



Members Brief

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

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Volume 136
January 17, 2025

S.B. 52 and Local Utility Regulation

Ohio law grants counties, townships, and municipalities certain authority over public utilities. Counties are empowered by Senate Bill 52 of the 134th General Assembly, which was enacted in 2021, to prohibit the construction of economically significant wind farms, large wind farms, and large solar facilities in designated zones, or to prohibit or limit the size of a particular farm or facility. Counties, townships, and municipalities have authority over the placement of small solar farms and small wind farms. Lastly, municipalities have public utility home rule power under the Ohio Constitution to own and operate municipal public utilities.

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Senate Bill 52, 134th General Assembly

Senate Bill 52 of the 134th General Assembly, which was enacted in 2021, provides authority for counties to limit the construction of an economically significant wind farm, a large wind farm, or a large solar facility (collectively defined by S.B. 52, and referred to in this *Member's Brief*, as a "utility facility"). It also requires the Power Siting Board (PSB) to include two local voting ad hoc members for utility facility PSB certificate applications, or material amendments to existing utility facility PSB certificates. For a detailed explanation of all aspects of S.B. 52, see the LSC [S.B. 52 Final Analysis \(PDF\)](#), which is available on the General Assembly's website: legislature.ohio.gov.

Relevant definitions from S.B. 52 are in the following table.¹

Terms	Definitions
Major utility facility	Consists of several types of facilities, including an electric generating plant and associated facilities designed for, or capable of, operation at a capacity of 50 megawatts (MW) or more. Also specifically excludes certain facilities, such as electric distributing lines and associated facilities as defined by the PSB.
Economically significant wind farm	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 five but less than 50 MW, but excluding: <ul style="list-style-type: none"> ▪ Any such wind farm in operation on June 24, 2008; ▪ One or more wind turbines and associated facilities primarily dedicated to providing electricity to a single customer at a single location and designed for, or capable of, operation at an aggregate capacity of less than 20 MW, as measured at the customer's point of interconnection to the electrical grid.
Large wind farm	An electric generating plant that consists of wind turbines and associated facilities with a single interconnection to the electrical grid that is a major utility facility.
Large solar facility	An electric generating plant that consists of solar panels and associated facilities with a single interconnection to the electrical grid that is a major utility facility.
Material amendment	An amendment to an existing PSB certificate for the construction, operation, or maintenance of a utility facility that makes any of several listed changes, such as, for example, increasing the facility's nameplate capacity.

Power Siting Board role

Existing law, which was unchanged by S.B. 52, requires a person to obtain a certificate of environmental compatibility and public need from the PSB before building a major utility facility or economically significant wind farm in Ohio. To obtain a certificate, the PSB must make several

¹ R.C. 303.57, 4906.01, and 4906.13.

findings regarding the certificate application, such as the nature of the probable environmental impact and that the facility will serve the public interest, convenience, and necessity.

S.B. 52 added a prohibition against the PSB granting a certificate, or a material amendment to an existing certificate, for a utility facility if the facility would be in a designated restricted area, the particular facility is prohibited by a board of county commissioners, or the facility's area would be outside the geographic area approved by a board. There are also public meeting requirements that apply to utility facility applicants. Each of these processes is summarized below.²

Designating restricted areas

A board of county commissioners is permitted to adopt a resolution designating all or part of the county's unincorporated area as a restricted area where the construction of any or all types of utility facilities is prohibited. The restricted area resolution takes effect 30 days after being adopted by the board, unless a petition is submitted in those 30 days requesting the resolution be submitted to the voters. The petition must be signed by a number of the county's registered voters equal to at least 8% of the total votes cast for Governor in the county in the most recent general gubernatorial election. If the petition is properly filed and validated, the resolution takes effect only if approved by a majority of voters at the next eligible election.

If the resolution creating a restricted area takes effect, all persons are prohibited from filing, and the PSB cannot accept, an application for a certificate or a material amendment to an existing certificate to construct a utility facility within the restricted area.³

Prohibiting particular utility facilities

A board of county commissioners may adopt a resolution to prohibit the construction of a particular utility facility, without creating a restricted area. The resolution must be adopted not later than 90 days after the statutory public meeting described below.⁴

Limiting the area of particular utility facilities

A board of county commissioners, without creating a restricted area, also may adopt a resolution limiting the boundaries of a proposed utility facility to a smaller geographic area of the county, completely within the area proposed for the facility. The resolution must be adopted not later than 90 days after the statutory public meeting described below.⁵

Public meeting requirements

There are two public meeting requirements that a utility facility certificate applicant must satisfy: one statutory; the other required by administrative rule.

² R.C. 4906.04, 4906.10 to 4906.103, and 4906.20. For more information on the PSB, see the LSC *Member's Briefs*, [Power Siting Board Overview \(PDF\)](#) and [Power Siting Board Certification Process \(PDF\)](#), which are available on LSC's website: lsc.ohio.gov.

³ R.C. 303.58 to 303.60.

