COMMISSIONERS' MANUAL FOR RENEWABLE ENERGY GENERATION FACILITIES:

SITING AND TAXATION OF CERTAIN WIND AND SOLAR PROJECTS

COUNTY COMMISSIONERS ASSOCIATION OF OHIO
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INTRODUCTION

In June 2021, the 134th Ohio General Assembly passed Senate Bill 52, legislation that gives a board of county commissioners permissive authority to oversee site selection requests from renewable energy generation facilities in the unincorporated area of the county. The legislation was enacted in response to surging interest from developers in siting solar facilities across the state in recent years. Prior to SB 52, the state vested exclusive authority and oversight for the siting, operating, and decommissioning of all energy generation facilities with the Ohio Power Siting Board (OPSB). Local zoning laws did not apply. With the passage of SB 52, commissioners can declare certain parts of the county off-limits to renewable projects, and they can deny requests from developers for individual projects. This authority is discretionary and is unrelated to any regular zoning laws that may be in force at the township or county level. If commissioners choose not to take any action, the developer may proceed and file an application with the OPSB after 90 days. When a project applies to the OPSB, SB 52 also allows a county commissioner and a township trustee from the project to serve as "ad hoc" members of the OPSB.

SB 52 did not alter commissioners' existing authority to approve a "qualified energy project" tax abatement for renewable projects with "nameplate" generation capacity of 20 megawatts or above. These abatements, which require the developer to make payments in lieu of taxes (PILOTs) to the county and other taxing districts, also explicitly allow for the negotiation of a road use maintenance agreement and for the facilitation of training for first responders. Taken together, commissioners' authority over site selection and a potential tax abatement allows county government to ensure that energy generation facilities are located in a manner that is best suited to ensure the long-term development of the county.

This manual combines an overview of the new authority granted in SB 52 with the existing law governing PILOT payments. The first section of the manual provides background on the steps a renewable energy developer must take to receive approval from the PJM Interconnection, an organization that manages the electric grid in Ohio and twelve other states, and from the Ohio Power Siting Board. These two processes are woven together by the requirement that the developer receive a completed System Impact Study from the PJM Interconnection in order to file an application with the OPSB. The second section reviews the major provisions of Senate Bill 52 and attempts to answer some of the "frequently asked questions" that may arise when commissioners are considering their options. The third section reviews the procedures necessary to establish a qualified energy facility tax abatement and discusses an alternative tax abatement available through the Ohio Air Quality Development Authority.

Renewable energy development projects are complex, long-term undertakings, which are often controversial. This manual emphasizes the need for early and frequent communications among the developer, local governments, and residents. With the passage of SB 52, basic project information, including whether or not a tax abatement will be required, can be discussed and negotiated months before a developer applies to the Ohio Power Siting Board. Commissioners can choose to become involved in the siting process, or they may choose to become involved only through the appointment of the ad hoc member to the OPSB. Commissioners will need to decide whether a proactive or reactive approach best fits the needs of the county.

SECTION 1: OVERSIGHT OF OHIO'S ELECTRIC GRID

In 2019, Ohio consumed the 8th most electricity in the nation, spending an aggregate total of nearly $42 billion on electricity. The industrial sector consumes about one-third of the state's total, followed by the transportation sector, residential communities and buildings, and finally commercial buildings. The state has about 150 electric power plants and more than 7,000 miles of transmission lines. When a developer wants to build a new utility-scale electricity-generating plant, the project must receive approval from two entities: PJM Interconnection and the Ohio Power Siting Board. PJM Interconnection is a federally regulated regional transmission organization that operates the electricity grid in Ohio, twelve other states, and the District of Columbia, while the Power Siting Board is a state agency charged with overseeing construction of energy generation projects.

1.01 PJM INTERCONNECTION

Electricity is provided to customers in North America through nine interconnected transmission systems. The entirety of Ohio, along with Pennsylvania, West Virginia, New Jersey, Maryland, and Delaware, as well as parts of Virginia, North Carolina, Kentucky, Indiana, Michigan, Tennessee, Illinois, and the District of Columbia, are served by PJM Interconnection. PJM is one of the largest electricity markets in the world and serves nearly 70 million residents. The role of PJM and the other transmission systems is to coordinate connections between electricity-generating facilities and transmission grids.

When companies want to build utility-scale solar or wind facilities, they must obtain approval from PJM. Before the process formally begins, project applicants must demonstrate that they have land control of the site, typically through lease agreements at least three years in length. While seeking approval, the applicant must show the project's impact on the electric grid, the costs of establishing the new connections, and that the project will meet reliability standards. Additionally, the applicant must pay for a series of engineering studies to show the feasibility, system impact, and interconnection facilities footprint of the project:

- A Feasibility study estimates interconnection costs and construction time to provide initial feedback to the developer.

- A System Impact study performs a more detailed analysis and provides more precise estimates for system upgrade costs and timing.

- The Interconnection Facilities study includes detailed design work for all required network transmission updates and attachment facilities.

Each consecutive study becomes more detailed, time-consuming, and expensive. The costs are paid by the applicant, who may withdraw a proposal at any time. In order to file an application with the Ohio Power Siting Board, the developer must at least have a completed PJM System Impact Study.

1.02 OHIO POWER SITING BOARD

In addition to receiving approval from PJM Interconnection, a utility-scale project must receive approval, known as a "certificate," from the Ohio Power Siting Board (OPSB) before beginning construction. OPSB oversight continues through the operation and decommissioning phases of the project (see ORC Chapter 4906).

