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H.B. 223
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Strahorn and Skindell

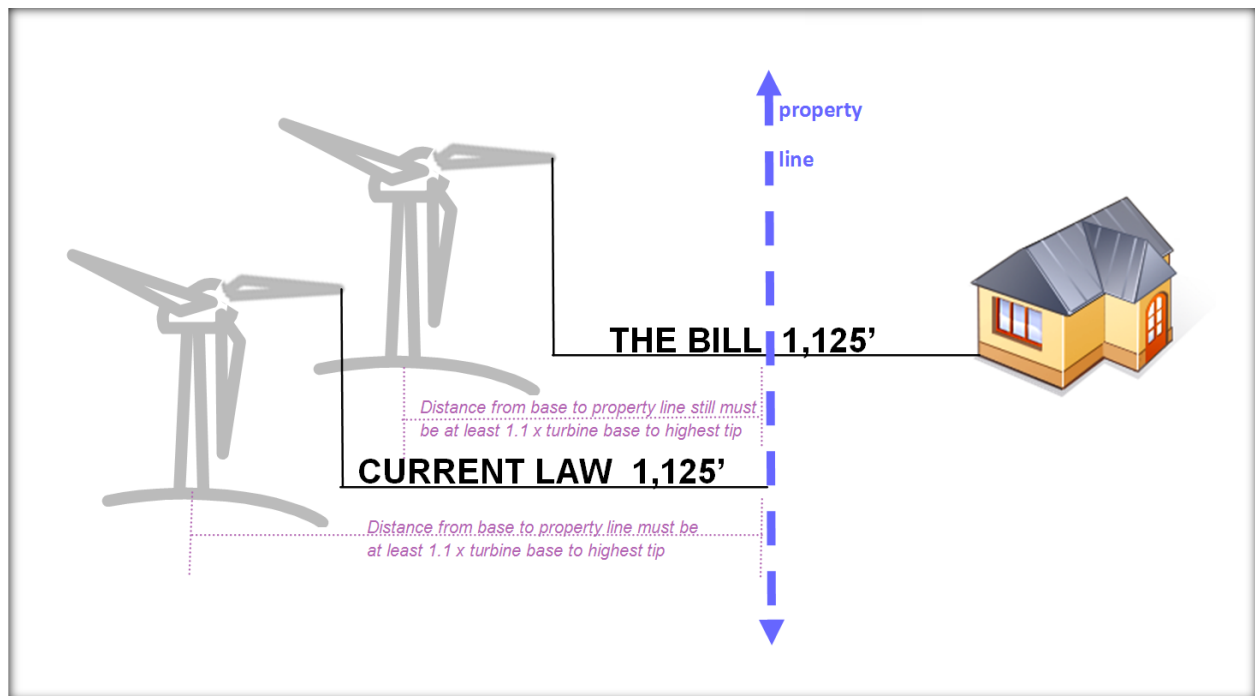
Kathleen A. Luikart, Research Associate

SUMMARY

- Returns the wind-turbine setback to what it was before Am. Sub. H.B. 483 of the 130th General Assembly (specifically, changing the measurement point for the 1,125-foot setback from the *property line* of the nearest adjacent property to the *exterior of the nearest habitable residential structure*, if any, located on adjacent property).

DETAILED ANALYSIS

Changing the measurement point for the wind-turbine setback



The bill changes the measurement point for a wind-turbine setback from at least 1,125 feet from the *property line* of the nearest adjacent property to the *exterior of the nearest habitable residential structure*, if any, located on adjacent property at the time of the certification application. This change returns the wind-turbine setback to what it was before September 15, 2014, the effective date of Am. Sub. H.B. 483 of the 130th General Assembly.

Under continuing law, there are two minimum setbacks for wind turbines: (1) the 1,125-foot-minimum setback (or in certain cases, a 750-foot-minimum-grandfathered setback) measured from the turbine *blade*, affected by the bill as discussed above, and (2) a setback measured from the turbine *base*, unchanged by the bill. The setback measured from the turbine base requires a minimum setback distance from the turbine's base to the wind farm property line of at least 1.1 multiplied by the distance from the turbine's base to the tip of the highest blade.¹ The above diagram illustrates both setback requirements and the changes made by the bill to the setback under (1).

