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131st General Assembly
Regular Session
2015-2016

Sub. H. B. No. 190

A BILL

To amend sections 4906.01, 4906.13, 4906.20, and 4906.201 and to enact section 4906.202 of the Revised Code to create an alternative wind farm setback in cases where a process has been initiated to interconnect the wind farm to a transmission system and the wind farm is in the Ohio wind corridor.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4906.01, 4906.13, 4906.20, and 4906.201 be amended and section 4906.202 of the Revised Code be enacted to read as follows:

Sec. 4906.01. As used in Chapter 4906. of the Revised Code:

(A) "Person" means an individual, corporation, business trust, association, estate, trust, or partnership or any officer, board, commission, department, division, or bureau of the state or a political subdivision of the state, or any other entity.

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(B)(1) "Major utility facility" means:

(a) Electric generating plant and associated facilities designed for, or capable of, operation at a capacity of fifty megawatts or more;

(b) An electric transmission line and associated facilities of a design capacity of one hundred twenty-five kilovolts or more;

(c) A gas pipeline that is greater than five hundred feet in length, and its associated facilities, is more than nine inches in outside diameter and is designed for transporting gas at a maximum allowable operating pressure in excess of one hundred twenty-five pounds per square inch.

(2) "Major utility facility" does not include any of the following:

(a) Gas transmission lines over which an agency of the United States has exclusive jurisdiction;

(b) Any solid waste facilities as defined in section 6123.01 of the Revised Code;

(c) Electric distributing lines and associated facilities as defined by the power siting board;

(d) Any manufacturing facility that creates byproducts that may be used in the generation of electricity as defined by the power siting board;

(e) Gathering lines, gas gathering pipelines, and processing plant gas stub pipelines as those terms are defined in section 4905.90 of the Revised Code and associated facilities;

(f) Any gas processing plant as defined in section 4905.90 of the Revised Code;

(g) Natural gas liquids finished product pipelines;

(h) Pipelines from a gas processing plant as defined in section 4905.90 of the Revised Code to a natural gas liquids fractionation plant, including a raw natural gas liquids pipeline, or to an interstate or intrastate gas pipeline;

(i) Any natural gas liquids fractionation plant;

(j) A production operation as defined in section 1509.01 of the Revised Code, including all pipelines upstream of any gathering lines;

(k) Any compressor stations used by the following:

(i) A gathering line, a gas gathering pipeline, a processing plant gas stub pipeline, or a gas processing plant as those terms are defined in section 4905.90 of the Revised Code;

(ii) A natural gas liquids finished product pipeline, a natural gas liquids fractionation plant, or any pipeline upstream of a natural gas liquids fractionation plant; or

(iii) A production operation as defined in section 1509.01 of the Revised Code.

(C) "Commence to construct" means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route of a major utility facility, but does not include surveying changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions.

(D) "Certificate" means a certificate of environmental compatibility and public need issued by the power siting board under section 4906.10 of the Revised Code or a construction certificate issued by the board under rules adopted under division (E) or (F) of section 4906.03 of the Revised Code.

(E) "Gas" means natural gas, flammable gas, or gas that is toxic or corrosive.

(F) "Natural gas liquids finished product pipeline" means a pipeline that carries finished product natural gas liquids to the inlet of an interstate or intrastate finished product natural gas liquid transmission pipeline, rail loading facility, or other petrochemical or refinery facility.

(G) "Natural gas liquids fractionation plant" means a facility that takes a feed of raw natural gas liquids and produces finished product natural gas liquids.

(H) "Raw natural gas" means hydrocarbons that are produced in a gaseous state from gas wells and that generally include methane, ethane, propane, butanes, pentanes, hexanes, heptanes, octanes, nonanes, and decanes, plus other naturally occurring impurities like water, carbon dioxide, hydrogen sulfide, nitrogen, oxygen, and helium.

(I) "Raw natural gas liquids" means naturally occurring hydrocarbons contained in raw natural gas that are extracted in a gas processing plant and liquefied and generally include mixtures of ethane, propane, butanes, and natural gasoline.

