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Sub. H. B. No. 133

**Representatives 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
Senator Blessing**

A B I L L

To amend sections 4906.06, 4906.08, 4906.10, 4906.98, 1
4906.99, 4928.62, and 4928.63 and to enact section 2
4906.97 of the Revised Code to change filing and 3
notice timelines for applications filed with the 4
Power Siting Board; to modify approval standards 5
regarding a major electric generating facility; to 6
authorize the Board or its chairperson to order 7
the suspension of an activity during the Board's 8
consideration of a complaint about the activity; 9
to authorize the Board to impose a forfeiture for 10
a violation of power siting law; and to modify the 11
provision of financial assistance under the Energy 12
Efficiency Revolving Loan Program. 13

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

Section 1. That sections 4906.06, 4906.08, 4906.10, 4906.98, 14
4906.99, 4928.62, and 4928.63 be amended and section 4906.97 of 15
the Revised Code be 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 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 48
persons residing in the municipal corporations and counties 49
entitled to receive notice under division (B) of this section, by 50
the publication of a summary of the application in newspapers of 51
general circulation in such area. Proof of such publication shall 52
be filed with the 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. 4906.08. (A) The parties to a certification proceeding 84
shall include: 85

(1) The applicant; 86

(2) Each person entitled to receive service of a copy of the 87
application under division (B) of section 4906.06 of the Revised 88
Code, if ~~it~~ the person has filed with the power siting board a 89
notice of intervention as a party, within thirty days after the 90
date ~~it~~ the person was served with a copy of the application; 91

(3) Any person residing in a municipal corporation or county 92
entitled to receive service of a copy of the application under 93
division (B) of section 4906.06 of the Revised Code~~r~~ and any other 94
person, if ~~such a~~ the person has petitioned the board for leave to 95
intervene as a party within thirty days after the date of 96
publication of the notice required by division (C) of section 97
4906.06 of the Revised Code, and if ~~such~~ that petition has been 98
granted by the board for good cause shown. 99

(B) The board ~~may~~, in extraordinary circumstances for good 100
cause shown, may grant a petition~~r~~ for leave to intervene as a 101
party to participate in subsequent phases of the proceeding, that 102
is filed by a person identified in division (A)(2) or (3) of this 103
section, ~~but who~~ that failed to file a timely notice of 104
intervention or petition for leave to intervene, as the case may 105
be. 106

(C) The board shall accept written or oral testimony from any 107
person at the public hearing, but the right to call and examine 108
witnesses shall be reserved for parties. However, the board may 109

adopt rules to exclude repetitive, immaterial, or irrelevant 110
testimony. 111

Sec. 4906.10. (A) The power siting board shall render a 112
decision upon the record either granting or denying the 113
application as filed, or granting it upon such terms, conditions, 114
or modifications of the construction, operation, or maintenance of 115
the major utility facility as the board considers appropriate. The 116
certificate shall be conditioned upon the facility being in 117
compliance with standards and rules adopted under sections 118
1501.33, 1501.34, and 4561.32 and Chapters 3704., 3734., and 6111. 119
of the Revised Code. The period of initial operation under a 120
certificate shall expire two years after the date on which 121
electric power is first generated by the facility. During the 122
period of initial operation, the facility shall be subject to the 123
enforcement and monitoring powers of the director of environmental 124
protection under Chapters 3704., 3734., and 6111. of the Revised 125
Code and to the emergency provisions under those chapters. If a 126
major utility facility constructed in accordance with the terms 127
and conditions of its certificate is unable to operate in 128
compliance with all applicable requirements of state laws, rules, 129
and standards pertaining to air pollution, the facility may apply 130
to the director of environmental protection for a conditional 131
operating permit under division (G) of section 3704.03 of the 132
Revised Code and the rules adopted thereunder. The operation of a 133
major utility facility in compliance with a conditional operating 134
permit is not in violation of its certificate. After the 135
expiration of the period of initial operation of a major utility 136
facility, the facility shall be under the jurisdiction of the 137
environmental protection agency and shall comply with all laws, 138
rules, and standards pertaining to air pollution, water pollution, 139
and solid and hazardous waste disposal. 140

The board shall not grant a certificate for the construction, 141

operation, and maintenance of a major utility facility, either as 142
proposed or as modified by the board, unless it finds and 143
determines all of the following: 144

(1) The basis of the need for the facility. ~~In if the case of~~ 145
~~a major utility facility described in division (B)(1) of section~~ 146
~~4906.01 of the Revised Code to be constructed on or after the~~ 147
~~effective date of this amendment, the board shall presume the need~~ 148
~~for the facility as that need is stated in an application pursuant~~ 149
~~to division (A)(3) of section 4906.06 of the Revised Code. is an~~ 150
electric transmission line or gas or natural gas transmission 151
line; 152

