



# Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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## Power Siting Board Overview

The Power Siting Board (PSB) is responsible for approving the siting in Ohio of (1) major utility facilities and (2) economically significant wind farms, which, with two exceptions, are wind turbines and associated facilities operating at a capacity of at least five but less than 50 megawatts.

These facilities and wind farms are subject to PSB jurisdiction and not subject to the local zoning regulations of the municipal corporation, county, or township where the facility or wind farm is to be located. They must receive a PSB certificate of environmental compatibility and public need for the construction, operation, and maintenance of the facility or wind farm in order to operate in Ohio.

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### Power Siting Board

The Power Siting Board (PSB), created within the Public Utilities Commission of Ohio (PUCO), is responsible for approving the siting of major utility facilities and certain wind farms and ensuring that they meet requirements specified in Ohio law.

#### Membership

PSB is an 11-member board consisting of the PUCO chairperson, who serves as the chairperson and chief executive officer; the directors of Environmental Protection, Development

Services, Health, Natural Resources, and Agriculture; a representative of the public; and four nonvoting legislative members.

The member representing the public, who must be an engineer, is appointed by the Governor for a four-year term, from a list of three nominees submitted to the Governor by the Office of the Consumers' Counsel. This member's appointment is subject to the advice and consent of the Senate.

The Speaker of the House of Representatives, the Senate President, and the Minority Leaders of the House and Senate each appoint one legislative member and an alternate member to attend the PSB meetings in the absence of the appointed members. The legislative members and their alternates serve for the duration of the legislative term the member is serving at the time of the appointment.<sup>1</sup>

### **Compensation and expenses for public and legislative members**

The PSB public member and legislative members are paid at the per-diem rate of \$10.01/hour when engaged in PSB duties and are reimbursed for their actual and necessary expenses incurred while performing PSB duties.<sup>2</sup>

### **PSB duties**

PSB must approve, disapprove, or modify and approve applications for certificates and adopt rules for the certificate process. All hearings, studies, and consideration of applications for certificates must be conducted by PSB members or their representatives. PSB has the authority to conduct any necessary and appropriate studies or investigations to carry out its responsibilities and to require information for hearings and investigations from persons subject to PSB.

The PSB chairperson must keep a complete record of all PSB proceedings; issue all necessary process, writs, warrants, and notices; keep all books, maps, documents, and papers ordered to be filed; conduct investigations; and perform other duties that PSB prescribes.

The chairperson also must designate a voting member to serve as vice-chairperson. The vice-chairperson, in the chairperson's absence or disability, has the authority to act as the chairperson.<sup>3</sup>

### **How PSB is funded and staffed**

PSB is funded by PUCO, application fees that are set by PSB rule, and amounts billed to applicants for certificates to meet PSB's expenses for application evaluations. All amounts are deposited in the state treasury to the credit of the Power Siting Board Fund. The PSB chairperson administers the fund and authorizes expenditures from the fund for PSB purposes.

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<sup>1</sup> R.C. 4906.02(A).

<sup>2</sup> R.C. 124.15 and 4906.02(A).

<sup>3</sup> R.C. 4906.02(A) and (B) and 4906.03.

PSB offices are located within PUCO offices, and the PUCO chairperson may assign or transfer PSB duties among PUCO staff. However, PSB's authority to grant certificates must only be exercised by PSB and not by any other officer, employee, or body.