The OPSB was created in 1972 as the Power Siting Commission and is an entity under the Public Utilities Commission of Ohio. The Board is comprised of nine voting members and four non-voting members. The voting members are comprised of six directors of state agencies who serve in an ex officio capacity, two "ad hoc" members who are appointed to represent local interests with respect to a specific project, and one public member. The public member must be a licensed engineer. The non-voting members are legislators, two from each chamber. The two ad hoc voting members were added by SB 52. These two seats are filled by a county commissioner and a township trustee from the project area, or their designees. More details on the ad hoc membership by commissioners and trustees will be provided in a later section of the manual.

For renewable projects, the board's jurisdiction includes wind installations with a nameplate capacity of 5 MW or higher, and solar installations capable of generating 50 MW or higher. The Board is tasked with approving, disapproving, or giving conditional approval for applications based on eight criteria defined by law, including need, whether the facility represents the minimum adverse environmental impact, and whether the facility will serve the "public interest, convenience, and necessity" (ORC 4906.10). The board's administrative rules establish an extensive list of information that must be contained in an application. Ohio Administrative Code Chapter 4906-4 pertains specifically to electric generation facilities.

The OPSB conducts its assessment of project applications via five steps starting with an initial public meeting in the project area. A sixth step includes a possible rehearing and appeal following a denial. The OPSB has prepared a flowchart of the standard application process that is available on its website.[1] The following is a brief description of each phase:

1. Pre-application phase

   This includes an optional pre-application conference with OPSB staff, a pre-application letter to OPSB describing the project, and an applicant-hosted public informational meeting near the project site. The public informational meeting must take place no more than 90 days prior to the submission of a formal application to the OPSB. The applicant must also send a letter to each property owner and affected tenant describing the certification process, how to participate, and how to request notifications of the Board-facilitated public hearing.

2. Application submission and staff review of application completeness

   After the application is submitted, OPSB staff members have 90 days to review its content and ensure that it contains the required information. A typical application is about 1,500 pages in length. If an application is deemed incomplete, staff will notify the applicant in a

[1] https://opsb.ohio.gov/wps/portal/gov/opsb/processes/standard-process

formal letter so the deficiencies can be corrected. If the application is complete, the process moves to the investigation phase.

3. Investigation

   First, an administrative law judge sets the hearing dates and deadlines for parties to intervene in the case, and the applicant provides formal notice to landowners and appropriate government entities. Staff conducts an investigation of the project that includes site visits and a review of public comments. A staff report with findings and recommendations is due 15 days prior to the scheduled public hearing.

4. Hearings

   The board conducts two formal hearings. The first is a public hearing, approximately two weeks after the staff report is issued, during which members of the public may offer sworn testimony to the board. Several weeks later, the board holds an evidentiary hearing where the applicant, OPSB staff, and any other formal parties, known as intervenors, may provide expert testimony.

5. Decision

   The parties have an opportunity to file final briefs and reply to briefs after the hearing. The administrative law judge drafts a final recommendation to the board based on all of the evidence on the record. The OPSB may approve, deny, or approve the project with conditions.

6. Rehearing/Appeal (if needed)

   Parties to a case may request a rehearing within 30 days of the board's decision. A party that disagrees with the board's decision may appeal the case to the Ohio Supreme Court within 60 days after the decision on rehearing.

OPSB continues to monitor a project during the construction and operation. The applicant must establish a complaint resolution process to address concerns resulting from project construction and operation and must report quarterly to the board about this process. More information is available on the OPSB website, https://opsb.ohio.gov/wps/portal/gov/opsb/.

Intervention in a Power Siting Board Case

Counties and other local governments that have territory in the proposed project area have the right to become official "intervenors," or formal interested parties in a Power Siting Board case. According to the Power Siting Board, intervention grants individuals, organizations, and governments the right to participate as a party of record in the case proceedings. Intervenors are served with all documents in the case, participate in the adjudicatory hearing, and may file for rehearing or appeal of a Board decision to the Ohio Supreme Court.

The requirements that must be met to become an intervenor are set forth in Ohio Administrative Code Section 4906-2-12. The county must file its request for intervention with the OPSB within 30 days after receiving notice from the developer that an application has been filed with the OPSB.

Becoming an intervenor has numerous advantages besides the ability to submit official information for the OPSB case record. In some cases, a project developer may be willing to negotiate with the county over issues such as drainage, visual screening, or other stipulations. If the parties reach agreement, the stipulations can be jointly submitted to the Power Siting Board as formal recommendations to be included in the board's final decision in the case. Developers know that their case will be strengthened if they can reach agreement with local governments. It is to the counties' advantage to have these discussions with the developer before the adjudicatory hearing toward the end of the OPSB process.

SECTION 2: GENERAL PROVISIONS OF SENATE BILL 52

2.01 BACKGROUND AND LEGISLATIVE HISTORY

Senate Bill 52 was introduced into the 134th General Assembly on February 9, 2021, by Senator Bill Reineke and Senator Rob McColley. In the Introduced version of the bill, the process through which certain energy projects could be approved or rejected rested with the voters of the township(s) in which the proposed projects would be located.

As the bill went through the legislative process, the approval/rejection mechanism was shifted from a vote of township electorates to a vote of the board of county commissioners, potentially subject to referendum by the county electorate. Smaller solar facilities were removed from the scope of the bill to make it consistent with OPSB jurisdiction. The bill passed the General Assembly on June 28, 2021, and signed into law by Governor Mike DeWine on July 12, 2021. The bill became effective on October 11, 2021.

