

AN ACT

To amend sections 4906.06, 4906.08, 4906.10, 4906.98, 4906.99, 4928.62, and 4928.63 and to enact section 4906.97 of the Revised Code to change filing and notice timelines for applications filed with the Power Siting Board; to modify approval standards regarding a major electric generating facility; to authorize the Board or its chairperson to order the suspension of an activity during the Board's consideration of a complaint about the activity; to authorize the Board to impose a forfeiture for a violation of power siting law; and to modify the provision of financial assistance under the Energy Efficiency Revolving Loan Program.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 4906.06, 4906.08, 4906.10, 4906.98, 4906.99, 4928.62, and 4928.63 be amended and section 4906.97 of the Revised Code be enacted to read as follows:

Sec. 4906.06. (A) An applicant for a certificate shall file with the office of the ~~chairman~~ chairperson of the power siting board an application, in such form as the board prescribes, containing the following information:

(1) A description of the location and of the major utility facility ~~to be built thereon~~;

(2) A summary of any studies ~~which~~ that have been made by or for the applicant of the environmental impact of the facility;

(3) A statement explaining the need for the facility;

(4) A statement of the reasons why the proposed location is best suited for the facility;

(5) A statement of how the facility fits into the applicant's forecast contained in the report submitted under section 4935.04 of the Revised Code;

(6) Such other information as the applicant may consider relevant or as

the board ~~may~~ by rule or order may require. Copies of the studies referred to in division (A)(2) of this section shall be filed with the office of the ~~chairman~~ chairperson, if ordered, and shall be available for public inspection.

The application shall be filed not less than ~~two years, except one year in the case of transmission lines,~~ nor more than five years prior to the planned date of commencement of construction. ~~Such~~ Either period may be waived by the board for ~~unforeseen emergencies~~ good cause shown.

(B) Each application shall be accompanied by proof of service of a copy of such application on the chief executive officer of each municipal corporation and county, and the head of each public agency charged with the duty of protecting the environment or of planning land use, in the area in which any portion of such facility is to be located.

(C) Each applicant ~~shall~~ within ~~seven~~ fifteen days after the date of the filing of the application shall give public notice to persons residing in the municipal corporations and counties entitled to receive notice under division (B) of this section, by the publication of a summary of the application in newspapers of general circulation in such area. Proof of such publication shall be filed with the office of the ~~chairman~~ chairperson.

(D) Inadvertent failure of service on, or notice to, any of the persons identified in divisions (B) and (C) of this section may be cured pursuant to orders of the board designed to afford them adequate notice to enable them to participate effectively in the proceeding. In addition, the board ~~may~~, after filing, may require the applicant to serve notice of the application or copies thereof or both upon such other persons, and file proof thereof, as the board considers appropriate.

(E) An application for an amendment of a certificate shall be in such form and contain such information as the board prescribes. Notice of such an application shall be given as required in divisions (B) and (C) of this section.

(F) Each application for certificate or an amendment shall be accompanied by the application fee prescribed by board rule. All application fees, supplemental application fees, and other fees collected by the board shall be deposited in the state treasury to the credit of the power siting board fund, which is hereby created. The ~~chairman~~ chairperson shall administer and authorize expenditures from the fund for any of the purposes of this chapter. If the ~~chairman~~ chairperson determines that moneys credited to the fund from an applicant's fee are not sufficient to pay the board's expenses associated with its review of the application, ~~he~~ the chairperson shall request the approval of the controlling board to assess a supplemental application

fee upon an applicant to pay anticipated additional expenses associated with the board's review of the application or an amendment to an application. If the ~~chairman~~ chairperson finds that an application fee exceeds the amount needed to pay the board's expenses for review of the application, ~~he~~ the chairperson shall cause a refund of the excess amount to be issued to the applicant from the fund.

Sec. 4906.08. (A) The parties to a certification proceeding shall include:

(1) The applicant;

(2) Each person entitled to receive service of a copy of the application under division (B) of section 4906.06 of the Revised Code, if ~~it~~ the person has filed with the power siting board a notice of intervention as a party, within thirty days after the date ~~it~~ the person was served with a copy of the application;

(3) Any person residing in a municipal corporation or county entitled to receive service of a copy of the application under division (B) of section 4906.06 of the Revised Code; and any other person, if ~~such a~~ the person has petitioned the board for leave to intervene as a party within thirty days after the date of publication of the notice required by division (C) of section 4906.06 of the Revised Code, and if ~~such~~ that petition has been granted by the board for good cause shown.

(B) The board ~~may~~, in extraordinary circumstances for good cause shown, may grant a petition, for leave to intervene as a party to participate in subsequent phases of the proceeding, that is filed by a person identified in division (A)(2) or (3) of this section, ~~but who~~ that failed to file a timely notice of intervention or petition for leave to intervene, as the case may be.

