB’s certificate or amendment to the electors of the unincorporated area of the township for approval or rejection at a special election held on the day of the next primary or general election occurring at least 90 days after the board receives the petition.

Under the bill, the OPSB’s certificate or amendment is invalid if it is rejected in every affected township. In the event that not all of the townships with electors voting on the referendum reject the certificate or amendment, the bill requires the OPSB to modify the certificate or amendment to exclude the area of the townships whose electors rejected the certificate or amendment.

H.B. 401 also revises the setback requirement applicable to wind turbines of a wind farm by making them the greater of: (1) the distance specified in existing law, or (2) the setback distance recommended in the wind turbine manufacturer’s safety specifications, as measured from the property line of the nearest adjacent property.

Local referendum costs

The referendum provisions of the bill could result in additional election costs for either county boards of elections or for the participating political subdivisions, depending on the timing of the referendum, the number of precincts involved in the referendum, and the number of political subdivisions voting on the referendum. The Secretary of State (SOS) estimates that the per-precinct costs for conducting elections range from \$800 to \$1,500 based on a number of factors such as size and location. Smaller and rural precincts tend to have lower costs than larger precincts, which are generally in urban areas.

The costs of primary and general elections held during even-numbered years are borne by the applicable county board of elections. In these cases, only the ballot advertising costs for the referendum under the bill would be paid by the participating subdivisions. However, for primary and general elections that occur in odd-numbered years, political subdivisions holding an election are responsible for a proportional share of the cost based upon a per-precinct ratio

calculated by the county board of elections in addition to the referendum's ballot advertising costs. Ballot advertising costs vary widely based on the length of the measure appearing on the ballot. Additionally, the number of publications in which the referendum language appears would also impact the ballot advertising costs.

Furthermore, in odd-numbered year elections, the costs of the wind farm referendum process in the bill would depend on whether the participating political subdivisions had other candidates or measures on the ballot. If the wind farm referendum were among other items on the ballot, then there would be some additional incremental cost. However, there could be situations when a wind farm referendum was the only item on the ballot. In these cases, the costs for holding the referendum election would ultimately depend on the number of voting precincts involved in the referendum measure.

Local revenue impact

As of this date, four wind energy projects have applications pending before the OPSB. Since the four proposed facilities have not been placed into service, they are not yet subject to property taxation. If they became operational, the facilities would bring millions of dollars of annual revenue to the local taxing authorities, but the referendum provision in H.B. 401 could nullify those potential gains. Any revenue loss for the township would be permissive, but revenue losses to other political subdivisions would not be permissive.

Similarly, the bill may result in township voters nullifying property tax revenue that would otherwise result from future applications for wind farms.

The prospective revenue impact would vary depending on whether a given wind energy project is taxable, or if the project's owner instead received a tax benefit that significantly reduces their payments to applicable political subdivisions. All four projects with pending applications before the OPSB are identified in the table below, and the tax status of each project is described in the following paragraphs. As of this writing, LBO is awaiting public information from OPSB, so an itemization of wind turbines proposed in each tax jurisdiction is not yet available.

Although the bill applies the referendum process to existing certificates already approved by the OPSB, those wind farms are not discussed in detail. The referendum process provides a disincentive for project owners to amend their existing certificates, so it is unclear to LBO whether the owner of an approved wind farm would initiate a change that might prompt a referendum.

Wind Farm Applications Pending before the Ohio Power Siting Board				
Project Name	County	Megawatts	Application Filing Date	OPSB Case No.
Icebreaker	Cuyahoga	20.7	2/1/2017	16-1871-EL-BGN
Republic	Seneca, Sandusky	200	2/2/2018	17-2295-EL-BGN
Emerson Creek	Erie, Huron	297.7	1/31/2019	18-1607-EL-BGN
Seneca	Seneca	212	Pre-application	19-1381-EL-BGN

Source: As of October 8, 2019, <https://www.opsb.ohio.gov/opsb/?LinkServID=895FE98C-C363-FCF9-6BFDC7DF3A3F7AA2>

The Icebreaker project plans construction on leased submerged state land off the coast of the city of Cleveland, in Cuyahoga County.² The project area is not located in an unincorporated township, so a certificate issued by the OPSB would not be subject to referendum under H.B. 401, and the bill would therefore have no effect on local receipts.

The Republic wind energy facility would benefit from a payment in lieu of taxes (PILOT) authorized by R.C. 5727.75. The Board of Commissioners for Seneca County and Sandusky County previously declared their counties as an Alternative Energy Zone (AEZ) in 2011 and 2012, respectively. Under continuing law, an AEZ enables certain renewable energy projects to be exempt from property taxes levied by political subdivisions in the county. In exchange for this real and tangible personal property tax exemption, the qualified energy project owner makes an annual PILOT valued between \$6,000 and \$9,000 for each MW of nameplate capacity located in the county. Republic Wind, LLC obtained approval from the Director of the Development Services Agency (DSA) for its qualified energy project on October 10, 2018. The preliminary DSA approval is conditioned on the owner beginning construction and placing the property into service before the dates prescribed by the Revised Code. The county commissioners in Sandusky and Seneca both ended their AEZ in mid-2019, but the Republic application will retain the beneficial tax treatment as long as it meets the conditions codified in state law.

On the other hand, another project identified in the table above, Seneca, would not benefit from the AEZ. However, the project owners could apply to the Seneca County Board of Commissioners for certification of a qualified energy project. The wind farm is still in the pre-application stage. No turbine locations have been submitted to the OPSB, but Seneca Wind, LLC told OPSB it intends to build up to 77 wind turbine generators on approximately 25,000 acres of leased private land in Scipio, Reed, Venice, Eden, and Bloom townships, Seneca County.

The Emerson Creek wind farm will not benefit from a PILOT; its owners will instead pay real and tangible personal property taxes upon placing their project into service. Since Emerson Creek's project area was not declared an AEZ, the owners, Firelands Wind, LLC, submitted an application to the board of commissioners in both Erie and Huron counties. Erie County rejected the application for a qualified energy project in February 2019 and Huron County commissioners followed suit in March 2019.

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² The owners, Icebreaker Windpower Inc., proposed a six-turbine, demonstration wind-powered electric generation facility on the bed of Lake Erie.