

As Reported by the House Public Utilities Committee

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Sub. H. B. No. 133

**Representatives Olman, Driehaus, Strahorn, Carmichael, Distel, Hartnett,
G. Smith, Niehaus, Schmidt**

A B I L L

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

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

Section 1. That sections 4906.06, 4906.08, 4906.10, 4906.98, 12
and 4906.99 be amended and section 4906.97 of the Revised Code be 13
enacted to read as follows: 14

Sec. 4906.06. (A) An applicant for a certificate shall file 15
with the office of the ~~chairman~~ chairperson of the power siting 16
board an application, in such form as the board prescribes, 17
containing the following information: 18

(1) A description of the location and of the major utility 19

facility to be built thereon;	20
(2) A summary of any studies which <u>that</u> have been made by or for the applicant of the environmental impact of the facility;	21 22
(3) A statement explaining the need for the facility;	23
(4) A statement of the reasons why the proposed location is best suited for the facility;	24 25
(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;	26 27 28
(6) Such other information as the applicant may consider relevant or as the board may by rule or order <u>may</u> require. Copies of the studies referred to in division (A)(2) of this section shall be filed with the office of the chairman <u>chairperson</u> , if ordered, and shall be available for public inspection.	29 30 31 32 33
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 <u>Either</u> period may be waived by the board for unforeseen emergencies <u>good cause shown.</u>	34 35 36 37 38
(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.	39 40 41 42 43 44
(C) Each applicant shall within seven <u>fifteen</u> days <u>after the</u> <u>date</u> of the filing of the application <u>shall</u> 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	45 46 47 48 49

general circulation in such area. Proof of such publication shall 50
be filed with the office of the ~~chairman~~ chairperson. 51

(D) Inadvertent failure of service on, or notice to, any of 52
the persons identified in divisions (B) and (C) of this section 53
may be cured pursuant to orders of the board designed to afford 54
them adequate notice to enable them to participate effectively in 55
the proceeding. In addition, the board ~~may~~, after filing, may 56
require the applicant to serve notice of the application or copies 57
thereof or both upon such other persons, and file proof thereof, 58
as the board considers appropriate. 59

(E) An application for an amendment of a certificate shall be 60
in such form and contain such information as the board prescribes. 61
Notice of such an application shall be given as required in 62
divisions (B) and (C) of this section. 63

(F) Each application for certificate or an amendment shall be 64
accompanied by the application fee prescribed by board rule. All 65
application fees, supplemental application fees, and other fees 66
collected by the board shall be deposited in the state treasury to 67
the credit of the power siting board fund, which is hereby 68
created. The ~~chairman~~ chairperson shall administer and authorize 69
expenditures from the fund for any of the purposes of this 70
chapter. If the ~~chairman~~ chairperson determines that moneys 71
credited to the fund from an applicant's fee are not sufficient to 72
pay the board's expenses associated with its review of the 73
application, ~~he~~ the chairperson shall request the approval of the 74
controlling board to assess a supplemental application fee upon an 75
applicant to pay anticipated additional expenses associated with 76
the board's review of the application or an amendment to an 77
application. If the ~~chairman~~ chairperson finds that an application 78
fee exceeds the amount needed to pay the board's expenses for 79
review of the application, ~~he~~ the chairperson shall cause a refund 80
of the excess amount to be issued to the applicant from the fund. 81

Sec. 4906.08. (A) The parties to a certification proceeding	82
shall include:	83
(1) The applicant;	84
(2) Each person entitled to receive service of a copy of the	85
application under division (B) of section 4906.06 of the Revised	86
Code, if it <u>the person</u> has filed with the power siting board a	87
notice of intervention as a party, within thirty days after the	88
date it <u>the person</u> was served with a copy of the application;	89
(3) Any person residing in a municipal corporation or county	90
entitled to receive service of a copy of the application under	91
division (B) of section 4906.06 of the Revised Code; and any other	92
person, if such a <u>the person</u> has petitioned the board for leave to	93
intervene as a party within thirty days after the date of	94
publication of the notice required by division (C) of section	95
4906.06 of the Revised Code, and if such <u>that</u> petition has been	96
granted by the board for good cause shown.	97
(B) The board may , in extraordinary circumstances for good	98
cause shown, <u>may</u> grant a petition, for leave to intervene as a	99
party to participate in subsequent phases of the proceeding, <u>that</u>	100
<u>is</u> filed by a person identified in division (A)(2) or (3) of this	101
section, but who <u>that</u> failed to file a timely notice of	102
intervention or petition for leave to intervene, as the case may	103
be.	104
(C) The board shall accept written or oral testimony from any	105
person at the public hearing, but the right to call and examine	106
witnesses shall be reserved for parties. However, the board may	107
adopt rules to exclude repetitive, immaterial, or irrelevant	108
testimony.	109
Sec. 4906.10. (A) The power siting board shall render a	110
decision upon the record either granting or denying the	111