A brief overview of SB 52's provisions are outlined below. Two major provisions (siting approval authority over individual projects and ad hoc membership on the OPSB) will also be discussed more in-depth in their own sections. The bill enacted new ORC sections 303.57, 303.58, 303.59, 303.60, 303.61, 303.62, and made various amendments to ORC Chapter 4906 governing the OPSB.

2.02 SUMMARY

Under the law, boards of county commissioners can restrict the siting of certain renewable energy projects within the unincorporated areas of the county. These installations are defined as large solar facilities (nameplate capacity of 50 or more megawatts), economically significant wind farms (between 5 and 49 megawatts), and large wind farms (50 or more megawatts).

There are two tracks that commissioners may take to exercise this authority.

The first is their ability to designate restricted areas within the unincorporated area of the county. Commissioners may designate all or part of the unincorporated area of the county as a restricted area, prohibiting construction of or significant modification to the solar and wind projects described above. Boards must comply with a statutory procedure including notice requirements and public meetings. If commissioners designate a restricted area, county voters may petition for a referendum to approve or reject the creation of the restricted area.

If a project is proposed in an unincorporated area outside of a restricted zone, the law allows, after certain procedural steps are completed, the board of county commissioners to adopt a resolution to either prohibit the construction of the project or limit its geographic scope. Unlike a resolution creating a restricted area, project-specific resolutions are not subject to voter referendum.

Membership on the Power Siting Board is expanded by SB 52 to include two voting ad hoc members to represent local interests when the OPSB considers a utility project. One member is the chairperson of the township trustees and the other is the president of the board of county commissioners, or their designees. If the project is in multiple townships and/or multiple counties, the affected political subdivisions must agree on a single representative to the OPSB to represent each type of political subdivision.

2.03 SCOPE: TYPES OF UTILITY FACILITIES

One of the major new powers created by SB 52 for county commissioners is the ability to designate restricted areas in their county and the ability to block or limit proposed projects. As mentioned in the prior chapter, commissioners' scope of authority rests over three types of energy projects, consistent with OPSB jurisdiction, defined in ORC Chapter 4906 as follows:

- Economically significant wind farm: 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 between five and 49 megawatts. Not included in this category are wind farms in operation on June 24, 2008, and facilities with one or more wind turbines that provide electricity to a single customer at a single location and are designed for an aggregate capacity of less than twenty megawatts.

- Large solar farm: Electric generating plant that consists of solar panels and facilities with a single interconnection to the electrical grid that is a "major utility facility" under the jurisdiction of the OPSB and is designed for or capable of operation at a capacity of 50 megawatts or more.

- Large wind farm: Electric generating plant consisting of wind turbines and associated facilities with a single interconnection to the electrical grid that is a "major utility facility" under the jurisdiction of the OPSB and is designed for or capable of operation at a capacity of 50 megawatts or more.

Facilities that meet any of those three criteria are subject to the provisions of SB 52 if the developer files a new application with the OPSB or an application for a "material amendment." A material amendment is defined as an amendment that does at least one of the following:

- Changes the facility's generation type from one type of utility facility to another.

- Increases the facility's nameplate capacity.

- Changes the boundaries of the facility unless the new boundaries are entirely within the previous boundaries or if the components outside the previous boundaries are underground.

- For both categories of wind installations, increases the number of wind turbines or increases the height of a wind turbine.

The additions of a battery storage system to the facility does not constitute a material amendment.

2.04 DESIGNATION OF RESTRICTED AREAS

Even before any energy projects are proposed, county commissioners may take action to prevent such projects from being started. Through a resolution, commissioners may designate restricted areas throughout the unincorporated areas of the county, including the entire unincorporated area

of the county. The resolution may be adopted either at a regular meeting of the board or through a special meeting called specifically for this purpose.

Commissioners who choose to designate a restricted area must comply with a specific procedure. At least 30 days before the meeting at which the commissioners consider the resolution, the board must complete three steps:

- Provide public notice of the date and time of the meeting in at least one publication in a newspaper of general circulation within the county.

- Post a map showing the boundaries of the proposed restricted area at all public libraries within the county.

- Provide written notice of the meeting by first class mail to all school districts, municipal corporations, and boards of township trustees located in whole, or in part, within the proposed restricted area.

As a note, the requirement to post a map showing the proposed boundaries of the restricted area in public libraries in the county applies to all public libraries in the county, not just those in the affected area.

The resolution itself must include a map of the restricted area and a description sufficient to identify the boundaries. The resolution becomes effective 30 days after its adoption unless the board receives a valid petition for a referendum.

If the resolution becomes effective, the Power Siting Board may not accept any applications or grant any certifications for either a new project or a material amendment to a project located in a restricted area. An adopted resolution does not require an existing project to cease operations; rather, it prevents them from filing for any material amendments. After the resolution becomes effective, the commissioners must, within five working days, file the text of the resolution and maps of the restricted areas with the county recorder and, where applicable, the regional planning commission. The resolution's validity is not affected if the commissioners do not file within five working days. The law does not define on any repercussions for filing later than the prescribed five working days.

If a board of commissioners wants to amend a previously adopted resolution creating a restricted area, it must follow the same procedures. Additionally, a resolution creating a restricted area does not retroactively affect an application that was previously presented to the commissioners at a mandatory public hearing but that the commissioners do not prohibit within the required 90-day window.