The chairperson also may request the temporary assistance of any employee of the Environmental Protection Agency, Development Services Agency, and departments of Health, Natural Resources, or Agriculture for the purpose of making studies, conducting hearings, investigating applications, or preparing any reports. When assisting PSB, agency employees are reimbursed for their actual and necessary expenses incurred but do not receive any additional compensation over that which they receive from the agency employing them. All contracts for special services are subject to the approval of the chairperson.<sup>4</sup>

## Facilities subject to PSB jurisdiction

In Ohio, major utility facilities and certain economically significant wind farms are subject to PSB jurisdiction and certification. They must meet specific requirements to be certified to operate. The table below lists the facilities that are and are not major utilities and economically significant wind farms under PSB law.<sup>5</sup>

Major Utility Facilities	Economically Significant Wind Farms
<ul style="list-style-type: none"> <li>▪ Electric generating plants and associated facilities designed for, or capable of, operation at a capacity of 50 megawatts or more;</li> <li>▪ Electric transmission lines and associated facilities of a design capacity of 100 kilovolts or more;</li> <li>▪ Gas pipelines that exceed 500 feet in length (and their associated facilities), more than nine inches in outside diameter, and designed for transporting gas at a maximum allowable operating pressure that is 125 pounds per square inch.<sup>6</sup></li> </ul>	<ul style="list-style-type: none"> <li>▪ Economically significant wind farms are wind turbines and associated facilities with a single interconnection to the electrical grid that are designed for, or capable of, operation at an aggregate capacity of at least five megawatts but less than 50 megawatts.<sup>7</sup></li> </ul>

<sup>4</sup> R.C. 4906.02 and 4902.06(F).

<sup>5</sup> R.C. 4906.01(B) and 4906.13(A).

<sup>6</sup> R.C. 4906.01(B)(1).

<sup>7</sup> R.C. 4906.13(A).

Not Major Utility Facilities	Not Economically Significant Wind Farms
<p>Major utility facilities do not include:</p> <ul style="list-style-type: none"> <li>▪ Gas transmission lines subject to the jurisdiction of a federal agency; solid waste facilities; electric distributing lines and associated facilities; manufacturing facilities that create byproducts that may be used in electricity generation; gathering lines, gas gathering pipelines, and processing plant gas stub pipelines and associated facilities; gas processing plants; natural gas liquids finished product pipelines; natural gas liquids fractionation plants; pipelines from a gas processing plant to a natural gas liquids fractionation plant; production operations for oil, gas, or mineral resources; and certain compressor stations.<sup>8</sup></li> </ul>	<p>Economically significant wind farms do not include:</p> <ul style="list-style-type: none"> <li>▪ Wind farms consisting of one or more wind turbines and associated facilities, if the wind farm is primarily dedicated to providing electricity to a single customer at a single location and is designed for, or capable of, operation at an aggregate capacity of less than 20 megawatts, as measured at the customer's point of interconnection to the electrical grid.</li> <li>▪ Any wind farm in operation on June 24, 2008.<sup>9</sup></li> </ul>

### **No public agency or political subdivision jurisdiction**

Major utility facilities and economically significant wind farms are not subject to regulation by an Ohio public agency or political subdivision. Under Ohio law, “[n]o public agency or political subdivision of this state may require any approval, consent, permit, certificate, or other condition for the construction or operation of a major utility facility or economically significant wind farm authorized by a certificate issued pursuant to Chapter 4906. of the Revised Code.”<sup>10</sup>

#### **Exceptions**

However, state laws for the protection of employees engaged in the construction of the facilities or wind farms still apply to a major utility facility or economically significant wind farm that has been granted a PSB certificate. And, municipal regulations may still apply if they do not pertain to the location or design of, or pollution control and abatement standards for, the facility or wind farm.<sup>11</sup>

Electric generating plants, electric transmission lines, and gas pipelines (including their associated facilities) that are not major utility facilities are not exempt from state or local laws or

<sup>8</sup> R.C. 4906.01(B)(2).

<sup>9</sup> R.C. 4906.13(A).

<sup>10</sup> R.C. 4906.13(B).