(J) "Finished product natural gas liquids" means an individual finished product produced by a natural gas liquids fractionation plant as a liquid that meets the specifications for commercial products as defined by the gas processors

association. Those products include ethane, propane, iso-butane, normal butane, and natural gasoline.

(K) "Economically significant wind farm" means 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 five or more megawatts but less than fifty megawatts. The term excludes any such wind farm in operation on June 24, 2008.

(L) "Large wind farm" means 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 fifty megawatts or more.

(M) "Ohio wind corridor" means the area beginning at the northwest corner of this state and spanning across the northern natural state border, thence to the northeast corner at forty-one degrees and twenty-five and seventy-two hundredths minutes north and eighty-two degrees and twenty and eighty-nine hundredths minutes west, thence to the south at forty degrees and forty-three and one tenth minutes north and eighty-two degrees and twenty and eighty-nine hundredths minutes west, thence to the west at forty degrees and twenty-six and sixty-four hundredths minutes north and eighty-three degrees and fourteen and eighty-nine hundredths minutes west, thence south at forty degrees and sixty-one hundredths minutes north and eighty-three degrees and thirty and ninety-five hundredths minutes west, thence west at forty degrees and sixty-one hundredths minutes north and eighty-four degrees and forty-eight and sixty-four hundredths minutes west located at the western natural state border, and thence returning to the northwest

corner at the northern natural state border as measured by the transportation information mapping system maintained by the department of transportation, to the extent that such area is located in this state.

Sec. 4906.13. ~~(A) As used in this section and sections 4906.20 and 4906.98 of the Revised Code, "economically significant wind farm" means 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 five or more megawatts but less than fifty megawatts. The term excludes any such wind farm in operation on the effective date of this section.~~

~~(B)~~ No public agency or political subdivision of this state may require any approval, consent, permit, certificate, or other condition for the construction or initial operation of a major utility facility or economically significant wind farm authorized by a certificate issued pursuant to Chapter 4906. of the Revised Code. Nothing herein shall prevent the application of state laws for the protection of employees engaged in the construction of such facility or wind farm nor of municipal regulations that do not pertain to the location or design of, or pollution control and abatement standards for, a major utility facility or economically significant wind farm for which a certificate has been granted under this chapter.

Sec. 4906.20. (A) No person shall commence to construct an economically significant wind farm in this state without first having obtained a certificate from the power siting board. An economically significant wind farm with respect to which such a certificate is required shall be constructed, operated, and maintained in conformity with that certificate and any terms,

conditions, and modifications it contains. A certificate shall be issued only pursuant to this section. The certificate may be transferred, subject to the approval of the board, to a person that agrees to comply with those terms, conditions, and modifications.

(B) The board shall adopt rules governing the certificating of economically significant wind farms under this section. Initial rules shall be adopted within one hundred twenty days after June 24, 2008.

(1) The rules shall provide for an application process for certificating economically significant wind farms that is identical to the extent practicable to the process applicable to certificating major utility facilities under sections 4906.06, 4906.07, 4906.08, 4906.09, 4906.10, 4906.11, and 4906.12 of the Revised Code and shall prescribe a reasonable schedule of application filing fees structured in the manner of the schedule of filing fees required for major utility facilities.

(2) Additionally, the rules shall prescribe reasonable regulations regarding any wind turbines and associated facilities of an economically significant wind farm, including, but not limited to, their location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement and including erosion control, aesthetics, recreational land use, wildlife protection, interconnection with power lines and with regional transmission organizations, independent transmission system operators, or similar organizations, ice throw, sound and noise levels, blade shear, shadow flicker, decommissioning, and necessary cooperation for site visits and enforcement investigations.