2.05 Referendum on Restricted Area Designation

Within the 30-day window between the adoption of the resolution by the commissioners and the effective date, the voters of the county may bring a petition to challenge the designation of a restricted area. The petition must be signed by at least 8% of the total registered voters who cast ballots in the most recent gubernatorial election. If the resolution has a title and number, the

petition must include the full title and a summary. The law included a specific format the petition must follow which is reproduced in the Appendix.

When the circulators file the petition with the board of county commissioners, the board has two weeks to certify the petition to the county board of elections. The commissioners have no authority to do anything other than certify the petition. The two-week window is simply to provide the commissioners appropriate time to comply.

The board of elections must receive the petition at least 90 days before the election at which voters may approve or disapprove the referendum. As with other petitions that the board of elections receives, it must determine the sufficiency and validity of the petition. If the board signs off on the petition, the referendum is placed on the ballot for the next primary or general election that occurs at least 120 days after the petition was filed with the county commissioners. The election need not include the nomination of or election of candidates.

If the voters in the county approve the designation of a restricted area, the resolution takes effect immediately upon the certification of election results. If the voters reject the designation of a restricted area, the resolution is no longer a valid document. However, there is no restriction on how soon after a vote the board of commissioners may adopt another resolution to designate a restricted area, provided the commissioners follow the appropriate process.

2.06 Potential Questions Concerning Restricted Areas

There are several potential questions that could arise for commissioners regarding both the designation of restricted areas and scenarios that could arise after designations are made. This section will provide a brief discussion concerning common or anticipated questions. CCAO recommends that counties consult with either their county prosecutor or outside legal counsel to provide more definitive guidance.

What elements should commissioners consider before designating a restricted area?

SB 52 did not include any criteria that commissioners must consider before designating a restricted area nor does it require the commissioners to include reasoning in the resolution. This gives the county broad discretion when designating restricted areas and allows for the creation of additional processes that may be added at the county's discretion.

While commissioners do not need to consider any factors, there are some that they may want to think about.

- Community Input: Commissioners are stewards of the county and, as elected officials, are accountable to the voters. A board may find it useful to discuss the possibility of a resolution at non-voting public sessions or in regular sessions to gauge how the people feel before formally going through the process to consider a resolution. If the restricted area is less than the whole county, it may be useful to solicit formal written support from large landowners whose property rights could be affected by the restriction.

- Consulting other Subdivisions: While the power to restrict unincorporated areas rests solely with the commissioners, a decision to designate parts of the county as restricted areas will affect other local governments, namely townships and school districts. Considering the thoughts of these other governments may be helpful to gain other insights

into how restricted areas will affect the community. Commissioners may wish to request a formal resolution and a detailed map from a township that wishes a restricted area to be established. A county or regional planning commission also will be able to provide useful information about land use plans and growth projections.

- Impact on Revenue: Commissioners may want to consider the revenue implications of restricting renewable development. Allowing development and agreeing to a PILOT payment may provide greater and more stable revenue than the alternative land uses.

- Impact on the Environment: While qualified energy projects have certain environmental requirements they must comply with, commissioners still may want to evaluate the environmental impact potential projects could cause, and the long-term impact on farmland from various alternative land uses.

The list above is not meant to be exhaustive but rather to provide commissioners ideas of what they can use as internal guidelines when debating whether to create restricted areas.

What is the procedure to amend a resolution?

The only provision of the Act concerning amendments to restricted area designations is that it must follow the same 30-day public notice procedure for new resolutions. Otherwise, it is a reasonable assumption that the amending procedure for SB 52 resolutions is the same as the existing procedure for amending commissioners' resolutions.

If a county has a resolution designating restricted areas and later passes a new resolution unrestricting all of the area, is it subject to a referendum?

It does not appear so. The relevant portion of the Act is in ORC Section 303.58(B). It reads, "*A resolution [to designate all or a part of the unincorporated area of a county as a restricted area] may designate one or more restricted areas and shall fix restricted area boundaries within the unincorporated area of the county.*" Since a resolution to remove restricted areas is distinct from designating areas, it will likely not be subject to a referendum. If the new resolution reestablishes part of a restricted area, however, the referendum process will apply.

Can commissioners create restricted areas for new projects while allowing existing projects in the area to continue to make material amendments?

ORC Section 303.58(A) states that commissioners may adopt a resolution "prohibiting the construction" of a solar facility or wind farm. It is likely that the term "construction" would also encompass new construction at an existing site, assuming that it meets the definition of a material amendment that falls under OPSB jurisdiction. ORC Section 303.60 states that no person may apply for, and the OPSB shall not accept, an application for either a new certificate or a material amendment if the project would be or is in a restricted area.

If a county wants to allow changes that would constitute a material amendment to an existing facility, including the expansion of geographic boundaries, the resolution and accompanying map should exclude the entire project territory from the restricted area. The law does not appear to

prevent the creation of an “island” of unrestricted area surrounded by territory on which construction is prohibited.

Can a resolution specify that the restricted area is only in effect for a limited period of time?

