



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Kathleen A. Luikart

### **S.B. 238**

132nd General Assembly  
(As Introduced)

**Sens.** Dolan, Peterson, Manning, Gardner, Lehner, Bacon, Wilson, LaRose, Beagle, Hottinger, Hackett, Kunze, Eklund, Schiavoni

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### **BILL SUMMARY**

- Changes the two applicable distances used to calculate the minimum setback requirement for wind turbines of wind farms with generating capacity of at least five megawatts as follows:
  - Increases the distance requirement from the turbine's base to the wind farm property line equal to 1.2 times the total turbine height to its highest blade (current law is 1.1 times);
  - Requires a minimum of 1,225 feet from the tip of the turbine's nearest blade at 90° to the exterior of the nearest, habitable, residential structure, if any, located on adjacent property (current law measures 1,125 feet to the property line of the nearest adjacent property).
- Requires the Power Siting Board to create rules requiring applicants for economically significant wind farms to both (1) hold a public information meeting and (2) provide notice on the meeting and windfarm setback requirements by newspaper and by letter to abutting owners and tenants of the potential wind farm.
- Changes the setback waiver provision to permit an owner of a parcel that abuts a parcel where a wind turbine is located to waive the setback requirement, rather than current law's requirement that all owners of property adjacent to the wind farm property make the waiver.

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## CONTENT AND OPERATION

### Wind turbine setback changes

The bill changes the minimum setback requirements for turbines on wind farms with at least five megawatts of generating capacity.<sup>1</sup> Under continuing law, there are two minimum setback measurements for turbines: (1) the distance measured from the turbine base to the wind farm property line, and (2) the distance from the nearest turbine blade tip at 90°.

#### Base measurement

The bill increases the turbine base measurement to a distance of 1.2 x the total height (measured from the turbine base to the tip of its highest blade), from the turbine's base to the property line of the wind farm. The current law calculation is 1.1 x the total height.<sup>2</sup>

#### Blade tip at 90° measurement

The bill requires at least 1,225 feet in horizontal distance from the tip of the turbine's nearest blade at 90° to the exterior of the nearest, habitable, residential structure, if any, located on adjacent property. Currently, the minimum is 1,125 feet to the property line of the nearest adjacent property.<sup>3</sup>

#### Illustration

The diagram below illustrates the changes the bill makes to the measurements:

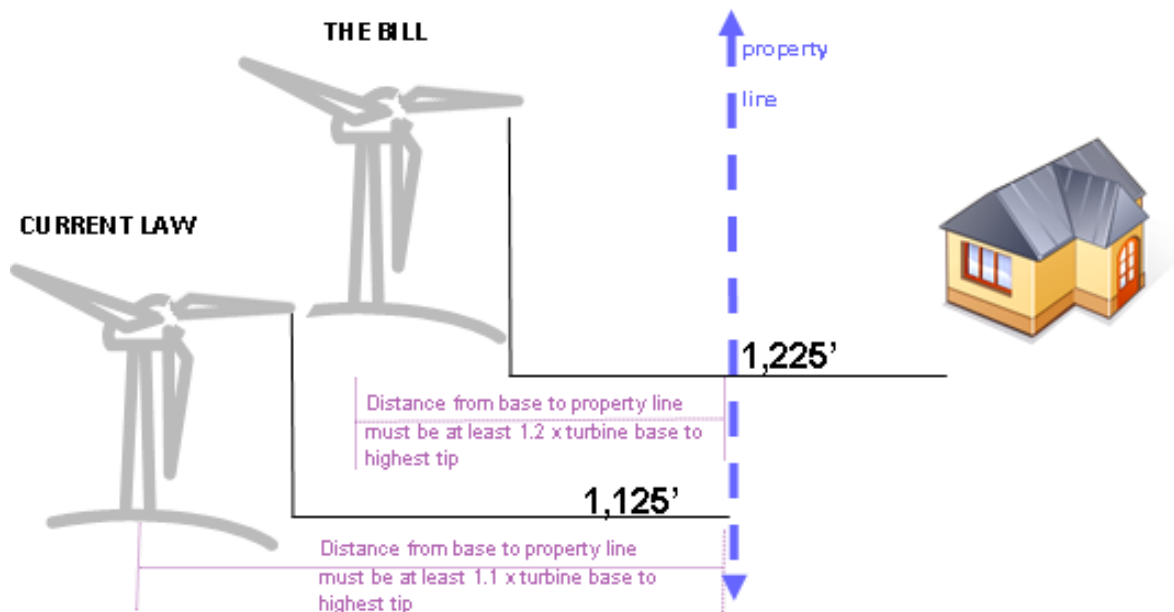
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<sup>1</sup> R.C. 4906.13(A) (not in the bill) and 4906.201.

