



# 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 other public agency or political subdivision regulations. They must receive a PSB certificate of environmental compatibility and public need for their construction, operation, and maintenance 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 economically significant wind farms (ESWFs) and ensuring that they meet requirements specified in Ohio law. Major utility facilities and ESWFs are described below in “**Facilities subject to PSB jurisdiction.**”

## Membership

The PSB is an 11-member board consisting of the following:

- The PUCO chairperson, who serves as the chairperson and chief executive officer;
- The directors of Environmental Protection, Development, Health, Natural Resources, and Agriculture;
- A representative of the public, who must be an engineer and appointed by the Governor, subject to the advice and consent of the Senate, for a four-year term from a list of three nominees submitted by the Office of the Consumers' Counsel;
- Four nonvoting legislative members.

The Speaker of the House, 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 legislative member. 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>

## Voting ad hoc members

Two ad hoc members are added in cases involving a certificate application or application for a material amendment to an existing certificate for a “utility facility” (an ESWF, large wind farm, or large solar facility; the latter two also being major utility facilities).<sup>2</sup> Ad hoc members and their role in the certification process are detailed in the *Member's Brief*, [S.B. 52 and Local Utility Regulation \(PDF\)](#), which is available on LSC's website: [lsc.ohio.gov](http://lsc.ohio.gov).

## Compensation and expenses

The PSB public member and legislative members (or their alternates) 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>3</sup> The law does not provide for payment or expense reimbursement for ad hoc members.

## PSB duties

The 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. The 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 the PSB.

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

<sup>2</sup> R.C. 303.57(D), 4906.01(G) and (H), 4906.02(A)(1) and (2), and 4906.021 to 4906.025.

<sup>3</sup> R.C. 124.15 and 4906.02(A).

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 the PSB prescribes.

The chairperson also must designate a voting member to serve as vice-chairperson. The vice-chairperson has the authority to act as the chairperson in the chairperson's absence or disability.<sup>4</sup>

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

The PSB is funded by PUCO, application fees that are set by PSB rule, and amounts billed to applicants for certificates to meet the 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 it for PSB purposes.

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 the PSB and not by any other officer, employee, or body.

The chairperson also may request the temporary assistance of any employee of the Ohio Environmental Protection Agency and departments of Agriculture, Development, Health, or Natural Resources for the purpose of making studies, conducting hearings, investigating applications, or preparing any reports. When assisting the 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>5</sup>

### **Facilities subject to PSB jurisdiction**

In Ohio, major utility facilities and certain ESWFs 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 ESWFs under PSB law.<sup>6</sup>

Major Utility Facilities	ESWFs
<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 (MWs) or more;</li></ul>	<ul style="list-style-type: none"><li>▪ 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 MWs but less than 50 MWs.<sup>8</sup></li></ul>

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<sup>4</sup> R.C. 4906.02(A) and (B) and 4906.03.

<sup>5</sup> R.C. 4906.02(C) to (E) and 4906.06(F).

<sup>6</sup> R.C. 4906.01(B) and 4906.13(A).

<sup>8</sup> R.C. 4906.13(A).

Major Utility Facilities	ESWFs
<ul style="list-style-type: none"> <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;</li> <li>▪ Large solar facilities/wind farms: electric generating plant that consists of solar panels/wind turbines and associated facilities with a single interconnection to the electrical grid.<sup>7</sup></li> </ul>	
Not Major Utility Facilities	Not ESWFs
<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>9</sup></li> </ul>	<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 MWs, as measured at the customer's point of interconnection to the electrical grid.</li> <li>▪ Any wind farm that would be an ESWF, except that it was in operation on June 24, 2008.<sup>10</sup></li> </ul>

### No public agency or political subdivision jurisdiction

Major utility facilities and ESWFs 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

<sup>7</sup> R.C. 4906.01(B)(1)(a), (G), and (H).

<sup>9</sup> R.C. 4906.01(B)(2).