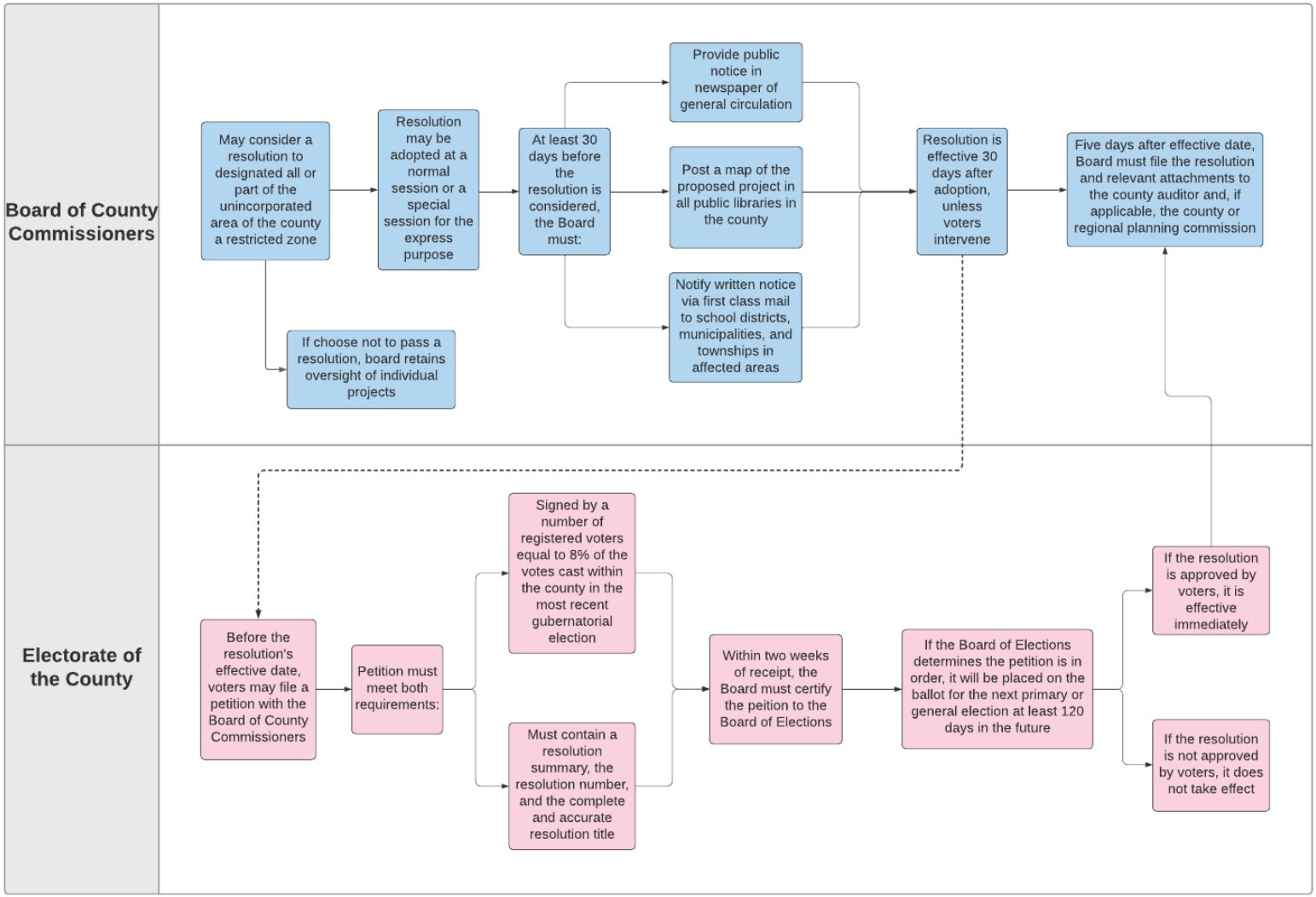
The language of SB 52 is silent on this option but does not prohibit the use of a time-limited restriction.

Who votes on the referendum if one is placed on the ballot?

If the county board of elections certifies the referendum and places it on the ballot, all registered voters in the county may cast a vote on the issue. Voting is not restricted to just those voters who live in the proposed restricted area or to those living in the unincorporated area of the county.

The flowchart on the next page illustrates the basic steps required in the process to designate a restricted area.

Process to Designate a Restricted Area



2.07 County Response to a Proposed Individual Project

The second major tool created by SB 52 is oversight of individual project proposals. Developers with a project proposal in the unrestricted part of the county must follow a prescribed set of procedures before applying to the OPSB. These procedures create an opportunity for public feedback and commissioner control over siting decisions.

Requirements for Project Developer

Before the developer can apply to the OPSB for a new certificate or for a material amendment, the company must hold a public meeting in each county where the project will be located. The public meeting must take place between 90 to 300 days before the developer plans to apply to the OPSB. No later than 14 days before the public meeting, the developer must provide written notice to the board of county commissioners and the affected boards of township trustees. Unlike when commissioners are considering creating restricted areas, the developer does not have an obligation to notify school districts in the proposed project's area, although they should be encouraged to do so.

At the public meeting the developer must provide three types of information:

- What type of facility the project proposes (large wind farm, economically significant wind farm, or large solar farm).
- The maximum nameplate capacity of the facility.
- A map displaying the project's proposed geographic boundaries within the county.

The developer must also provide this information in writing to the county commissioners.

Commissioner Consideration of Project Proposal

After the public hearing, commissioners have 90 days to act on the proposal. Commissioners may adopt a resolution to either prohibit construction on the project or limit the geographic scope of the project. If the commissioners decide to limit the size of the project, the new footprint must be entirely within the initially proposed boundaries.

If commissioners decide to take no action, the developer may file the application with the OPSB using the project specifications as presented at the public meeting.

The timeline and process can become complicated if the project footprint spans multiple counties.