(a) ~~The~~ Except as provided in division (B)(2)(b) of this

section and section 4906.202 of the Revised Code:

(i) The rules also shall prescribe a minimum setback for a wind turbine of an economically significant wind farm. ~~That~~

(ii) The minimum setback required under division (B)(2)(a)(i) of this section shall be equal to a horizontal distance, from the turbine's base to the property line of the wind farm property, equal to one and one-tenth times the total height of the turbine structure as measured from its base to the tip of its highest blade and be at least one thousand one hundred twenty-five feet in horizontal distance from the tip of the turbine's nearest blade at ninety degrees to property line of the nearest adjacent property at the time of the certification application.

(b)(i) For any existing certificates and amendments thereto, and existing certification applications that have been found by the chairperson to be in compliance with division (A) of section 4906.06 of the Revised Code before the effective date of the amendment of this section by H.B. 59 of the 130th general assembly, September 29, 2013, the distance shall be seven hundred fifty feet instead of one thousand one hundred twenty-five feet, in horizontal distance from the tip of the turbine's nearest blade at ninety degrees to the exterior of the nearest, habitable, residential structure, if any, located on adjacent property at the time of the certification application.

(ii) Any amendment made after the effective date of the amendments to this section by H.B. 190 of the 131st general assembly to an existing certificate ~~after the effective date of the amendment of this section by H.B. 483 of the 130th general assembly~~ shall be subject to the minimum setback ~~provision of this section as amended by~~ that ~~act~~ applied to the certificate

at the time that it was granted. The amendments to this section by that act shall not be construed to limit or abridge any rights or remedies in equity or under the common law.

(c) The setback shall apply in all cases except those in which all owners of property adjacent to the wind farm property waive application of the setback to that property pursuant to a procedure the board shall establish by rule and except in which, in a particular case, the board determines that a setback greater than the minimum is necessary.

Sec. 4906.201. (A) ~~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 fifty megawatts or more~~ Except as provided in division (B) of this section and section 4906.202 of the Revised Code, a large wind farm is subject to the minimum setback requirements established in rules adopted by the power siting board under division (B)(2) of section 4906.20 of the Revised Code.

(B)(1) For any existing certificates and amendments thereto, and existing certification applications that have been found by the chairperson to be in compliance with division (A) of section 4906.06 of the Revised Code before the effective date of the amendment of this section by H.B. 59 of the 130th general assembly, September 29, 2013, the distance shall be seven hundred fifty feet instead of one thousand one hundred twenty-five feet, in horizontal distance from the tip of the turbine's nearest blade at ninety degrees to the exterior of the nearest, habitable, residential structure, if any, located on adjacent property at the time of the certification application.

(2) Any amendment made after the effective date of the

amendments to this section by H.B. 190 of the 131st general assembly to an existing certificate ~~after the effective date of the amendment of this section by H.B. 483 of the 130th general assembly,~~ shall be subject to the minimum setback ~~provision of this section as amended by~~ that ~~act~~ applied to the certificate at the time that it was granted. The amendments to this section by that act shall not be construed to limit or abridge any rights or remedies in equity or under the common law.

Sec. 4906.202. (A)(1) The power siting board shall adopt rules prescribing a separate minimum setback for a wind turbine of either of the following types of wind farms, provided that there has been a process initiated with a regional transmission organization or similar entity to interconnect the wind farm to an electric transmission system:

(a) An economically significant wind farm located in the Ohio wind corridor;

(b) A large wind farm located in the Ohio wind corridor.

(2) For purposes of division (A)(1) of this section, an entity that has paid the fees required to initiate the process described in that division shall be deemed to have initiated the process.

(B) The minimum setback for a wind turbine described in division (A) of this section shall be equal to a horizontal distance, from the turbine's base to the property line of the wind farm property, equal to one and one-tenth times the total height of the turbine structure as measured from its base to the tip of its highest blade and be at least one thousand one hundred twenty-five feet in horizontal distance from the tip of the turbine's nearest blade at ninety degrees to the exterior of

the nearest, habitable, residential structure, if any, located on adjacent property at the time of the certification application.

Section 2. That existing sections 4906.01, 4906.13, 4906.20, and 4906.201 of the Revised Code are hereby repealed.