(C) The board shall accept written or oral testimony from any person at the public hearing, but the right to call and examine witnesses shall be reserved for parties. However, the board may adopt rules to exclude repetitive, immaterial, or irrelevant testimony.

Sec. 4906.10. (A) The power siting board shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the major utility facility as the board considers appropriate. The certificate shall be conditioned upon the facility being in compliance with standards and rules adopted under sections 1501.33, 1501.34, and 4561.32 and Chapters 3704., 3734., and 6111. of the Revised Code. The period of initial operation under a certificate shall expire two years after the date on which electric power is first generated by the facility. During the period of initial operation, the facility shall be subject to the enforcement and monitoring powers of the director of environmental

protection under Chapters 3704., 3734., and 6111. of the Revised Code and to the emergency provisions under those chapters. If a major utility facility constructed in accordance with the terms and conditions of its certificate is unable to operate in compliance with all applicable requirements of state laws, rules, and standards pertaining to air pollution, the facility may apply to the director of environmental protection for a conditional operating permit under division (G) of section 3704.03 of the Revised Code and the rules adopted thereunder. The operation of a major utility facility in compliance with a conditional operating permit is not in violation of its certificate. After the expiration of the period of initial operation of a major utility facility, the facility shall be under the jurisdiction of the environmental protection agency and shall comply with all laws, rules, and standards pertaining to air pollution, water pollution, and solid and hazardous waste disposal.

The board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the board, unless it finds and determines all of the following:

(1) The basis of the need for the facility. ~~In if the case of a major utility facility described in division (B)(1) of section 4906.01 of the Revised Code to be constructed on or after the effective date of this amendment, the board shall presume the need for the facility as that need is stated in an application pursuant to division (A)(3) of section 4906.06 of the Revised Code.~~ is an electric transmission line or gas or natural gas transmission line;

(2) The nature of the probable environmental impact;

(3) 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;

(4) 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 of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;

(5) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under sections 1501.33, 1501.34, and 4561.32 of the Revised Code. In determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of multi-modal planning and programs of the department of transportation under section 4561.341 of the Revised Code.

(6) That the facility will serve the public interest, convenience, and necessity;

(7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those divisions, what its impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929. of the Revised Code that is located within the site and alternative site of the proposed major utility facility. Rules adopted to evaluate impact under division (A)(7) of this section shall not require the compilation, creation, submission, or production of any information, document, or other data pertaining to land not located within the site and alternative site.

(8) That the facility incorporates maximum feasible water conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives.

(B) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon that modification, provided that the municipal corporations and counties, and persons residing therein, affected by the modification shall have been given reasonable notice thereof.

(C) A copy of the decision and any opinion issued therewith shall be served upon each party.

Sec. 4906.97. (A) Upon a finding by the power siting board that there are reasonable grounds to believe that a person has violated a provision of section 4906.98 of the Revised Code, the board shall fix a time for hearing such complaint and shall notify the person. The notice shall be served not less than fifteen days before the date of hearing and shall state the matters that are the subject of the complaint. Parties to the complaint are entitled to be heard, to be represented by counsel, and to have process to enforce the attendance of witnesses.

(B) The power siting board by order or its chairperson, with written notice to the person and opportunity to respond, may require that any activity that is the subject of a complaint under division (A) of this section be suspended for the duration of the board's consideration of the complaint. Upon a showing by the party against which the complaint was filed that all matters have been addressed satisfactorily, the chairperson shall terminate the suspension.

(C) After notice and opportunity for hearing in accordance with division (A) of this section and upon a finding by the board that a person has violated a provision of section 4906.98 of the Revised Code, the board by order may assess a forfeiture of not more than five thousand dollars for each day of the

violation, but the aggregate of forfeitures for a related series of violations shall not exceed one million dollars. In determining the amount of any forfeiture, the board shall 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;

(7) Such other matters as justice requires.

(D) The attorney general, upon written request of the board, shall bring a civil action to recover any forfeiture assessed under division (C) of this section but not paid, or to seek other appropriate relief, including injunctive relief. The action shall be brought in the court of common pleas of Franklin county. The court shall give precedence to the action over all other cases.

(E) All forfeitures collected under division (C) or (D) of this section shall be deposited into the state treasury to the credit of the general revenue fund.

Sec. 4906.98. (A) No person shall willfully construct a major utility facility without first obtaining a certificate.

(B) No person shall willfully construct, operate, or maintain a major utility facility other than in compliance with the certificate ~~he~~ the person has obtained.