⁴ R.C. 303.61 and 303.62(A)(1).

⁵ R.C. 303.61 and 303.62(A)(2).

Statutory public meeting

A person intending to apply for a utility facility certificate from the PSB, or a material amendment to an existing certificate, located in whole or in part in the unincorporated area of a county must hold a public meeting in each county where the utility facility is to be located. The meeting must be held at least 90 days, but not more than 300 days, prior to applying for the certificate or amendment. At least 14 days before the meeting, the applicant must provide written notice of the meeting to the board of county commissioners and the board of trustees of every township in which the utility facility is to be located. At the meeting, the applicant must provide certain written information to the board of county commissioners, such as whether the utility facility will be a large wind farm, economically significant wind farm, or large solar facility.⁶

Public informational meetings required by PSB rule

After complying with the statutory meeting requirement, PSB rules direct the applicant also to conduct at least two informational meetings open to the public in the area where the facility is to be located before submitting a standard certificate application. At least 21 days before any of the informational meetings, the applicant must file a preapplication notification letter with the PSB containing certain information, such as the date, time, and location of the meetings. The first informational meeting is to notify the public and solicit feedback on the scope of the project. The second meeting, which must occur not more than 90 days before filing the application, is intended to present the project to the public in a manner consistent with what will be presented in the application. Further informational meetings may be required by the PSB Executive Director, or are required if the county adopts a resolution limiting the boundaries of the proposed facility (as described above). There are also various requirements pertaining to sending notice of the meetings and displaying certain information at the meetings, such as that the applicant must send a letter to each property owner and affected resident at least 21 days before each informational meeting containing specified information.⁷

PSB ad hoc members

S.B. 52 also requires that two voting ad hoc members be included on the PSB regarding approval, disapproval, or modification and approval for an application for a utility facility certificate or a material amendment to an existing certificate. The ad hoc members are to be: (1) the chairperson of the board of township trustees of the township where the utility facility is to be located, or the chairperson's designee, and (2) the president of the board of county commissioners of the county where the utility facility is to be located, or the president's designee. The designee must be another elected official or a resident from the same political subdivision as the designator, but cannot be certain persons, such as an immediate family member of a person who holds any beneficial interest in a utility facility. If the utility facility is to be located in multiple townships or counties, a single member must be chosen to represent the townships and a single member must be chosen to represent the counties.

⁶ R.C. 303.61.

⁷ Ohio Administrative Code (O.A.C.) 4906-3-03.

There are various other provisions that apply to the ad hoc members, including those concerning the designation of members and an exemption from *ex parte* communication limits.⁸

Applicability

S.B. 52 contains uncodified applicability provisions regarding utility facility certificates and material amendments to such certificates. Those provisions govern the applicability of the ad hoc member provisions to certificates and amendments filed with PSB, but not yet determined compliant and accepted. Those provisions also govern the applicability of the entire act to large wind farms and large solar facilities under certain circumstances.⁹

Local regulation of public utilities

Generally

As a general matter, counties and townships have little authority to regulate public utilities through their zoning authorities. Boards of county commissioners, county boards of zoning appeals, boards of township trustees, and township boards of zoning appeals are not given authority over the “location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad, for the operation of its business.”

Municipal planning commissions (which may assist a municipal legislative authority with zoning) do not have authority over the “construction, maintenance, use, or enlargement of improvements by any public utility or railroad on its own property if such utility is owned or operated by an individual, partnership, association, or a corporation for profit.”¹⁰

Small wind farms and small solar facilities

However, despite the foregoing, counties, townships, and municipalities have zoning power over “the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement” of small wind farms and small solar facilities, “whether publicly or privately owned, or the use of land for that purpose.”

A “small wind farm” is wind turbines and associated facilities that are not subject to PSB jurisdiction (in other words, is not an economically significant wind farm or large wind farm). “Small solar facility” means solar panels and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of less than 50 MW (in other words, is not a large solar facility).¹¹

⁸ R.C. 4906.02 to 4906.025. For more information on the role of the PSB ad hoc members, see the PSB [Ad Hoc Board Member Guidelines \(PDF\)](#), which is available on the PSB’s website under “Senate Bill 52 resources”: opsb.ohio.gov/home.

⁹ S.B. 52, Sections 3 to 5. For more information on the applicability of S.B. 52, see the PSB [Senate Bill 52 resources](#), which is available on the PSB’s website: opsb.ohio.gov/home.

¹⁰ R.C. 303.211, 519.211, and 713.02.

¹¹ R.C. 303.213, 519.213, and 713.081.

Municipal home rule

Article XVIII, Sections 4, 5, and 6 of the Ohio Constitution grant municipalities home rule authority to own and operate public utilities, subject to a referendum by their residents, and to sell surplus utility products and services to customers outside municipal limits. For more information on the municipal public utility home rule authority, please see the LSC *Member's Brief*, [Municipal Public Utility Home Rule \(PDF\)](#), which is available on LSC's website: lsc.ohio.gov.