Applicability

Wind farm size

With one exception, the bill's setback change applies to any "economically significant wind farm," which are wind turbines and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of at least five megawatts.² With the enactment of H.B. 6 of the 133rd General Assembly, an economically significant wind farm excludes one or more turbines and associated facilities that are primarily dedicated to providing electricity to a single customer at a single location and that are designed for, and capable of, operation at an aggregate capacity of less than 20 megawatts, as measured at the customer's point of interconnection to the electrical grid. Consequently, wind farms of at least 5 but less than 20 megawatts that meet these newly enacted requirements are subject to local control.

Prior to the enactment of H.B. 6, *all* wind farms of at least 5 megawatts were subject to the jurisdiction of the Power Siting Board, and *all* those under 5 megawatts were subject to local control.³

Amendments to existing certificates for wind farms

The bill modifies continuing provisions that prescribe the setback for amendments to existing certificates for wind farms. The current provisions state that any amendment made to

¹ R.C. 4906.20 and 4906.201.

² R.C. 4906.13(A), not in the bill, 4906.20(B)(2)(a), and 4906.201.

³ R.C. 4906.13, not in the bill. A referendum effort to overturn provisions of H.B. 6 of the 133rd General Assembly currently is the subject of questions certified to the Ohio Supreme Court in the opinion and order of the U.S. District Court for the Southern District of Ohio. (*Ohioans Against Corporate Bailouts, LLC, v. LaRose*, S.D. Ohio No. 2:19-cv-4466, 2019 U.S. Dist. LEXIS 184498 (October 23, 2019)).

an existing certificate after September 15, 2014, must be subject to the setback in current law. The bill modifies these provisions to say that any amendment to an existing certificate after September 15, 2014, *and before the bill's effective date* must be subject to the setback in current law. So, an amendment made to an existing certificate between September 15, 2014, and the bill's effective date would be subject to the property-line setback. And an amendment made to an existing certificate after the bill's effective date would be subject to the residential-structure setback.⁴

Common law rights and remedies

The bill states that its changes must not be construed to limit or abridge any rights or remedies in equity under the common law.⁵

History of legislative changes affecting the wind-farm setback

The following is a summary of the legislative changes that have affected the wind-farm setback since its enactment:

Effective date	Bill	Action
June 24, 2008	Am. Sub. H.B. 562	Enacted the original setback, which applied only to wind farms of more than 5 but less than 50 megawatts: <ul style="list-style-type: none"> ▪ 750 feet from the tip of the turbine's nearest blade at ninety degrees to the exterior of the nearest, habitable, residential structure; and ▪ 1.1 times the total turbine height measured from its base to the tip of its highest blade.⁶
Sept. 10, 2012	Am. Sub. S.B. 315	Repealed provisions that made certificate approval expressly conditional on whether the wind farm would comply with (1) applicable rules, including the setback, and (2) certain airport rules for the height and location of structures. These provisions applied only to wind farms of more than 5 but less than 50 megawatts. ⁷
Sept. 29, 2013	Am. Sub. H.B. 59	<ul style="list-style-type: none"> ▪ Changed the setback distance from 750 feet to 1,125 feet (but left the measurement point as the residential structure).

⁴ R.C. 4906.20(B)(2)(b)(ii) and (iii) and 4906.201(B)(2) and (3).

⁵ R.C. 4906.20(B)(2)(b)(iii) and 4906.201(B)(3).

⁶ Former R.C. 4906.13(A) and former 4906.20(B).

⁷ Former R.C. 4906.13(A) and former 4906.20(C), repealed by S.B. 315; R.C. 4561.32, not in H.B. 223.

Effective date	Bill	Action
		<ul style="list-style-type: none"> ▪ Made the 1,125 setback applicable to <i>all</i> wind farms over 5 megawatts (not just wind farms of more than 5 but less than 50 megawatts). ▪ Grandfathered “existing certification applications” found to be in compliance with application rules before September 29, 2013, which made those existing certificates and amendments subject to the 750-foot distance.⁸
Sept. 15, 2014	Am. Sub. H.B. 483	<ul style="list-style-type: none"> ▪ Changed the 1,125 foot measurement point from the residential structure to the property line. ▪ Made amendments to existing certificates subject to the new setback.⁹

HISTORY

Action	Date
Introduced	04-29-19

H0223-I-133/ar

⁸ R.C. 4906.20(B)(2) and 4906.201.

⁹ R.C. 4906.20(B)(2)(a) and (B)(2)(b)(ii) and 4906.201(B)(2).