One County

If the project is entirely contained within a single county, the project proposal ends immediately if the commissioners adopt a resolution prohibiting construction. The OPSB cannot grant a certificate to the developer of the project. However, the developer is free to amend the proposal and repeat the process with the county.

If the commissioners take no action, the project can move on to the OPSB after the 90-day period elapses.

More than One County

If the project spans multiple counties, each county board of commissioners has 90 days from the date of its respective developer public meeting in which to act. If any of the counties adopts a resolution to prohibit the project within its borders, the developer may continue the process in the remaining counties. If all counties pass prohibiting resolutions, the developer must either abandon the project or revise its details and restart the process.

After the 90-day period elapses in all the counties that do not act on the project, the developer can move on to the OPSB.

2.08 Potential Questions Concerning Commissioners' Action on a Proposed Project

There are several potential questions that could arise for commissioners regarding actions undertaken by commissioners to prohibit or limit the scope of a solar or wind project. This section will provide brief discussion concerning common or anticipated questions. The CCAO recommends that counties consult with either their county prosecutor or outside legal counsel to provide more definitive guidance.

Is a decision to prohibit or limit the scope of a project subject to a referendum?

No, it is not. The referendum provision of the act applies only to resolutions designating restricted areas.

What factors should commissioners consider when weighing their options on a proposed project?

Like resolutions designating restricted areas, the law does not specify any factors or information that commissioners must consider. Generally, the same factors discussed in the section on designated areas are also worthwhile to evaluate under this procedure. Commissioners should consider adopting a set of criteria that will apply to all project proposals in order to set expectations for landowners, developers, and the public.

Commissioners may also find it useful to meet individually with the developer and affected landowners additional times after the public hearing to have a more in-depth discussion about the project's potential impacts on the community, environment, and tax revenue. Townships, school districts, and other taxing districts may also wish to weigh in before and after the public meeting.

Unfortunately, since the commissioners' decision comes before the OPSB can even become involved, the county will not have access to findings that the OPSB's investigators determine are relevant. Still, the commissioners should attempt to obtain as much information as possible about the project before and after the public meeting in order consider all of its impacts.

Commissioners may also choose to condition the approval of the project on a developer's agreement to certain terms and conditions. As with any other agreement or memorandum of understanding, these should be spelled out in detail in written form and approved by all parties. Developers could be asked if they will request a PILOT payment, and all of the related issues that are spelled out in the PILOT tax abatement law could be handled at this stage (e.g., RUMA and drainage). If no PILOT payment is requested, a developer may be asked under what conditions it might challenge its property valuation. Other issues, such as vegetative screening, could be

handled as well. The MOU should be submitted as part of the OPSB record during the application process, where the board will take into account whether an applicant is dealing in good faith with the county and other local governments.

If a county decides to take no action on the project, can it waive the 90-day period?

No. While a resolution to prohibit a project takes effect immediately and closes the 90-day window, there is no provision through which commissioners may shorten the window if they decide to decide to take no action.

Can commissioners reconsider a resolution to prohibit construction or restrict geographic boundaries within the 90-day window, without the developer holding another public meeting?

The law states that "no resolution adopted under this section shall prevent an applicant from filing another proposal for consideration by the board of county commissioners at a later date." (ORC 303.629C)) Clearly, the developer may change its project proposal, hold another public meeting, and request reconsideration of the decision. It is not clear whether the reconsideration could be requested within the 90-day window without holding another public meeting. Assuming that the changes involve matters that do not alter the project's nameplate capacity or enlarge the boundaries that were given at the original public meeting, it may be possible for the developer to request a repeal of the resolution and proceed with an application without holding another public meeting.

Can the Ohio Power Siting Board alter the details of a project during the application process?

Certain project details are fixed and cannot change after the public meeting. The OPSB can only grant a certificate to a project that has identical information in its application as to what was provided to the commissioners prior to the public meeting, unless the developer has shrunk the project. Specifically, if the information provided on the application to the OPSB differs in any of the following ways from the information that was provided to the commissioners in advance of the public meeting, the OPSB cannot grant the certificate:

- The nameplate capacity is greater than the information originally provided.
- The geographic area is not completely within the boundaries originally provided.
- The type of power generation is different from what was originally provided.

