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## PUBLIC UTILITIES COMMISSION

### Wind farm setback

- Changes, from 750 feet to 1,125 feet, the minimum setback distance for wind turbines of an economically significant wind farm (5-50 megawatts) beginning on September 29, 2013.
- Applies the minimum setback requirements established in Power Siting Board (PSB) rules, including the 1,125-foot minimum setback distance, also to wind farms that are major utility facilities (50 megawatts or more).
- Maintains the 750-foot distance for both types of wind farms (economically significant and major utility facilities) for any existing certificates and amendments thereto, and any existing certification applications found to be in compliance with PSB application requirements before September 29, 2013.

### Railroad audible warnings

- Changes the railroad audible-warning requirement to a horn-sounding requirement rather than a requirement to sound a whistle and ring a bell.
- Applies the horn-sounding requirement only to public highways and grade crossings rather than to private crossings and crossings at a turnpike, highway, street, or other traveled place.
- Establishes that the sounding of a locomotive horn at a private crossing or the failure to sound a locomotive horn at a private crossing is not a basis for a civil action against the railroad, a board of county commissioners, or any local authority, or against any of their agents or employees.
- Establishes a criminal penalty of a fourth degree misdemeanor for a violation of the act's horn-sounding requirement, and a third degree misdemeanor if a person is physically harmed, but provides an affirmative defense if an alternative audible warning system was activated.
- Repeals a provision that made it a fourth degree misdemeanor for a person to fail to sound a locomotive whistle when approaching and passing through a grade crossing or a third degree misdemeanor if a person was physically harmed because of the failure.
- Removes a provision that specified that railroad audible-warning requirements do not interfere with local ordinances.



## Recovery of environmental remediation costs

- Would have permitted the PUCO to authorize a natural gas company or gas company to recover environmental remediation costs that were (1) prudently incurred before 2025, and (2) related to real property that, at the time recovery was authorized, was being or was previously used for the provision of public utility service (VETOED).
- Would have required, if recovery were authorized, the company to, upon the sale of the real property, return to customers the difference between the sale price, minus reasonable sale expenses, and the property's fair market value prior to remediation (VETOED).
- Would have declared that certain rate-making provisions did not preclude recovery of the environmental remediation costs (VETOED).

## Wind farm setback

(R.C. 4906.20 and 4906.201)

The act increases the minimum setback distance for wind turbines of an economically significant wind farm from at least 750 feet to at least 1,125 feet beginning on September 29, 2013. Under continuing law, an economically significant wind farm is defined as 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 at least 5 but less than 50 megawatts.<sup>205</sup> The act also applies the minimum setback requirements established in Power Siting Board (PSB) rules, including the 1,125-foot distance, to 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 *50 megawatts or more*. Under continuing law, an electric generating plant of this capacity is known as a major utility facility.<sup>206</sup> Neither a major utility facility<sup>207</sup> nor an economically significant wind farm may be constructed without a certificate from the PSB.

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<sup>205</sup> R.C. 4906.13, not in the act.

<sup>206</sup> R.C. 4906.01(B)(1)(a), not in the act.

<sup>207</sup> R.C. 4906.04, not in the act.



The act maintains the setback distance of at least 750 feet for both types of wind farms for "existing" certification applications that have been found by the Chairperson of the PSB to be in compliance with PSB application requirements before September 29, 2013. The act also states, for both types of wind farms, that the 750-foot distance applies for any existing certificates and "amendments thereto." But under prior law, the 750-foot setback applied only to economically significant wind farms (5-50 megawatts). No setback requirement was imposed on a major utility facility wind farm under the Revised Code. Also, the provision appears unnecessary as it applies to existing certificates for economically significant wind farms, which should already have setbacks consistent with the 750-foot requirement. Finally, the provision is unclear as to what is meant by "amendments thereto."

The standard for measuring the minimum footage setback distance, unchanged by the act, is the horizontal distance measured from the tip of the turbine's nearest blade at 90 degrees to the exterior of the nearest, habitable, residential structure, if any, located on adjacent property at the time of the application for PSB certification.

Under continuing law governing economically significant wind farms, the setback does not apply to the following:

- Cases in which all owners of property adjacent to the wind farm property waive application of the setback to that property according to a procedure established by PSB rule; and
- Cases in which the PSB determines that a setback greater than the minimum is necessary.