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

The board shall not grant a certificate for the construction, 139
operation, and maintenance of a major utility facility, either as 140
proposed or as modified by the board, unless it finds and 141
determines all of the following: 142

(1) The basis of the need for the facility. ~~In if the case of~~ 143

~~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; 151

(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; 152
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(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; 156
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(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. 162
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(6) That the facility will serve the public interest, convenience, and necessity; 171
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(7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those 173
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divisions, what its impact will be on the viability as 175
agricultural land of any land in an existing agricultural district 176
established under Chapter 929. of the Revised Code that is located 177
within the site and alternative site of the proposed major utility 178
facility. Rules adopted to evaluate impact under division (A)(7) 179
of this section shall not require the compilation, creation, 180
submission, or production of any information, document, or other 181
data pertaining to land not located within the site and 182
alternative site. 183

(8) That the facility incorporates maximum feasible water 184
conservation practices as determined by the board, considering 185
available technology and the nature and economics of the various 186
alternatives. 187

(B) If the board determines that the location of all or a 188
part of the proposed facility should be modified, it may condition 189
its certificate upon that modification, provided that the 190
municipal corporations and counties, and persons residing therein, 191
affected by the modification shall have been given reasonable 192
notice thereof. 193

(C) A copy of the decision and any opinion issued therewith 194
shall be served upon each party. 195

Sec. 4906.97. (A) Upon a finding by the power siting board 196
that there are reasonable grounds to believe that a person has 197
violated a provision of section 4906.98 of the Revised Code, the 198
board shall fix a time for hearing such complaint and shall notify 199
the person. The notice shall be served not less than fifteen days 200
before the date of hearing and shall state the matters that are 201
the subject of the complaint. Parties to the complaint are 202
entitled to be heard, to be represented by counsel, and to have 203
process to enforce the attendance of witnesses. 204

(B) The power siting board by order or its chairperson, with 205

written notice to the person and opportunity to respond, may 206
require that any activity that is the subject of a complaint under 207
division (A) of this section be suspended for the duration of the 208
board's consideration of the complaint. Upon a showing by the 209
party against which the complaint was filed that all matters have 210
been addressed satisfactorily, the chairperson shall terminate the 211
suspension. 212

(C) After notice and opportunity for hearing in accordance 213
with division (A) of this section and upon a finding by the board 214
that a person has violated a provision of section 4906.98 of the 215
Revised Code, the board by order may assess a forfeiture of not 216
more than five thousand dollars for each day of the violation, but 217
the aggregate of forfeitures for a related series of violations 218
shall not exceed one million dollars. In determining the amount of 219
any forfeiture, the board shall consider all of the following: 220

(1) The gravity of the violation; 221

(2) The person's history of prior violations; 222

(3) The person's good faith efforts to comply and undertake 223
corrective action; 224

(4) The person's ability to pay the forfeiture; 225

(5) The cost of the project; 226

(6) The effect of the forfeiture on the person's ability to 227
continue as an applicant; 228

(7) Such other matters as justice requires. 229

(D) The attorney general, upon written request of the board, 230
shall bring a civil action to recover any forfeiture assessed 231
under division (C) of this section but not paid, or to seek other 232
appropriate relief, including injunctive relief. The action shall 233
be brought in the court of common pleas of Franklin county. The 234
court shall give precedence to the action over all other cases. 235

(E) All forfeitures collected under division (C) or (D) of 236
this section shall be deposited into the state treasury to the 237
credit of the general revenue fund. 238

Sec. 4906.98. (A) No person shall ~~willfully~~ construct a major 239
utility facility without first obtaining a certificate. 240

(B) No person shall ~~willfully~~ construct, operate, or maintain 241
a major utility facility other than in compliance with the 242
certificate ~~he~~ the person has obtained. 243

(C) No person shall fail to comply with any order issued 244
pursuant to this chapter or with a suspension otherwise required 245
under division (B) of section 4906.97 of the Revised Code. 246

Sec. 4906.99. Whoever ~~willfully~~ violates any provision of 247
section 4906.98 of the Revised Code ~~shall~~ may be fined not less 248
than one thousand dollars nor more than ten thousand dollars for 249
each day of violation, or imprisoned for not more than one year, 250
or both. 251

Section 2. That existing sections 4906.06, 4906.08, 4906.10, 252
4906.98, and 4906.99 of the Revised Code are hereby repealed. 253