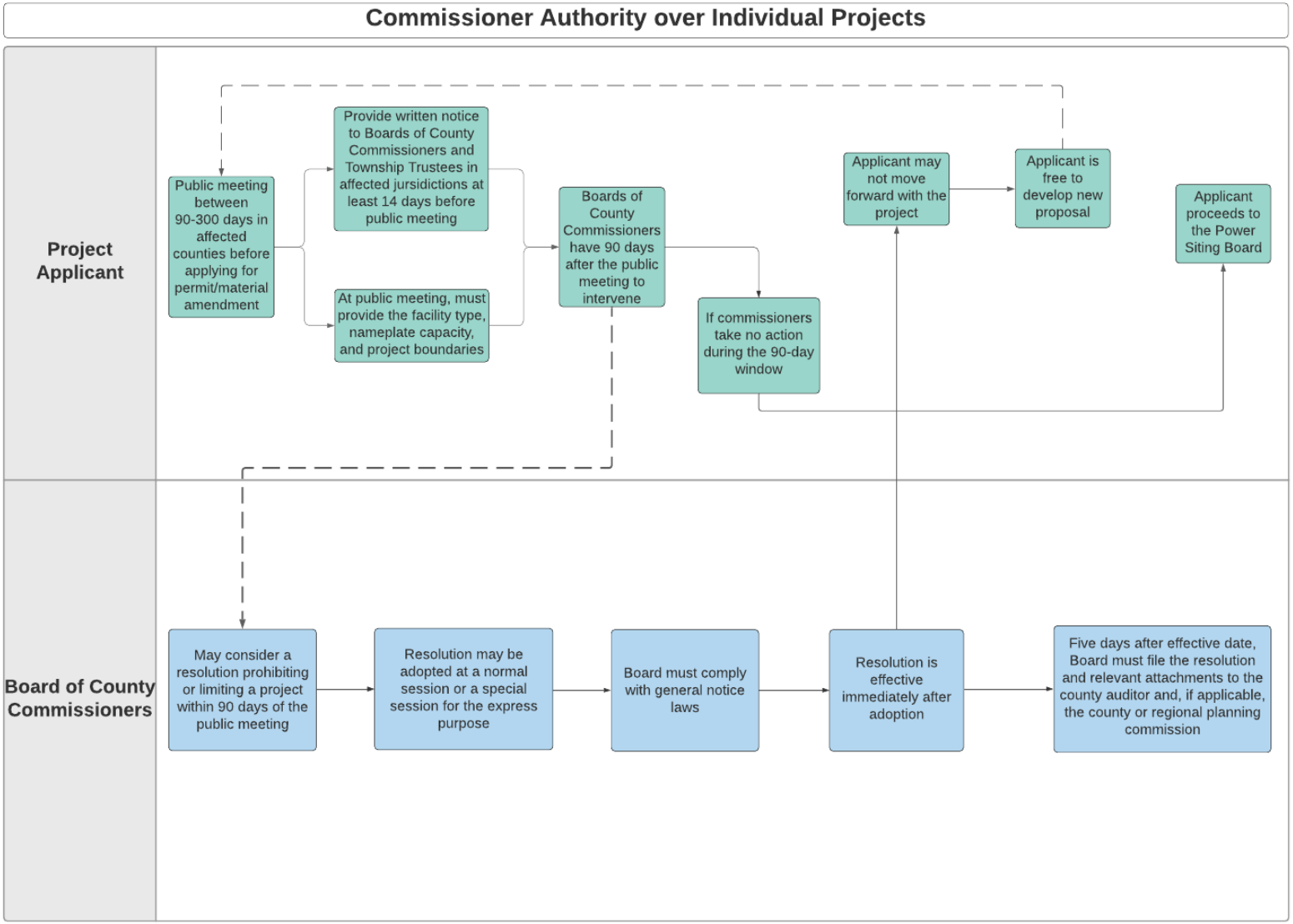
Provided that those three factors are not violated, the developer and/or the OPSB may make amendments to the proposal during the Power Siting Board's part of the process.

May the commissioners adopt additional procedures before making a decision about an individual project?

The 90-day decision window after the public meeting is set in law and cannot be changed, but as with the decision to establish a restricted area, commissioners may decide that additional procedures are necessary, such as requesting an additional public meeting in the project area or

informational sessions with the commissioners or other political subdivisions. Commissioners could also ask for formal recommendations from townships or political subdivisions before making a decision.

The flowchart on the next page illustrates the basic steps required to review a proposed individual project.


Commissioner Authority over Individual Projects
Project Applicant
Public meeting between 90-300 days in affected counties before applying for permit/material amendment
Provide written notice to Boards of County Commissioners and Township Trustees in affected jurisdictions at least 14 days before public meeting
At public meeting, must provide the facility type, nameplate capacity, and project boundaries
Boards of County Commissioners have 90 days after the public meeting to intervene
If commissioners take no action during the 90-day window
Applicant may not move forward with the project
Applicant is free to develop new proposal
Applicant proceeds to the Power Siting Board
Board of County Commissioners
May consider a resolution prohibiting or limiting a project within 90 days of the public meeting
Resolution may be adopted at a normal session or a special session for the express purpose
Board must comply with general notice laws
Resolution is effective immediately after adoption
Five days after effective date, Board must file the resolution and relevant attachments to the county auditor and, if applicable, the county or regional planning commission

2.09 AD HOC MEMBERSHIP ON THE POWER SITING BOARD

As discussed in the Overview of Ohio's Electrical Grid chapter, the Power Siting Board is comprised of seven permanent voting members, six of whom are the heads (or designees of the head) of state executive agencies, and one is a professional engineer appointed by the governor. There are also four non-voting members, two from each chamber of the General Assembly.

SB 52 expands membership on the OPSB under when a renewable energy project is considered. When the Board is considering an application for a certificate for a new facility, or a material amendment to an existing certificate of a facility covered by the siting oversight provisions of the Act, there are two additional members who will serve on the board on an ad hoc basis.

One of these members is the chairperson of the board of township trustees in which the project is located and the other is the president of the board of county commissioners in which the project is located. These members may also appoint a designee. If the project spans multiple townships or counties, all of the like subdivisions must approve the appointment of the ad hoc member (or the member's designee) by a majority vote. The ad hoc members must be appointed within 30 days of the OPSB notifying the subdivisions that the project application is accepted and complete.

Restrictions on Ad Hoc Membership

There are certain restrictions on who may serve as an ad hoc member. These can serve as a useful guide when determining if a designee should be selected. Generally, the law restricts individuals from serving as an ad hoc member if:

- They are party to a lease agreement with, or have granted an easement to, the developer of a utility facility (this is not limited to the facility in question).
- They hold any other beneficial interest in a utility facility.
- They have an immediate family member to whom the prior two conditions apply.
- They have an immediate family member who has intervened in the OPSB proceedings for the same project.

