



# OEC [ Action Fund ]

**House Public Utilities Committee  
OPPONENT TESTIMONY  
Senate Bill 52 (Reineke/McColley)  
June 23, 2021**

Chair Hoops, Vice Chair Ray, Ranking Member Smith, and members of the House Public Utilities Committee; I am Randi Leppla, Vice President of Energy Policy for the Ohio Environmental Council Action Fund. Our organization works to secure healthy air, land and water for all who call Ohio home. Thank you for allowing me to submit opponent testimony on Senate Bill 52 (SB 52).

Despite the latest round of revisions, the OEC Action Fund is still opposed to Senate Bill 52. This bill continues to single out and treat large renewable energy projects - both wind and solar - differently from any other form of generation in the state. It creates two mechanisms by which this unlevel playing field is perpetuated: (1) counties can reject and ban any and all large wind and solar development in the entire county, or in parts of the county; or, (2) counties can reject or limit the scope of specific large wind and solar projects. Both of these options are in addition to the approval already required for these projects at the state level through the Ohio Power Siting Board certificate process. No other form of generation, or energy infrastructure project required to undergo OPSB, is subject to this type of local control, despite the fact that other types of projects often raise concerns from local residents about location, aesthetics, and environmental concerns.

This version of Senate Bill 52 still singles out wind and solar for disparate treatment under Ohio law. Utility-scale solar and wind facilities are already subject to review, analysis, and regulation by the Ohio Power Siting Board (OPSB). Through the Power Siting Board, Ohio has a longstanding approach to regulation of all types of energy generation at the statewide level. The process isn't perfect, but a state level process is the right approach for the technical and important task of determining safety, environmental impacts, and public need for Ohio.

What does Sub SB 52<sup>1</sup> do? Sub-SB 52 allows counties to outright ban wind or solar, as a "restricted area".<sup>2</sup> For areas that are not designated a "restricted area", the language creates a review process for individual projects. The bill requires developers to hold a public meeting (no more than 270 days but at least 90 days before filing a project application at the

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<sup>1</sup> Sub SB 52, I\_134\_1618.

<sup>2</sup> *Id.* at lines 43-62; 526-534.

OPSB)<sup>3</sup> and invite all county commissioners and township trustees in the project footprint. At the meeting, the developer must provide to the county commissioners the maximum nameplate capacity of the project, whether its wind or solar, and the footprint of the project. The commissioners then have 90 days to act. They can (1) reject the project, meaning it is denied, or (2) limit the scope of the project, putting parts of the county off limits and approving the development in other parts.<sup>4</sup> The language is silent on what happens if the county commissioners do neither of these. Presumably, if the commissioners neither reject the project nor limit the scope, the project is approved and can proceed through the OPSB process; however, there is no explicit language stating that the project is approved if the commissioners do nothing.

We are encouraged to see that the latest round of amendments to sub-Senate Bill 52 provides more certainty for large solar projects that have already applied for certificates at the Ohio Power Siting Board (OPSB) and have met particular benchmarks at PJM<sup>5</sup> to ensure they will not be banned from being sited after having spent time and money working to develop clean energy projects in the state. This change seems to address a very concerning component of earlier drafts of SB 52 was the fact that it would permit counties to reject renewable energy projects that had already begun the OPSB process<sup>6</sup>, meaning developers may have spent hundreds of thousands or millions of dollars working to develop renewable projects in Ohio that could then be rejected. However, the bill still implements this county approval process just 30 days after the bill's effective date for any large wind project that has yet to receive its letter of completeness from the OPSB. As a result, the bill continues to inject uncertainty and an additional layer of local regulation into the development process for nearly all wind projects, solar projects that have yet to meet the stated requirements at PJM, and all future solar projects, and makes the future of renewable energy projects in the state even more difficult and uncertain.

If this bill passes with the amendments introduced today, it is unlikely that we will see much renewable development occur in the state once the currently pending solar projects that meet the PJM benchmarks have been approved, meaning Ohio will be left behind as the clean energy economy and jobs, cleaner air, and better health are enjoyed by citizens in other states. The OEC Action Fund appreciates that amended language creating these legacy solar projects ensures those currently pending projects can move forward, but ultimately it is a shortsighted fix given the booming clean energy economy that Ohio will miss out on in the near future with this type of additional regulation layered over the OPSB process.