(2) The nature of the probable environmental impact; 153

(3) That the facility represents the minimum adverse 154
environmental impact, considering the state of available 155
technology and the nature and economics of the various 156
alternatives, and other pertinent considerations; 157

(4) In the case of an electric transmission line or 158
generating facility, that the facility is consistent with regional 159
plans for expansion of the electric power grid of the electric 160
systems serving this state and interconnected utility systems and 161
that the facility will serve the interests of electric system 162
economy and reliability; 163

(5) That the facility will comply with Chapters 3704., 3734., 164
and 6111. of the Revised Code and all rules and standards adopted 165
under those chapters and under sections 1501.33, 1501.34, and 166
4561.32 of the Revised Code. In determining whether the facility 167
will comply with all rules and standards adopted under section 168
4561.32 of the Revised Code, the board shall consult with the 169
office of aviation of the division of multi-modal planning and 170
programs of the department of transportation under section 171
4561.341 of the Revised Code. 172

(6) That the facility will serve the public interest, 173
convenience, and necessity; 174

(7) In addition to the provisions contained in divisions 175
(A)(1) to (6) of this section and rules adopted under those 176
divisions, what its impact will be on the viability as 177
agricultural land of any land in an existing agricultural district 178
established under Chapter 929. of the Revised Code that is located 179
within the site and alternative site of the proposed major utility 180
facility. Rules adopted to evaluate impact under division (A)(7) 181
of this section shall not require the compilation, creation, 182
submission, or production of any information, document, or other 183
data pertaining to land not located within the site and 184
alternative site. 185

(8) That the facility incorporates maximum feasible water 186
conservation practices as determined by the board, considering 187
available technology and the nature and economics of the various 188
alternatives. 189

(B) If the board determines that the location of all or a 190
part of the proposed facility should be modified, it may condition 191
its certificate upon that modification, provided that the 192
municipal corporations and counties, and persons residing therein, 193
affected by the modification shall have been given reasonable 194
notice thereof. 195

(C) A copy of the decision and any opinion issued therewith 196
shall be served upon each party. 197

Sec. 4906.97. (A) Upon a finding by the power siting board 198
that there are reasonable grounds to believe that a person has 199
violated a provision of section 4906.98 of the Revised Code, the 200
board shall fix a time for hearing such complaint and shall notify 201
the person. The notice shall be served not less than fifteen days 202

before the date of hearing and shall state the matters that are 203
the subject of the complaint. Parties to the complaint are 204
entitled to be heard, to be represented by counsel, and to have 205
process to enforce the attendance of witnesses. 206

(B) The power siting board by order or its chairperson, with 207
written notice to the person and opportunity to respond, may 208
require that any activity that is the subject of a complaint under 209
division (A) of this section be suspended for the duration of the 210
board's consideration of the complaint. Upon a showing by the 211
party against which the complaint was filed that all matters have 212
been addressed satisfactorily, the chairperson shall terminate the 213
suspension. 214

(C) After notice and opportunity for hearing in accordance 215
with division (A) of this section and upon a finding by the board 216
that a person has violated a provision of section 4906.98 of the 217
Revised Code, the board by order may assess a forfeiture of not 218
more than five thousand dollars for each day of the violation, but 219
the aggregate of forfeitures for a related series of violations 220
shall not exceed one million dollars. In determining the amount of 221
any forfeiture, the board shall consider all of the following: 222

(1) The gravity of the violation; 223

(2) The person's history of prior violations; 224

(3) The person's good faith efforts to comply and undertake 225
corrective action; 226

(4) The person's ability to pay the forfeiture; 227

(5) The cost of the project; 228

(6) The effect of the forfeiture on the person's ability to 229
continue as an applicant; 230

(7) Such other matters as justice requires. 231

(D) The attorney general, upon written request of the board, 232
shall bring a civil action to recover any forfeiture assessed 233
under division (C) of this section but not paid, or to seek other 234
appropriate relief, including injunctive relief. The action shall 235
be brought in the court of common pleas of Franklin county. The 236
court shall give precedence to the action over all other cases. 237

(E) All forfeitures collected under division (C) or (D) of 238
this section shall be deposited into the state treasury to the 239
credit of the general revenue fund. 240

Sec. 4906.98. (A) No person shall willfully construct a major 241
utility facility without first obtaining a certificate. 242

(B) No person shall willfully construct, operate, or maintain 243
a major utility facility other than in compliance with the 244
certificate ~~he~~ the person has obtained. 245

(C) No person shall fail to comply with any order issued 246
pursuant to this chapter or with a suspension otherwise required 247
under division (B) of section 4906.97 of the Revised Code. 248