<sup>2</sup> R.C. 4906.20(B)(2)(a) and 4906.201(A).

<sup>3</sup> R.C. 4906.20(B)(2)(a) and 4906.201(A).





## Public notice

The bill requires the Power Siting Board (PSB) to adopt rules regarding public notice for an applicant seeking certification from the PSB to build an economically significant wind farm (5 or more but less than 50 megawatts). Those rules must require an applicant to do all of the following:

(1) Hold a public information meeting not later than 90 days before the filing of the application;

(2) Provide notice on both the meeting described above and the statutory setback requirements through :

- Publication in a newspaper of general circulation in the area in which the wind farm is proposed to be built, and
- Sending a letter to each owner of, and each tenant residing on, property that abuts the property on which the wind farm is proposed to be built.<sup>4</sup>

## Parcel owner may waive setback requirements

The bill permits the owner of a parcel that abuts a parcel where a wind turbine is located to waive the application of the setback to that owner's parcel.<sup>5</sup> "Parcel" is

<sup>4</sup> R.C. 4906.20(B)(1).

<sup>5</sup> R.C. 4906.20(B)(2)(c) and 4906.201(A).

defined as a tract of real property as identified on the records of the auditor of the county in which the real property is located.<sup>6</sup>

Current law requires all owners of property adjacent to the wind farm property to waive the setback requirement. Under continuing law, the PSB may, in a particular case, determine that it is necessary for a setback to be greater than the minimum.<sup>7</sup>

### **Transition language re: setback law changes**

The bill repeals the transitional language that made the setback amendments by H.B. 483 (see chart below) applicable to "any amendment made to an existing [wind farm of 5 megawatts or more] certificate" after the effective date of H.B. 483. The bill also repeals the provision stating that the setback amendments by H.B. 483 are not to be construed to "limit or abridge any rights or remedies in equity or under the common law." Finally, the bill eliminates the provision contrasting the pre-H.B. 59 measurement of 750 feet (blade-tip-at-90° measurement) with the measurement of 1,125 feet established by H.B. 59 (see chart below). The bill does this by eliminating the phrase "instead of [1,125] feet" in the law affirming that the 750 foot measurement still applied to existing certificates, amendments to those certificates, and applications for certificates from the PSB.<sup>8</sup>

### **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:

<b>Effective date</b>	<b>Bill</b>	<b>Action</b>
June 24, 2008	Am. Sub. H.B. 562	Enacted the original setback, which applied only to wind farms of 5 or more but less than 50 megawatts: <ul style="list-style-type: none"><li>• 750 feet from the tip of the turbine's nearest blade at ninety degrees to the exterior of the nearest, habitable, residential structure; and</li><li>• 1.1 times the total turbine height measured from its base to the tip of its highest blade.<sup>9</sup></li></ul>

<sup>6</sup> R.C. 4906.20(C) and 2329.66 (not in the bill).

<sup>7</sup> R.C. 4906.20(B)(2)(c) and 4906.201(A).

<sup>8</sup> R.C. 4906.20(B)(2)(b)(i) and (ii) and 4906.201(B)(1) and (2).

<sup>9</sup> R.C. 4906.13(A) (not in S.B. 238) and 4906.20(B).



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 5 or more but less than 50 megawatts. <sup>10</sup>
Sept. 29, 2013	Am. Sub. H.B. 59	<ul style="list-style-type: none"> <li>• Changed the setback distance from 750 feet to 1,125 feet (but left the measurement point as the residential structure).</li> <li>• Made the 1,125 setback applicable to <i>all</i> wind farms over 5 megawatts (not just wind farms of 5 or more but less than 50 megawatts).</li> <li>• Grandfathered "existing certification applications" found to be in compliance with application rules before Sept. 29, 2013, which made those existing certificates and amendments subject to the 750-foot distance.<sup>11</sup></li> </ul>
Sept. 15, 2014	Am. Sub. H.B. 483	<ul style="list-style-type: none"> <li>• Changed the 1,125-foot measurement point from the residential structure to the property line.</li> <li>• Made amendments to existing certificates subject to the new setback.<sup>12</sup></li> </ul>

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## HISTORY

### ACTION

### DATE

Introduced

12-05-17

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<sup>10</sup> R.C. 4906.13(A) (not in S.B. 238), 4906.20(C) (repealed by S.B. 315), and 4561.32 (not in S.B. 238).

<sup>11</sup> R.C. 4906.20(B)(2) and 4906.201.

<sup>12</sup> R.C. 4906.20(B)(2)(a) and (B)(2)(b)(ii) and 4906.201(B)(2).