(C) No person shall fail to comply with any order issued pursuant to this chapter or with a suspension otherwise required under division (B) of section 4906.97 of the Revised Code.

Sec. 4906.99. Whoever willfully violates any provision of section 4906.98 of the Revised Code shall may be fined not less than one thousand dollars nor more than ten thousand dollars for each day of violation, or imprisoned for not more than one year, or both.

Sec. 4928.62. (A) Beginning on the starting date of competitive retail electric service, there is hereby created the energy efficiency revolving loan program, which shall be administered by the director of development. Under the program, the director may authorize the use of moneys in the energy efficiency revolving loan fund for financial assistance for projects in this state. To the extent feasible given approved applications for assistance, the assistance shall be distributed among the certified territories of electric distribution utilities and participating electric cooperatives, and among the

service areas of participating municipal electric utilities, in amounts proportionate to the remittances of each utility and cooperative under divisions (B)(1) and (3) of section 4928.61 of the Revised Code. The assistance ~~shall~~ may be ~~made or provided through approved lending institutions by the director of development~~ in the form of direct loans or grants, or through lending institutions in the form of loan participation agreements at below market rates, ~~loan guarantees for such loans, and or linked deposits for such loans.~~ The total of all grants provided in any one fiscal year shall not exceed ten per cent of the revenues paid into the energy efficiency revolving loan fund during the previous fiscal year.

The director shall not authorize financial assistance under the program unless the director first determines all of the following:

(1) The project will include an investment in products, technologies, or services, including energy efficiency for low-income housing, for residential, ~~small~~ commercial and ~~small~~ industrial business, local government, educational institution, nonprofit entity, or agricultural customers of an electric distribution utility in this state or a participating municipal electric utility or electric cooperative in this state.

(2) The project will improve energy efficiency in a cost-efficient manner by using both the most appropriate national, federal, or other standards for products as determined by the director, and the best practices for use of technology, products, or services in the context of the total facility or building.

(3) The project will benefit the economic and environmental welfare of the citizens of this state.

(4) The receipt of financial assistance is a major factor in the applicant's decision to proceed with or invest in the project.

(B) In carrying out sections 4928.61 to 4928.63 of the Revised Code, the director may do all of the following for the purpose of the energy efficiency revolving loan program:

(1) Acquire in the name of the director any property of any kind or character in accordance with this section, by purchase, purchase at foreclosure, or exchange, on such terms and in such manner as the director considers proper;

(2) Make and enter into all contracts and agreements necessary or incidental to the performance of the director's duties and the exercise of the director's powers under those sections;

(3) Employ or enter into contracts with financial consultants, marketing consultants, consulting engineers, architects, managers, construction experts, attorneys, technical monitors, energy evaluators, or other employees or

agents as the director considers necessary, and shall fix their compensation;

(4) Adopt rules prescribing the application procedures for financial assistance under the program; the terms and conditions of any loans, grants, loan ~~guarantees~~ participation agreements, linked deposits, and contracts; criteria pertaining to the eligibility of participating lending institutions; and any other matters necessary for the implementation of the program;

(5) Do all things necessary and appropriate for the operation of the program.

(C) Financial statements, financial data, and trade secrets submitted to or received by the director from an applicant or recipient of financial assistance under sections 4928.61 to 4928.63 of the Revised Code, or any information taken from those statements, data, or trade secrets for any purpose, are not public records for the purpose of section 149.43 of the Revised Code.

Sec. 4928.63. The director of development and the public benefits advisory board have the powers and duties provided in sections 4928.61 and 4928.62 of the Revised Code, in order to promote the welfare of the people of this state, to stabilize the economy, to assist in the improvement and development within this state of not-for-profit entity, industrial, commercial, distribution, residential, and research buildings and activities required for the people of this state, to improve the economic welfare of the people of this state, and also to assist in the improvement of air, water, or thermal pollution control facilities and solid waste disposal facilities. It is hereby determined that the accomplishment of those purposes is essential so that the people of this state may maintain their present high standards in comparison with the people of other states and so that opportunities for improving the economic welfare of the people of this state, for improving the housing of residents of this state, and for favorable markets for the products of this state's natural resources, agriculture, and manufacturing shall be improved; and that it is necessary for this state to establish the program authorized pursuant to sections 4928.61 and 4928.62 of the Revised Code, ~~to establish the energy efficiency revolving loan program and program fund and the energy efficiency revolving loan program advisory board, and to vest the director and the board with the powers and duties provided in sections 4928.61 and 4928.62 of the Revised Code.~~

SECTION 2. That existing sections 4906.06, 4906.08, 4906.10, 4906.98, 4906.99, 4928.62, and 4928.63 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____