## **Railroad audible warnings**

(R.C. 4955.32, 4955.322, 4955.34, and 4999.04; conforming changes in R.C. 4955.321, 4955.44, and 4955.47)

### **Horn-sounding requirement**

The act requires the engineer or person in charge of the locomotive in the lead of a train, a lite locomotive consist, or an individual locomotive to sound the locomotive horn in accordance with federal law when approaching a public highway or a grade crossing. This requirement does not apply if an alternative audible warning system, approved by the Public Utilities Commission (PUCO) as provided for in continuing law, is activated. The act defines a "lite locomotive consist" as a consist of locomotives not attached to any piece of equipment or attached only to a caboose.



The audible-warning requirement that was replaced by these provisions required that when an engine is in motion and approaching a turnpike, highway, or street crossing or private crossing where the view of the crossing is obstructed by embankment, trees, curve, or other obstruction, upon the same line with the crossing, and in like manner where the railroad crosses any other traveled place, the engineer or person in charge of the engine must (1) sound the locomotive whistle at a distance of 80 to 100 rods from the crossing and (2) ring the engine's bell continuously until the engine passes the crossing. This requirement also did not apply if an alternative audible warning system, approved by PUCO, was activated. The act also removes a requirement that companies must attach to each locomotive engine on their railroads a bell and a steam or compressed-air whistle.

The act removes a provision that stated that the whistle-and-bell requirement does not interfere with the proper observance of an ordinance passed by the legislative authority of a municipal corporation regulating the management of railroads, locomotives, and steam whistles on locomotives within the municipal corporation.

The act modifies a provision of law to state that the establishment of an alternative audible warning system does not preclude the sounding of a locomotive horn in an emergency situation. Prior law had stated that the establishment of an alternative audible warning system does not preclude the sounding of a *whistle* in an emergency.

### **Crimes for failure to comply with audible-warning requirements**

The act repeals a provision of law that made it a fourth degree misdemeanor for a person to fail to sound a locomotive whistle at frequent intervals when approaching (at least 1,320 feet before) and passing through a grade crossing. The act likewise repeals a provision of law that made it a third degree misdemeanor to fail to sound a whistle in this manner if a person is physically harmed because of the failure.

The act makes it a fourth degree misdemeanor for a person to fail to comply with the act's horn-sounding requirement, and a third degree misdemeanor if the failure causes physical harm to any person. But, the act establishes an affirmative defense to these crimes if a PUCO-approved alternative audible warning system was activated.

### **Civil penalties for failure to comply with audible-warning requirements**

The act applies the former civil penalty of \$50 to \$100, previously imposed for a failure to comply with prior audible-warning requirements, to an engineer or person who fails to comply with the act's audible-warning requirements. Likewise, the company that employs the engineer or person, and the engineer or person, are liable in



damages to a person or company injured in person or property by a failure to comply with the act's audible-warning requirements.

### **Civil actions for horn sounding at private crossings**

The act establishes that the sounding of a locomotive horn at a private crossing or the failure to sound a locomotive horn at a private crossing is not a basis for a civil action against the railroad company that operated the locomotive, a board of county commissioners, or any local authority, or against their employees or agents.

### **Recovery of environmental remediation costs (VETOED)**

(R.C. 4909.157)

The Governor vetoed a provision that would have permitted the PUCO to authorize a natural gas company or gas company to recover environmental remediation costs that were (1) prudently incurred before January 1, 2025, and (2) related to real property that, at the time recovery was authorized, was being used or was previously used for the provision of public utility service. The Governor vetoed related provisions that would have allowed such recovery to be provided for through the establishment of a mechanism by the PUCO. The mechanism would have been required to set forth the specific terms of the recovery.

The Governor also vetoed a provision that would have declared that the following rate-making determinations (required under continuing law) do not preclude recovery of these environmental remediation costs:

- (1) The valuation of the utility's property used and useful in rendering the public utility service;
- (2) The cost to the utility of rendering the public utility service.

Finally, the Governor vetoed a provision that would have required the company, if the PUCO authorized recovery, to return to the company's customers, upon the sale of the real property, the difference between the sale price of the property (minus any reasonable expenses related to the sale) and the fair market value of the property prior to remediation.