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

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>11</sup>

### Exceptions

Ohio law permits a board of county commissioners to block the construction or limit the boundaries of utility facilities (as addressed above, these are ESWFs, large wind farms, or large solar facilities). To do this, a board of county commissioners must adopt a resolution to:

- Create a “restricted area” in which such facilities may not be constructed; or
- Prohibit the construction, or limit the boundaries, of a proposed utility facility.<sup>12</sup>

The procedures establishing the limitations on utility facilities are detailed in the *Member’s Brief*, [S.B. 52 and Local Utility Regulation \(PDF\)](#), which is available on LSC’s website: [lsc.ohio.gov](http://lsc.ohio.gov).

Also, state laws governing the protection of employees engaged in the construction of a major utility facility or ESWF that has been granted a PSB certificate apply. 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 ESWF.<sup>13</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 regulations. Further, replacement facilities that are not required to be certified are not exempt from any other requirements of state laws or local regulations.<sup>14</sup>

### PSB certification requirement

Ohio law prohibits any person from constructing a major utility facility or an ESWF in the state without a PSB-issued certificate of environmental compatibility and public need for the construction, operation, and maintenance of the facility or ESWF. The certificate may be granted through a standard or accelerated 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 *Member’s Brief*, [Power Siting Board Certification Process \(PDF\)](#), which is available on LSC’s website: [lsc.ohio.gov](http://lsc.ohio.gov).

If PSB issues a certificate for a facility, it 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>15</sup>

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

<sup>12</sup> R.C. 303.57 to 303.62, 4906.01(G) and (H), and 4906.101 to 4906.103.

<sup>13</sup> R.C. 4906.13(B).

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

<sup>15</sup> R.C. 4906.01(D), 4906.03(E) and (F), 4906.04, 4906.20(A), and 4906.98.

## When certification is not required

As determined by the 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, 1972, or within two years of that date, or for major utility facilities in operation before that date. But, a substantial addition (as defined by the PSB) to a facility already in operation must have a certificate.<sup>16</sup>

## Granting certification

The 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 the 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 following requirements regarding air and water pollution control, solid and hazardous waste management, and structures and objects in airport zones. The PSB must issue an opinion stating the reasons for its decisions on applications.<sup>17</sup>

Before granting a certificate for the construction, operation, and maintenance of a major utility facility or ESWF, the PSB must consider certain factors and determine the following:

- 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, considering the state of available technology and the nature and economics of the various alternatives, 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 the 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>18</sup>

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<sup>16</sup> R.C. 4906.04 and 4906.05.

<sup>17</sup> R.C. 4906.10(A) and (B) and 4906.11.

<sup>18</sup> R.C. 4906.10(A)(1) to (8).

## Granting certification to ESWFs

The certification application process for ESWFs must be as “identical to the extent practicable” to the process for major utility facilities. Additionally, however, the PSB rules must prescribe reasonable regulations regarding any wind turbines and associated facilities of an ESWF including, for example, rules for their location, erection, construction, alteration, maintenance, removal, use, enlargement, erosion control, aesthetics, recreational land use, 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.

The law also prescribes a minimum setback for ESWF turbines. Under the law, the setback minimums also apply to wind farms that are larger than ESWFs. 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 MWs or more.<sup>19</sup>

Minimum setback requirements for wind and solar facilities are detailed in the *Member’s Brief*, [Wind and Solar Energy Regulations\(PDF\)](#), which is available on LSC’s website: [lsc.ohio.gov](http://lsc.ohio.gov).

## Certification denied in restricted areas

The PSB may not grant a certificate, or a material amendment to an existing certificate, for a large wind farm, ESWF, or large solar facility in the unincorporated area of a county if (1) its construction would be in an area designated by the county’s commissioners as a restricted area or (2) the commissioners adopted a resolution (a) prohibiting the construction of the specific facility or (b) limiting the facility’s boundaries and the certificate or amendment proposes to include an area outside the boundaries.<sup>20</sup>

The certification prohibition and siting limitation are detailed in the *Member’s Brief*, [S.B. 52 and Local Utility Regulation \(PDF\)](#), which is available on LSC’s website: [lsc.ohio.gov](http://lsc.ohio.gov).

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<sup>19</sup> R.C. 4906.20(B) and 4906.201(A).

<sup>20</sup> R.C. 4906.10(A), and 4906.101 to 4906.103.