



# OEC [ Action Fund ]

## Senate Energy and Public Utilities Committee

### OPPONENT TESTIMONY

#### Senate Bill 52 (Reineke/McColley)

June 2, 2021

Chair McColley, 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 opponent testimony on Senate Bill 52 (SB 52).

Despite several rounds of revisions, the OEC Action Fund still strongly opposes 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 still 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 we will see much renewable development occur in the state, meaning Ohio will leave millions of dollars in economic development and thousands of jobs for another state to pick up.

The most recent 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.

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 gas<sup>1</sup> production wells, brine waste injection wells, and mineral (coal and aggregates) mining operations<sup>2</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 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

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<sup>1</sup> See O.R.C. 1509, et seq.

<sup>2</sup> See O.R.C. 1513, et seq.

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>3</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 is very daunting for someone unfamiliar with the OPSB process. 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 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 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

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<sup>3</sup> See OPSB 2020-21 Rule Review, *information available at* <https://opsb.ohio.gov/wps/portal/gov/opsb/rules/2020-21-rule-review>.

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
<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>

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.

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, though, as mentioned previously, the public process could and should be improved.

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.