The current sub bill also applies the county review process to new projects or projects that seek “material amendments”, which essentially are amendments that would expand the

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<sup>3</sup> Sub SB 52, I\_134\_1618 at lines 166-172.

<sup>4</sup> *Id.* at lines 166-212.

<sup>5</sup> Sub SB 52, I\_134\_1618 at lines 669-686

<sup>6</sup> As of February 5, 2021 there was 647.7 MW of wind and as of March 5, 2021 there was 4,566.9 MW of solar currently pending or in the pre-application process at the OPSB.

scope or footprint of the project.<sup>7</sup> This is an improvement over prior language that could have allowed even a minor adjustment to open a project back up. The bill also includes additional restrictions on the decommissioning process that are far more stringent than requirements placed upon forms of fossil fuel generation.

Finally, the sub bill 52 also requires the OPSB to include two ad hoc members to represent the interests of the residents of the area of the project--the chairperson of the board of township trustees of the township where the project is located OR the chairperson's designee; and the president of the board of county commissioners of the county where the utility facility is to be located OR the president's designee.

Wind and solar, like all other forms of energy generation in the state, are subject to a thorough state approval process at the Power Siting Board. Ohio has statewide processes for the siting of all forms of energy generation in the state. Some of that occurs at the Ohio Power Siting Board (OPSB). The OPSB's mission is to "support sound energy policies that provide for the installation of energy capacity and transmission infrastructure for the benefit of the Ohio citizens, promoting the state's economic interests, and protecting the environment and land use." As such, the Power Siting Board regulates:

- Electric generating plants with a capacity of 50 megawatts (MW) or more;
- Electric transmission lines and associated facilities of 100 kilovolts (kV) or more;
- Gas pipelines greater than 500 feet in length, more than nine inches in outside diameter, and designed for transporting gas at a maximum allowable operating pressure in excess of 125 pounds per square inch, and;
- Economically significant wind farm which means wind turbines and associated facilities with a single interconnection to the electric grid and designed for, or capable of, operation at an aggregate capacity of 5 or more MW but less than 50 MW.

Other forms of energy generation or extraction, including oil and natural gas<sup>8</sup> production wells, brine waste injection wells, and mineral (coal and aggregates) mining operations<sup>9</sup>, are subject to statewide approval processes by the Ohio Department of Natural Resources, with some aspects regulated by federal agencies. Coal- and natural gas-fired power plants have regulation and permitting required by both the Ohio and federal Environmental Protection Agencies, as well as other federal entities. Ohio has statewide processes for review and approval of energy production and generation projects because energy is a statewide issue, and is technical in nature, requiring expertise and specialists to thoroughly vet projects and ensure that all criteria, including safety, environmental, and health regulations, are met.

The Power Siting Board application and certificate process provides various opportunities for public input, but could, and should, be improved and updated as part of the upcoming five year rule review process. In testimony, the bill sponsors and proponents have argued that local residents have no notice, control, or input on wind and solar farms coming into their

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<sup>7</sup> *Id.* at lines 24-42.

<sup>8</sup> See O.R.C. 1509, et seq.

<sup>9</sup> See O.R.C. 1513, et seq.

communities. To the contrary, the Power Siting Board application process is thorough and provides multiple avenues for the public to provide input into the process. The Ohio Power Siting Board also does a thorough, in-depth investigation on the projects that come before it for certification and permitting in partnership with other state agencies, and there are a number of built-in public participation components to ensure the public has the opportunity to weigh in. In fact, former Public Utilities Commission of Ohio and Power Siting Board Chair Sam Randazzo praised the extensive local engagement available in a Duke pipeline case, recognizing that over 1,600 public comments had been received and 115 people had testified. The Chairman recognized that those individuals “provided valuable input in [the] process”. The same process described in the Duke pipeline case by the former Chair is available in all wind and solar cases brought before the Power Siting Board, and in fact, due to interest from the public, the public hearings are often longer and given more time during wind and solar cases.

