



OEC [Action Fund]

Senate Energy and Public Utilities Committee

OPPONENT TESTIMONY

Senate Bill 52 (Reineke/McColley)

March 23, 2021

Chair Peterson, Vice Chair Schuring, Ranking Member Williams, and members of the Senate Energy and 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 written only opponent testimony on Senate Bill 52 (SB 52). While I wish I could present this testimony in person to be able to have a more meaningful dialogue with you, the ongoing pandemic prevents me from safely doing so, and virtual testimony is still not an option.

OEC Action Fund is strongly opposed to Senate Bill 52. This bill, along with its companion legislation, House Bill 118, singles out and treats large renewable energy projects - both wind and solar - differently from any other form of generation in the state. It creates another layer of government regulation specifically for large wind and solar projects, 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 is subject to this type of local control, and the uncertainty this bill injects into the development process for renewable energy projects makes it even more difficult for renewable energy projects to be developed. The bill also creates additional requirements for wind projects that could result in even more extensive setbacks than were already implemented in 2014 after being slipped into the state biennial budget at the last minute. No terrestrial wind project has been granted a certificate by the Power Siting Board since its passage, and yet we continue to see additional unreasonable and disproportionate requirements specifically implemented for wind projects that aren't required of any other form of generation in the state. If this bill passes as currently drafted, it is unlikely that any additional renewable development will occur in the state, meaning Ohio will leave millions of dollars in economic development and thousands of jobs for another state to pick up.

Senate Bill 52 creates a referendum process under which township voters may approve or reject the placement of any "economically significant" or large solar and wind facilities, which means the solar and wind facilities that 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 need for Ohio.

SB 52 permits a local, township level referendum process for all wind and solar projects subject to OPSB jurisdiction in two ways.

- (1) 90 Day Period for Pending OPSB Applications and Amended Certificated Projects: As drafted, Sec. 519.217 is retroactive and can be applied to applications that are already pending at the Ohio Power Siting Board, as well as projects that have already received a certificate from the OPSB and apply for an amendment, including even a minor adjustment to the project. If the OPSB issues a certificate approving the project or approving an amendment, it is effective 90 days from the issuance--unless during that time a referendum petition is filed with the Board of Elections, after which it is subject to approval or rejection through the referendum process. (Lines 35-47)

If this bill were to pass, all 647.7 MW of wind¹ and 4,566.9 MW of solar² currently pending or in the pre-application process at the OPSB could be subject to multiple referenda processes which could derail a project years in the making by subjecting it to additional unexpected uncertainty. An additional 330.5 MW³ of wind and 1,828.6 MW⁴ of solar already approved by the Power Siting Board would also be subject to a potential referendum process if the project requested even a minor adjustment to a project (“any change or modification”, lines 35-47). For example, if a new type of solar module that would improve a certificated project becomes available prior to the project breaking ground, requesting an amendment to the project certificate from the Power Siting Board could open the project up to the township referenda process. Because of the risk that a referendum process could derail a project, or at minimum create significant increased costs for a developer, the practical effect of this law might be that the developer decides to stick with the older, less efficient solar module.

Permitting a referendum process to move forward *after* the Power Siting Board has already granted a certificate due to a minor modification, or for a pending project which has already submitted its application means that a developer that has likely spent years and millions of dollars developing a project might now have it rejected completely or, have a portion of the project rejected, making it unworkable as a whole. Because wind and solar farms can span more than one county in the state, multiple townships would be permitted to hold a referendum, meaning some pieces of the project might be rejected or it could be rejected in whole. Either way, this will have a chilling effect and the end result of such a process is that Ohio simply won't have development of renewable energy in the state.

¹ As of Feb. 5, 2021. See Ohio Power Siting Board, Power Siting Wind Case Status, *available at* <https://opsb.ohio.gov/wps/portal/gov/opsb/about-us/resources/wind-power-map-and-stats>.

² As of March 5, 2021. See Ohio Power Siting Board, Power Siting Solar Case Status, *available at* <https://opsb.ohio.gov/wps/portal/gov/opsb/about-us/resources/solar-farm-map-and-statistics>.

³ See *supra*, note 1.

⁴ See *supra*, note 2.

