



Sub. H.B. 133

125th General Assembly
(As Passed by the General Assembly)

Reps. Olman, Driehaus, Strahorn, Carmichael, Distel, Hartnett, G. Smith, Niehaus, Schmidt, Barrett, Fessler, Harwood, Hollister, Hughes, Latta, McGregor, S. Patton, T. Patton, Price, Reidelbach, Seitz, J. Stewart

Sen. Blessing

Effective date: *

ACT SUMMARY

- Eliminates the requirement of a determination of the need for a major electric generating facility by the Power Siting Board prior to authorizing the facility.
- Extends to such a facility a standard currently applicable to electric transmission lines: that the facility be consistent with regional electric power grid plans and serve system economy and reliability in order to be authorized by the Board.
- Authorizes the Board to conduct a complaint hearing if it finds reasonable grounds to believe that a violation of power siting law has occurred.
- Authorizes the Board by order or its chairperson, by written notice and after an opportunity to respond, to require that any activity that is the subject of a complaint be suspended for the duration of the Board's consideration of the complaint, and requires the chairperson to terminate any such suspension if the complaint has been satisfactorily addressed.

** The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Adds to the two continuing prohibitions under power siting law--not obtaining a certificate and not complying with a certificate--a third prohibition against failing to comply with an order or suspension issued under that law.
- Upon a finding in a complaint hearing that a violation has occurred, authorizes the Board to assess a forfeiture of not more than \$5,000 for each day of the violation, with the actual amount determined after considering specified factors.
- Caps at \$1 million the total amount of forfeitures that may be imposed for a related series of violations under power siting law, with collected forfeitures deposited to the credit of the state General Revenue Fund.
- Authorizes, instead of requires, the criminal penalty of continuing power siting law to be imposed if violations are proven in a criminal proceeding.
- Advances from two years, to one year, before the planned construction date the latest date to file an application for a certificate for a major electric generating facility.
- Removes Board authority to waive for "unforeseen emergencies" the filing period for an application for a certificate, and replaces it with authority to waive the filing period for "good cause shown."
- Extends from 7 to 15 days the period within which newspaper notice must be given after the filing of an application.
- Modifies punctuation to clarify the requirement that, generally, persons that wish to intervene in a siting proceeding must petition the Board for authority to do so.
- Authorizes the Director of Development to provide financial assistance under the Energy Efficiency Revolving Loan Program in the form of direct loans or grants.
- Modifies the authority of lending institutions to provide financial assistance under the program, to allow assistance in the form of loan participation agreements at below market rates or linked deposits, rather



than loans at below market rates or loan guarantees or linked deposits for such loans.

- Limits the total of all grants provided in a fiscal year to not more than 10% of the revenue paid into the Energy Efficiency Revolving Loan Fund during the previous fiscal year.

CONTENT AND OPERATION

Power Siting Board overview

Generally, under the power siting law of R.C. Chapter 4906., the Power Siting Board (PSB) issues certificates of environmental compatibility and public need for the following "major utility facilities" proposed to be constructed in Ohio: (1) electric generating facilities with a capacity of 50 megawatts or more, (2) electric transmission lines with a design capacity of 125 kilovolts or more, and (3) gas and natural gas transmission lines capable of carrying pressures greater than 125 pounds per square inch. The PSB also issues construction certificates for major utility facilities related to Ohio coal development. The PSB is composed of the Chairperson of the Public Utilities Commission (PUCO); the Directors of Environmental Protection, Health, Development, Natural Resources, and Agriculture; a public member appointed by the Governor; and, as nonvoting members, two state representatives and two senators. The act changes the PSB's authority in two general areas: (1) the certificating process and (2) enforcement.

Certificating process

Siting standards for generating facilities

(R.C. 4906.10)

The act changes the standards applicable to PSB approval of a certificate for a major electric generating facility. Previously, the PSB was prohibited from granting a certificate to any major utility facility, including a generating facility, unless it determined the need for the facility. Based on a provision added by the Electric Restructuring Law of the 123rd General Assembly (Am. Sub. S.B. 3), a generating facility is presumed to be needed.

The act eliminates the requirement of a needs determination for a major electric generating facility. It also extends to such a facility a standard applicable to major electric transmission lines: that the facility be consistent with regional electric power grid plans and serve system economy and reliability.

Time of filing

(R.C. 4906.06)

Previous law provided that an application for a certificate of environmental compatibility and public need from the PSB had to be filed not less than two years (or one year, in the case of transmission lines) nor more than five years before the date construction was planned to begin. The act advances from two years, to one year, before the planned construction date the latest date to file an application for a major electric generating facility. It also replaces PSB authority to waive the filing period for "unforeseen emergencies" with authority to waive it for "good cause shown." Additionally, it lengthens from 7, to 15, days after the filing of an application the period during which notice must be published in local newspapers.

Intervention in a siting proceeding

(R.C. 4906.08)

The act removes a semicolon to clarify a continuing requirement that persons that wish to intervene in a siting proceeding must petition the PSB for authority to do so.