However, there is always room for improvement, and the OEC Action Fund is looking forward to the upcoming opportunity to engage in the OPSB five year rule review, including to provide input on how to increase public participation and education, and ensure transparency for all cases that come before the Power Siting Board.<sup>10</sup> There are a number of updates that can and should be made to the process and all Ohioans will have the opportunity to weigh in on the rules and regulations governing the Power Siting Board process this year. Having practiced for nearly a decade in front of the Ohio Power Siting Board, I agree with many comments you’ve heard that we need a more understandable siting process to ensure robust opportunity for participation in these cases. There are *many* updates that would help ensure the notification requirements and processes for public input are more transparent. For example, the homepage for each OPSB project should be easy to read and understand, and contain a timeline with all deadlines for public input and major deadlines for the project, instead of requiring a person to dig into the case docket, which can be daunting for someone unfamiliar with the OPSB and legal processes. There are many ways that process could be updated and revised to bring more local voices into the process from the outset, some of which were [suggested by the Ohio Farm Bureau](#) in their testimony before the Senate Energy and Public Utilities Committee on May 25, 2021.

SB 52 singles out wind and solar energy for this additional local regulation, making it the only form of energy generation subject to local control in the state. Local control isn’t required for any other type of energy generation in the state, and SB 52 would require these additional steps only for renewable energy sources. Meanwhile, there are also bills pending that would ban local communities from prohibiting or limiting the use of fossil fuels. This bill is not about providing local control--it’s a thinly-veiled effort to block development of renewable energy in the state. If the legislature truly wants to give local communities more control over what types of energy generation are permitted in their communities, we should also permit communities to determine if they want oil and gas wells, brine waste injection wells, or

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<sup>10</sup> See OPSB 2020-21 Rule Review, *information available at* <https://opsb.ohio.gov/wps/portal/gov/opsb/rules/2020-21-rule-review>.

natural gas pipelines to traverse their communities. Equally so, if Ohio policymakers wish to follow this same logic, Ohio communities should be given full range and authority to move away from fossil fuels (rather than impose an artificial ban). But in reality, state law and the courts have largely spoken on oil and natural gas production, and the Supreme Court of Ohio has held that the state has “exclusive authority” to regulate oil and gas extraction, and that local communities can neither ban nor regulate fracking.

To illustrate this as well as the opportunity for public input further, the chart below is a comparison of the permitting authorities and opportunities for input from local stakeholders between a few different types of energy generation in the state: wind and solar; oil & gas; and coal mining. Like oil, gas and coal mining, wind and solar energy are regulated at the state level, and any local attempt to regulate is preempted by state law. Additionally, the public notice requirements and opportunity for local input is actually more robust for wind and solar than the other types of energy generation. As the chart demonstrates, the Power Siting Board process actually provides a number of public notice and participation requirements for applicants of wind and solar farms that are not required of other forms of energy generation in the state, but again, could be improved through the upcoming rulemaking process.