Sec. 4906.99. Whoever willfully violates any provision of 249
section 4906.98 of the Revised Code ~~shall~~ may be fined not less 250
than one thousand dollars nor more than ten thousand dollars for 251
each day of violation, or imprisoned for not more than one year, 252
or both. 253

Sec. 4928.62. (A) Beginning on the starting date of 254
competitive retail electric service, there is hereby created the 255
energy efficiency revolving loan program, which shall be 256
administered by the director of development. Under the program, 257
the director may authorize the use of moneys in the energy 258
efficiency revolving loan fund for financial assistance for 259
projects in this state. To the extent feasible given approved 260

applications for assistance, the assistance shall be distributed 261
among the certified territories of electric distribution utilities 262
and participating electric cooperatives, and among the service 263
areas of participating municipal electric utilities, in amounts 264
proportionate to the remittances of each utility and cooperative 265
under divisions (B)(1) and (3) of section 4928.61 of the Revised 266
Code. The assistance ~~shall~~ may be ~~made or~~ provided ~~through~~ 267
~~approved lending institutions~~ by the director of development in 268
the form of direct loans or grants, or through lending 269
institutions in the form of loan participation agreements at below 270
market rates, ~~loan guarantees for such loans, and or~~ linked 271
deposits ~~for such loans~~. The total of all grants provided in any 272
one fiscal year shall not exceed ten per cent of the revenues paid 273
into the energy efficiency revolving loan fund during the previous 274
fiscal year. 275

The director shall not authorize financial assistance under 276
the program unless the director first determines all of the 277
following: 278

(1) The project will include an investment in products, 279
technologies, or services, including energy efficiency for 280
low-income housing, for residential, ~~small~~ commercial and ~~small~~ 281
industrial business, local government, educational institution, 282
nonprofit entity, or agricultural customers of an electric 283
distribution utility in this state or a participating municipal 284
electric utility or electric cooperative in this state. 285

(2) The project will improve energy efficiency in a 286
cost-efficient manner by using both the most appropriate national, 287
federal, or other standards for products as determined by the 288
director, and the best practices for use of technology, products, 289
or services in the context of the total facility or building. 290

(3) The project will benefit the economic and environmental 291

welfare of the citizens of this state.	292
(4) The receipt of financial assistance is a major factor in the applicant's decision to proceed with or invest in the project.	293 294
(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:	295 296 297
(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;	298 299 300 301
(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;	302 303 304 305
(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;	306 307 308 309 310
(4) Adopt rules prescribing the application procedures for financial assistance under the program; the terms and conditions of any loans, <u>grants</u> , <u>loan guarantees</u> <u>participation agreements</u> , linked deposits, and contracts; criteria pertaining to the eligibility of participating lending institutions; and any other matters necessary for the implementation of the program;	311 312 313 314 315 316
(5) Do all things necessary and appropriate for the operation of the program.	317 318
(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	319 320 321

4928.63 of the Revised Code, or any information taken from those 322
statements, data, or trade secrets for any purpose, are not public 323
records for the purpose of section 149.43 of the Revised Code. 324

Sec. 4928.63. The director of development and the public 325
benefits advisory board have the powers and duties provided in 326
sections 4928.61 and 4928.62 of the Revised Code, in order to 327
promote the welfare of the people of this state, to stabilize the 328
economy, to assist in the improvement and development within this 329
state of not-for-profit entity, industrial, commercial, 330
distribution, residential, and research buildings and activities 331
required for the people of this state, to improve the economic 332
welfare of the people of this state, and also to assist in the 333
improvement of air, water, or thermal pollution control facilities 334
and solid waste disposal facilities. It is hereby determined that 335
the accomplishment of those purposes is essential so that the 336
people of this state may maintain their present high standards in 337
comparison with the people of other states and so that 338
opportunities for improving the economic welfare of the people of 339
this state, for improving the housing of residents of this state, 340
and for favorable markets for the products of this state's natural 341
resources, agriculture, and manufacturing shall be improved; and 342
that it is necessary for this state to establish the program 343
authorized pursuant to sections 4928.61 and 4928.62 of the Revised 344
Code, ~~to establish the energy efficiency revolving loan program 345~~
~~and program fund and the energy efficiency revolving loan program 346~~
~~advisory board, and to vest the director and the board with the 347~~
~~powers and duties provided in sections 4928.61 and 4928.62 of the 348~~
~~Revised Code. 349~~

Section 2. That existing sections 4906.06, 4906.08, 4906.10, 350
4906.98, 4906.99, 4928.62, and 4928.63 of the Revised Code are 351
hereby repealed. 352