<sup>11</sup> R.C. 4906.13(B).

regulations. And, replacement facilities that are not required to be certified are not exempt from any other requirements of state laws or local regulations.<sup>12</sup>

## PSB certification requirement

Ohio law prohibits any person from constructing a major utility facility or an economically significant wind farm in the state without a PSB-issued certificate of environmental compatibility and public need for the construction, operation, and maintenance of the facility or economically significant wind farm. The certificate may be granted through a standard or accelerated certificate application process, with the accelerated process available only to a facility that is a coal research and development project or a limited type of electric generating facility, electric transmission line, or gas pipeline. The certification process is detailed in the *Members Brief, Power Siting Board Certification Process*.

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Under Ohio law, wind farms not subject to PSB, effectively those with an operating capacity of less than five megawatts, are classified as “small wind farms” and are subject to local jurisdiction.

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If PSB issues a certificate for a facility, that facility must be constructed, operated, and maintained in conformity with any terms, conditions, and modifications contained in the certificate. A certificate may be transferred, subject to PSB approval, to a person who agrees to comply with the certificate’s terms, conditions, and modifications.<sup>13</sup>

## When certification is not required

As determined by PSB, certificates are not required for the replacement of existing major utility facilities with like facilities. Nor are they required for major utility facilities that began construction before October 23, 1974, or in operation before October 23, 1972. But, a substantial addition (as defined by PSB) to a facility already in operation must have a certificate.<sup>14</sup>

## Granting certification

PSB must grant or deny a certification application as it is filed or grant it subject to terms, conditions, or modifications to the facility’s construction, operation, or maintenance that PSB considers appropriate. If modified, the municipal corporations, counties, and their residents must be given reasonable notice of the modification. An approved certificate is conditioned upon the facility being in compliance with requirements regarding air and water pollution control, solid and hazardous waste management, and air navigation obstruction. PSB must issue a reason for its decisions on applications.<sup>15</sup>

Before granting a certificate for the construction, operation, and maintenance of a major utility or economically significant wind farm, PSB must consider certain factors and determine the following:

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<sup>12</sup> R.C. 303.213, 519.213, 713.081, 4906.04 and 4906.05.

<sup>13</sup> R.C. 4906.01(D), 4906.03(E) and (F), 4906.04, 4906.20(A), and 4906.98.

<sup>14</sup> R.C. 4906.04 and 4906.05.

<sup>15</sup> R.C. 4906.10(A) and (B) and 4906.11.

- The basis for the need for the facility (if it is a gas pipeline or electric transmission line);
- That the facility will serve the public interest, convenience, and necessity;
- The nature of the probable environmental impact and that the facility represents the minimum adverse environmental impact based on certain technological, economic, and other pertinent considerations;
- In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid serving the state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;
- That the facility will comply with all requirements governing air pollution, solid and hazardous wastes, water pollution, and structures and objects in airport zones and it also incorporates maximum feasible water conservation practices as PSB determines;
- What the facility's impact will be on the viability, as agricultural land, of any land in an existing agricultural district located within the proposed facility site and its alternative site.<sup>16</sup>

### **Granting certification to economically significant wind farms**

The law requires the certification application process for economically significant wind farms to be as “identical to the extent practicable” to the process for major utility facilities. PSB rules must prescribe reasonable regulations regarding any wind turbines and associated facilities of an economically significant wind farm including, for example, rules for their location, erection, construction, alteration, maintenance, enlargement, erosion control, aesthetics, wildlife protection, interconnection with power lines and grid operators, ice throw, sound and noise levels, blade shear, shadow flicker, decommissioning, and necessary cooperation for site visits and enforcement investigations.

Ohio law prescribes a minimum setback for economically significant wind turbines. Under the law, the setback minimums also apply to wind farms that are larger than economically significant wind farms. Specifically, these larger wind farms are electric generating plants that consist of wind turbines and associated facilities with a single interconnection to the electrical grid that are designed for, or capable of, operation at an aggregate capacity of 50 megawatts or more.<sup>17</sup>

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<sup>16</sup> R.C. 4906.10(A)(1) to (8).

<sup>17</sup> R.C. 4906.20(B)(2) and 4906.201(A).