### Comparison of Regulation of Energy Generation in Ohio

	Wind & Solar	Oil & Natural Gas	Coal Mining
<b>Permitting Authority</b>	<ul style="list-style-type: none"> <li>• Exclusive authority vested in Ohio Power Siting Board</li> <li>• Any local attempt to regulate is preempted by state law.</li> </ul>	<ul style="list-style-type: none"> <li>• Exclusive authority vested in Ohio Dept. Natural Resources</li> <li>• Any local attempt to regulate is preempted by state law.</li> </ul>	<ul style="list-style-type: none"> <li>• Exclusive authority vested in Ohio Dept. Natural Resources (also, Federal Office of Surface Mining, Ohio EPA)</li> <li>• Any local attempt to regulate is preempted by state law.</li> </ul>
<b>Public Notice &amp; Opportunity for Local Input</b>	<p><b>PRIOR</b> to applying for permit:</p> <ul style="list-style-type: none"> <li>• Hold a public informational meeting</li> <li>• Run public notice in local paper(s) 7-21 days before submitting application</li> <li>• Send letter first class to each landowner and tenant within affected area</li> <li>• Letter must detail the project, provide information on how to participate in the permitting process, and contact information for company</li> </ul> <p><b>AFTER</b> applying:</p> <ul style="list-style-type: none"> <li>• Hold more informational meetings</li> <li>• Must notify landowners and tenants of any change in scope of project</li> <li>• Provide copy of application to local governing officials</li> <li>• Make hard copies available for public review</li> <li>• Keep a website with project information and updates on progress in permit process</li> <li>• People are allowed to provide written comments during permitting process and request a hearing with the agency</li> </ul>	<p><b>AFTER</b> applying:</p> <ul style="list-style-type: none"> <li>• Send a notice of application to each land owner (owner must notify tenants) in affected area</li> <li>• Send a copy of the application to local governing officials IF they have requested to receive such notice</li> <li>• People are allowed to provide written comments during the permitting process and request a hearing with the agency</li> </ul>	<p><b>AFTER</b> applying:</p> <ul style="list-style-type: none"> <li>• Run a newspaper ad for 4 weeks</li> <li>• Send a copy of application to local governing officials</li> <li>• Make a copy of the application available to the public</li> <li>• People are allowed to provide written comments during the permitting process and request a hearing with the agency</li> </ul>

Additionally, the current version of the bill requires a county commissioner and a township trustee, or their designees, to be added as ad hoc voting members of the OPSB to “represent the interests of the residents of the area in which the utility facility is to be located”.<sup>11</sup> This requirement is limited, again, only to “utility facilities”, meaning large wind and solar projects, and will not apply to applications for other types of approvals at the OPSB, including pipelines, despite the fact that the same concern has been raised throughout various proceedings regarding approval of pipelines in the state. A recent example is the Duke Central Corridor Extension Gas Pipeline case (OPSB Case No. 16-0253-GA-BTX), which received over 1,600 public comments and testimony from 115 people, many of whom were very upset that a pipeline was being placed so close to their homes. However, the current version of the bill does not permit residents near proposed pipeline projects to have two ad hoc voting members added to those projects to “represent the interests of the residents of the area in which the utility facility is to be located”. This bill plainly singles out renewable energy for additional regulation despite similar complaints with other forms of generation and facilities.

SB 52 is an attack on private property rights. Permitting county commissioners and township trustees to make choices about how landowners can or cannot use their own land is an attack on the property rights of those individuals and families who wish to lease their property. With reasonable setback distances and approval by the Power Siting Board--the arbiter of sound energy policy for the state--an approved wind or solar project should be permitted to move forward, or the property rights of landowners become subject to the whims of citizens on the other side of their counties and townships. If a farmer wants to lease their property to ensure a source of stable income in an ever-increasing unstable climate, where we’re seeing flooding and drought impact farmers in ways that hit their pocketbooks, we should be encouraging that action, not subjecting the choices they make about their property to their neighbors.

SB 52 is a step in the wrong direction for Ohio. If our state truly intends to have an “all of the above” energy policy, SB 52 is the wrong choice. It clearly picks winners and losers, and will discourage future investment in renewable energy in the state due to the uncertainty and heightened risk that would come along with developing a project. OEC Action Fund urges the legislature to recognize this legislation for what it is: another attack on Ohio’s promising renewable energy future, and an attack on our state’s ability to reap the benefits of a clean energy economy and workforce. Ohio must not pass a bill singling out wind and solar energy, ignoring the very real dangers we face unless we move quickly to act on climate and reduce our carbon emissions. The OEC Action Fund asks you to vote no so that clean energy has a home in Ohio. Instead, OEC Action Fund hopes legislators will work to bring a balanced and level playing field for all forms of generation in Ohio and focus on improving the siting process, instead of creating artificial barriers for particular forms of energy generation. Thank you again for the opportunity to submit testimony, and our team looks forward to working with you on sound and balanced energy policy for the state.

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<sup>11</sup> Sub SB 52, I\_134\_1618 at lines 395-448.