

As Introduced

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H. B. No. 133

Representative Olman

A B I L L

To amend sections 4906.06, 4906.10, 4906.98, and 1
4906.99 and to enact section 4906.97 of the 2
Revised Code to change the standard for modifying 3
the time when a certificate application can be 4
filed with the Power Siting Board; to state the 5
Board's continuing jurisdiction to enforce a 6
certificate from the date of issuance through the 7
period of the facility's initial operation; to 8
authorize the Board or its chairperson to order 9
the suspension of an activity during the Board's 10
consideration of a complaint about the activity; 11
and to authorize the Board to impose a forfeiture 12
for a violation of power siting law. 13

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

Section 1. That sections 4906.06, 4906.10, 4906.98, and 14
4906.99 be amended and section 4906.97 of the Revised Code be 15
enacted to read as follows: 16

Sec. 4906.06. (A) An applicant for a certificate shall file 17
with the office of the ~~chairman~~ chairperson of the power siting 18
board an application, in such form as the board prescribes, 19
containing the following information: 20

(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 days of the filing of the application 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 51
such area. Proof of such publication shall be filed with the 52
office of the ~~chairman~~ chairperson. 53

(D) Inadvertent failure of service on, or notice to, any of 54
the persons identified in divisions (B) and (C) of this section 55
may be cured pursuant to orders of the board designed to afford 56
them adequate notice to enable them to participate effectively in 57
the proceeding. In addition, the board ~~may~~, after filing, may 58
require the applicant to serve notice of the application or copies 59
thereof or both upon such other persons, and file proof thereof, 60
as the board considers appropriate. 61

(E) An application for an amendment of a certificate shall be 62
in such form and contain such information as the board prescribes. 63
Notice of such an application shall be given as required in 64
divisions (B) and (C) of this section. 65

(F) Each application for certificate or an amendment shall be 66
accompanied by the application fee prescribed by board rule. All 67
application fees, supplemental application fees, and other fees 68
collected by the board shall be deposited in the state treasury to 69
the credit of the power siting board fund, which is hereby 70
created. The ~~chairman~~ chairperson shall administer and authorize 71
expenditures from the fund for any of the purposes of this 72
chapter. If the ~~chairman~~ chairperson determines that moneys 73
credited to the fund from an applicant's fee are not sufficient to 74
pay the board's expenses associated with its review of the 75
application, ~~he~~ the chairperson shall request the approval of the 76
controlling board to assess a supplemental application fee upon an 77
applicant to pay anticipated additional expenses associated with 78
the board's review of the application or an amendment to an 79
application. If the ~~chairman~~ chairperson finds that an application 80
fee exceeds the amount needed to pay the board's expenses for 81
review of the application, ~~he~~ the chairperson shall cause a refund 82

of the excess amount to be issued to the applicant from the fund. 83

Sec. 4906.10. (A) The power siting board shall render a 84
decision upon the record either granting or denying the 85
application as filed, or granting it upon such terms, conditions, 86
or modifications of the construction, operation, or maintenance of 87
the major utility facility as the board considers appropriate. The 88
certificate shall be conditioned upon the facility being in 89
compliance with standards and rules adopted under sections 90
1501.33, 1501.34, and 4561.32 and Chapters 3704., 3734., and 6111. 91
of the Revised Code. The period of initial operation under a 92
certificate shall expire two years after the date on which 93
~~electric power is first generated by the~~ major utility facility is 94
first placed in service. ~~During~~ The board has continuing 95
jurisdiction to enforce all conditions of a certificate from the 96
date of its issuance to the end of the period of initial 97
operation. Additionally during that period, the facility shall be 98
subject to the enforcement and monitoring powers of the director 99
of environmental protection under Chapters 3704., 3734., and 6111. 100
of the Revised Code and to the emergency provisions under those 101
chapters. If a major utility facility constructed in accordance 102
with the terms and conditions of its certificate is unable to 103
operate in compliance with all applicable requirements of state 104
laws, rules, and standards pertaining to air pollution, the 105
facility may apply to the director of environmental protection for 106
a conditional operating permit under division (G) of section 107
3704.03 of the Revised Code and the rules adopted thereunder. The 108
operation of a major utility facility in compliance with a 109
conditional operating permit is not in violation of its 110
certificate. After the expiration of the period of initial 111
operation of a major utility facility, the facility shall be under 112
the jurisdiction of the environmental protection agency and shall 113
comply with all laws, rules, and standards pertaining to air 114

pollution, water pollution, and solid and hazardous waste 115
disposal. 116

The board shall not grant a certificate for the construction, 117
operation, and maintenance of a major utility facility, either as 118
proposed or as modified by the board, unless it finds and 119
determines all of the following: 120

