



H.B. 133

125th General Assembly
(As Introduced)

Rep. Olman

BILL SUMMARY

- Expressly states in power siting law that the Power Siting Board has continuing jurisdiction to enforce all certificates it issues for major electric or gas utility facilities, and redefines the "period of initial operation" for purposes of that jurisdiction.
- Removes a standard of "willful" behavior that currently applies to prohibitions against constructing a major utility facility without first obtaining a certificate and against constructing, operating, or maintaining a facility other than in compliance with a certificate.
- Adds a third prohibition against failing to comply with an order or suspension notice issued under power siting law, and extends the criminal penalty provision of current power siting law to a violation of this new prohibition.
- Authorizes the Board to conduct a complaint hearing if it finds reasonable grounds to believe that a violation of one or more of the three prohibitions has occurred.
- Authorizes the Board by order, or its chairperson by written notice, to require that any activity that is the subject of the complaint be suspended for the duration of the Board's consideration of the complaint.
- Upon a finding in the complaint hearing that a violation has occurred, authorizes the Board to assess a forfeiture of not more than \$10,000 for each day of the violation, with collected forfeitures deposited to the credit of the state General Revenue Fund.

- Replaces Board authority, to waive for "unforeseen emergencies" the filing period specified under continuing law for an application for a certificate, with authority to waive it for "good cause shown."

CONTENT AND OPERATION

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 bill changes the PSB's authority in two areas: (1) the certificating process and (2) enforcement.

Certificating process

Continuing PSB jurisdiction

(R.C. 4906.10)

Current law unchanged by the bill states that a major facility for which a PSB certificate has been issued is subject, during its period of initial operation, to authority of the Director of Environmental Protection (EPA) to enforce specified air, solid and hazardous waste, and water pollution laws. It defines the period of initial operation as ending two years after the date electric power is first generated by the facility.

The bill expressly adds that the PSB has continuing jurisdiction to enforce all conditions of a certificate that it issues. This authority extends from the date of issuance to the end of the period of initial operation. For that purpose and the purposes of the above-noted EPA enforcement, the bill specifies that the period of initial operation ends two years after the date the facility is first placed in service.

Time of filing

(R.C. 4906.06)

Current law provides that an application for a certificate of environmental compatibility and public need from the PSB must 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 is planned to begin. The bill replaces PSB authority to waive this filing period for "unforeseen emergencies" with authority to waive it for "good cause shown."

Enforcement

Prohibitions and fines

(R.C. 4906.98 and 4906.99)

Continuing law 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. The violations continue to be 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 bill removes the standard of "willful" behavior that currently applies to both prohibitions. In addition, it adds a third prohibition against a person failing to comply with an order or suspension notice issued under power siting law and extends the above-described criminal penalty provision of power siting law to a violation of this new prohibition.

Complaint authority, activity suspension, and forfeitures

(R.C. 4906.97)

The bill additionally authorizes 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 bill also adds authority for the PSB by order, or its chairperson by written notice, 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).

The bill authorizes the PSB, after notice and opportunity for hearing and 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 \$10,000 for each day of each violation. In determining the amount of the forfeiture, the PSB must consider the nature of the violation. The bill authorizes 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.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-19-03	p. 262

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