Enforcement by the Power Siting Board

Prohibitions and criminal penalties

(R.C. 4906.98 and 4906.99)

Continuing law largely retained by the act contains two prohibitions affecting owners of major utility facilities: (1) a prohibition against constructing a major utility facility without first obtaining a certificate and (2) a prohibition against constructing, operating, or maintaining a facility other than in compliance with a certificate. Local prosecutors may bring criminal actions for violations of the prohibitions. Violations are punishable by a fine of not less than \$1,000 or more than \$10,000 for each day of violation, or imprisonment for not more than one year, or both.

The act adds to the two prohibitions described above--not obtaining a certificate and not complying with a certificate--a third prohibition against a person failing to comply with an order or suspension issued under power siting law, and it extends to that new prohibition the criminal penalty and the standard of "willfulness" that continue to apply to the first two prohibitions. In addition, the act replaces "shall" with "may" in relation to a provision specifying a court's authority to impose the criminal penalty when violations are proven.

Complaint authority, activity suspension, and forfeitures

(R.C. 4906.97)

The act additionally requires the PSB to conduct a complaint hearing if it has reasonable grounds to believe that a person has committed a violation of any of the three prohibitions described above. The PSB must serve notice on the alleged violator not less than 15 days before the hearing. The notice must state the matters that are the subject of the complaint hearing. Parties to the complaint are expressly entitled to be heard, to be represented by counsel, and to have the right to compel the attendance of witnesses.

The act also adds authority for the PSB by order or its chairperson, by written notice and after an opportunity to respond, to require that any activity that is the subject of the complaint be suspended for the duration of the PSB's consideration of the complaint. (Under continuing law, the chairperson of the PUCO is the designated chairperson of the PSB). Upon a showing by the party complained against that all matters have been addressed satisfactorily, the chairperson must terminate the suspension.

The act authorizes the PSB, upon a finding that a person has violated one or more of the three prohibitions, to assess by order a forfeiture of not more than \$5,000 for each day of each violation. In determining the actual amount of a forfeiture, the PSB must consider all of the following: (1) the gravity of the violation, (2) the person's history of prior violations, (3) the person's good faith efforts to comply and undertake corrective action, (4) the person's ability to pay the forfeiture, (5) the cost of the project, (6) the effect of the forfeiture on the person's ability to continue as an applicant, and (7) such other matters as justice requires. Additionally, the act caps at \$1 million the total amount of forfeitures that may be imposed for a related series of violations.

The act requires the Attorney General, upon the PSB's written request, to bring a civil action to recover any forfeiture not paid or to seek other appropriate relief, including injunctive relief. The action must be brought in the Court of Common Pleas of Franklin County, and the court must give precedence to the action over all other cases.

All collected forfeitures must be deposited into the state treasury to the credit of the General Revenue Fund.

Energy Efficiency Revolving Loan Program

(R.C. 4928.62 and 4928.63)

The Director of Development is required to administer the Energy Efficiency Revolving Loan Program. Under the program, the Director is authorized to use moneys in the Energy Efficiency Revolving Loan Fund to provide financial assistance for projects meeting certain requirements. Previously, the assistance could only be made or provided through approved lending institutions in the form of loans at below market rates, loan guarantees for such loans, and linked deposits for such loans.

The act *permits*, rather than requires, assistance under the program to be provided by (1) the Director in the form of *direct loans* or *grants* or (2) lending institutions in the form of *loan participation agreements* at below market rates or linked deposits. Additionally, the act limits the total of all grants provided in a fiscal year to not more than 10% of the revenue paid into the fund during the previous fiscal year. Continuing law not changed by the act allows the Director to adopt rules governing the implementation of the program. The act specifies that the rules can prescribe the terms and conditions of any grants and loan participation agreements that are provided.

Continuing law largely retained by the act prohibits the Director from authorizing financial assistance under the program unless certain requirements are met. One such requirement was that the project include an investment in products, technologies, or services for residential, *small* commercial and *small* industrial business, local government, educational institution, nonprofit entity, or agricultural customers of an electric distribution utility or a participating municipal electric utility or electric cooperative in Ohio. Under the act, the investment may be for commercial and industrial business customers (rather than just *small* commercial and *small* industrial business customers) or the other types of customers listed above.

The Electric Restructuring Law includes a determination that it is necessary to establish the Energy Efficiency Revolving Loan Program and Fund and to vest the Director with the powers and duties to operate the program. The act eliminates apparently redundant provisions of this determination.



HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-19-03	p. 262
Reported, H. Public Utilities	06-25-03	p. 961
Passed House (98-0)	06-25-03	pp. 979-980
Reported, S. Public Utilities	12-09-03	p. 1244
Passed Senate (33-0)	12-10-03	pp. 1262-1263
House concurred in Senate amendments (96-0)	12-10-03	pp. 1323-1325

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