(1) The basis of the need for the facility. In the case of a 121
major utility facility described in division (B)(1) of section 122
4906.01 of the Revised Code ~~to be constructed on or after the~~ 123
~~effective date of this amendment~~ October 5, 1999, the board shall 124
presume the need for the facility as that need is stated in an 125
application pursuant to division (A)(3) of section 4906.06 of the 126
Revised Code. 127

(2) The nature of the probable environmental impact; 128

(3) That the facility represents the minimum adverse 129
environmental impact, considering the state of available 130
technology and the nature and economics of the various 131
alternatives, and other pertinent considerations; 132

(4) In the case of an electric transmission line, that the 133
facility is consistent with regional plans for expansion of the 134
electric power grid of the electric systems serving this state and 135
interconnected utility systems and that the facility will serve 136
the interests of electric system economy and reliability; 137

(5) That the facility will comply with Chapters 3704., 3734., 138
and 6111. of the Revised Code and all rules and standards adopted 139
under those chapters and under sections 1501.33, 1501.34, and 140
4561.32 of the Revised Code. In determining whether the facility 141
will comply with all rules and standards adopted under section 142
4561.32 of the Revised Code, the board shall consult with the 143
office of aviation of the division of multi-modal planning and 144

programs of the department of transportation under section 145
4561.341 of the Revised Code. 146

(6) That the facility will serve the public interest, 147
convenience, and necessity; 148

(7) In addition to the provisions contained in divisions 149
(A)(1) to (6) of this section and rules adopted under those 150
divisions, what its impact will be on the viability as 151
agricultural land of any land in an existing agricultural district 152
established under Chapter 929. of the Revised Code that is located 153
within the site and alternative site of the proposed major utility 154
facility. Rules adopted to evaluate impact under division (A)(7) 155
of this section shall not require the compilation, creation, 156
submission, or production of any information, document, or other 157
data pertaining to land not located within the site and 158
alternative site. 159

(8) That the facility incorporates maximum feasible water 160
conservation practices as determined by the board, considering 161
available technology and the nature and economics of the various 162
alternatives. 163

(B) If the board determines that the location of all or a 164
part of the proposed facility should be modified, it may condition 165
its certificate upon that modification, provided that the 166
municipal corporations and counties, and persons residing therein, 167
affected by the modification shall have been given reasonable 168
notice thereof. 169

(C) A copy of the decision and any opinion issued therewith 170
shall be served upon each party. 171

Sec. 4906.97. (A) Upon a finding by the power siting board 172
that there are reasonable grounds to believe that a person has 173
violated a provision of section 4906.98 of the Revised Code, the 174

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 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.

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(B) The power siting board by order, or its chairperson with
written notice to the person, 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.

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(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 ten thousand dollars for each day of the violation. In
determining the amount of any forfeiture, the board shall consider
the nature of the violation.

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(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.

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(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.

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

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(B) No person shall ~~willfully~~ construct, operate, or maintain

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a major utility facility other than in compliance with the 205
certificate ~~he~~ the person has obtained. 206

(C) No person shall fail to comply with any order issued 207
pursuant to this chapter or with a suspension otherwise required 208
under division (B) of section 4906.97 of the Revised Code. 209

Sec. 4906.99. Whoever violates any provision of section 210
4906.98 of the Revised Code ~~shall~~ may be fined not less than one 211
thousand dollars nor more than ten thousand dollars for each day 212
of violation, or imprisoned for not more than one year, or both. 213

Section 2. That existing sections 4906.06, 4906.10, 4906.98, 214
and 4906.99 of the Revised Code are hereby repealed. 215