(2) New Applications and Amendments at the Ohio Power Siting Board: As drafted, Sec. 519.219 applies to all new applications submitted to the Ohio Power Siting Board, as well as the filing of amendments to existing certificates. At least thirty days prior to filing the application or amendment of a certificate with the OPSB, the project developer must notify all townships in the project footprint of its intent to file an application or amendment, including the location, size, all leaseholders names and addresses, as well as the number, height, diameter, and location of wind turbines, or number and location of solar panels. (Lines 139-188) During the thirty day period, the township trustees may permit or require a referendum on the project, and it appears if the referendum proceeds it would take place only *after* the conclusion of the extensive OPSB certificate process, injecting unworkable uncertainty into a lengthy and expensive siting process after the fact.

The referendum timeline proposed in this legislation will result in limited, if any, renewable energy development in the state, meaning tens of thousands of jobs and the chance for Ohio to take its place as a leader in the clean energy economy will be missed out on. This legislation sets a disturbing precedent where energy infrastructure projects are politicized, rather than run through a thorough and transparent process at the state level that brings certainty for developers and landowners alike no matter where they are proposed in Ohio, and will no doubt have a chilling effect on future projects of all kinds.

Wind and solar, like all forms of energy generation in the state, are subject to a thorough state approval process at the Power Siting Board. Ohio has provided statewide processes for the siting of energy generation of all forms 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 gas⁵ production wells, brine waste injection wells, and mineral (coal and aggregates) mining operations⁶, 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

⁵ See O.R.C. 1509, et seq.

⁶ See O.R.C. 1513, et seq.

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 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 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.

There is always room for improvement, however, 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.⁷ 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 is very daunting for someone unfamiliar with the OPSB process.

⁷ See OPSB 2020-21 Rule Review, *information available at* <https://opsb.ohio.gov/wps/portal/gov/opsb/rules/2020-21-rule-review>.

SB 52 singles out wind and solar energy for this additional township-level 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 or brine waste injection wells, or 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 all seriousness, state law and the courts have largely spoken on oil and natural gas production; 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 and 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 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.

Comparison of Regulation of Energy Generation in Ohio

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

SB 52 is an attack on private property rights. Permitting referendum on wind and solar projects 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 township. 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 referendum.

As a final blow to the wind energy industry, the proposed legislation also requires a potentially longer setback requirement for wind turbine placement. As drafted, Sec. 4906.20 adds yet another layer to the already complicated and overly burdensome wind turbine setback requirements that have been in place since 2014. The language proposed to be added to R.C. 4906.20(B)(2)(a)(ii) means that new statutory setback would be the longer of the existing property line setback, or "the safety distance in case of fires or thunderstorms recommended in the safety specifications." Further, even where the distance recommended in the manufacturer's safety specifications for the turbines is to be measured from a habitable structure or other requirement, Ohio must measure that distance from the property line of the nearest adjacent property. Choosing a distance recommended by the manufacturer but then applying it to a different point of measurement is taking the safety specifications out of context, and could lead to an application of the setbacks completely divorced from what the manufacturer believes is necessary. Ohio's setback distance, which ironically was passed with a complete absence of public dialogue and input on the subject as part of the state operating budget and with less than ten minutes of discussion by the legislature, has stifled the entire wind industry in Ohio, and has prevented the state from reaping approximately \$4.2 billion in economic development, not to mention prevented the 3,300 megawatts of clean, renewable wind power that was proposed to be built prior to the passage of the increased setbacks. Setback distances should be reasonable and rooted in what is necessary to ensure the safety of the public in siting turbines.

Ohio has already made siting wind farms extremely difficult, and SB 52 would be a significant setback for both wind and solar energy, despite the urgent need to fight climate change by reducing air pollution from the electric power sector. The OEC Action Fund has a particular focus on the clean energy needs of Ohioans, and we work every day to ensure Ohioans have access to a cleaner, more sustainable future. Shifting Ohio away from dirty energy sources will not only help combat the worst effects of climate change, including the negative impacts on human health, but, with wind and solar energy, Ohio could boost the economies of the communities hosting turbines and solar panels by bringing jobs to the areas, stable lease payments to property owners, and needed tax revenue to school districts. SB 52 singles out the renewables industry, treating it differently than other forms of generation, despite the fact that, like other forms of generation, it is already appropriately regulated by the Ohio

Power Siting Board by both the thorough review the Board does and by gathering public input on projects that come before it.

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 any future investment in renewable energy in the state due to the uncertainty and heightened risk that would come along with developing a project that could be rejected by just a handful of voters and make a project unworkable after millions of dollars have already been spent attempting to site a wind or solar 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 what amounts to a moratorium on both wind and solar energy, and 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, 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.