The law defines an immediate family member as a spouse, sibling (both by marriage or blood-relation), children (including adopted children), and parents.

If a designee is selected to serve as an ad hoc member, they also must be a resident of the county. Other elected officials within the subdivision are also eligible to serve as designees.

If a board of commissioners decides to adopt a resolution to intervene in an OPSB case for which it is entitled to an ad hoc member, the commissioner who will be serving as the ad hoc member is not permitted to vote on the resolution or any future matters pertaining to the intervention. If a designee is selected, all three commissioners may vote.

Voting ad hoc members of the OPSB are exempt from limitations on *ex parte* communications. Generally, *ex parte* communications are those that are made by a party without the presence of the other parties. In this circumstance, it means that the ad hoc members may discuss the OPSB

case without the other members of the OPSB present. However, if such communications take place, the ad hoc member and the individuals they communicated with must disclose to the OPSB the date of the conversation and the names of all those who participated in the conversation who are parties to the case.

Ad hoc members, both present and former, may not disclose or use information acquired during their duties as an ad hoc member if the information is confidential due to statute or if the information is designated confidential due to the status of the proceedings, the circumstances under which the information was received, or if the confidentiality is necessary to the proper conduct of governmental activities.

2.10 Potential Questions Concerning Ad Hoc Membership

There are several potential questions that could arise for commissioners regarding their potential role as an ad hoc member of the Power Siting Board. This section will provide brief discussion concerning common or anticipated questions.

What is the time commitment to being an ad hoc member of the OPSB?

Ad hoc members will generally be expected to review case records for the project and stay updated as new records get filed. The ultimate time commitment for these two responsibilities will depend on how much time the member will want to dedicate to keeping up to date on the proceedings compared to their other commissioner duties. Additionally, the in-person meeting of the OPSB will likely be about a full day commitment since they occur in Columbus. The OPSB process typically takes between 9-12 months, with the timeline varying based on the amount of public input. Since ad hoc members come into the process only after the application has been accepted, the time commitment may be between four and six months.

May an ad hoc member be replaced during the process?

The law specifies that the ad hoc member must be designated within 30 days after the commissioners receive notification that an application has been accepted. The law does not specify a timeline or process that should occur if the ad hoc member resigns or becomes incapacitated. In the absence of such instructions, it may be presumed that the president of the board of county commissioners may appoint a new designee.

2.11 Safe Harbor Provisions

Senate Bill 52's provisions regarding the oversight of individual projects and ad hoc membership on the OPSB do not apply to pending applications for OPSB certificates that have reached certain procedural milestones.

Wind Facilities

If the application for a wind farm has been filed with the OPSB, has been found to comply with the application requirements, and has been accepted by the OPSB by November 10, 2021 (30 days after the bill's effective date) it is not subject to review by the commissioners. If a pending application does not meet those criteria, the commissioners in the relevant counties have until January 10, 2022, to adopt a resolution prohibiting or limiting the project.

Large Solar Facilities

An application for a new large solar facility, or an amendment to an existing facility, is not subject to the commissioner review if the facility meets all of the following criteria:

- The facility is in the PJM Interconnection New Services Queue at the time the application is found to comply with the OPSB's application requirements;
- The application has been accepted by the OPSB; and
- As of October 11, 2021 (the Act's effective date), the applicant has received a completed system impact study from PJM and has paid the filing fee for the PJM's facilities study.

Ad Hoc Membership

Commissioners may appoint ad hoc members for a wind or solar project that has not been found to be complete and accepted by the OPSB as of October 11, 2021.

2.12 Decommissioning Requirements

The Act requires that the developer submit a comprehensive decommissioning plan to the OPSB at least 60 days before construction begins on a project. The plan must include a list of the parties responsible for decommissioning, a schedule of decommissioning activities (not to extend beyond 12 months of the date operation ceases), and an estimate of the full cost of decommissioning the facility (excluding any consideration of the salvage value of facility materials). The decommissioning cost must be recalculated every five years.

The plan must be developed by a professional engineer and the OPSB reserves the right to reject the engineer and require the applicant to select a new one.

Additionally, prior to beginning construction, the developer must post a performance bond to ensure that funds will be available for decommissioning. The OPSB must be named the obligee of the bond. The bond must equal the estimated cost of decommissioning the facility and must be updated every five years to correspond with the five-year decommissioning cost reevaluation. The bond can never decrease, even if the decommissioning cost decreases.

SECTION 3: QUALIFIED ENERGY PROJECT TAX ABATEMENT

3.01 OVERVIEW: SB 232, 128TH GENERAL ASSEMBLY

SB 232 of the 128th General Assembly, enacted in 2010, was the General Assembly's effort to encourage the development of alternative energy projects by allowing for an exemption from property taxes. Normally, public utilities are subject to property taxation assessed under ORC Chapter 5727 on both real property and tangible personal property. The exemption applies to individual facilities that meet certain criteria. The exemption can only be accessed through an application process. The legislation also created an "energy company" as a new type of electricity-related public utility and specified that the standard taxation rates for its tangible personal property would be 24% of true value for production equipment and 85% of true value for transmission and distribution equipment. An energy company is defined as a person engaged in the business of generating, transmitting, or distributing electricity in Ohio for use by others from an energy facility with an aggregate capacity in excess of 250 kilowatts.

An energy company starts the exemption process by applying for the certification of a facility by the Director of Development as a "qualified energy project." The qualified energy project exemption and procedure can be found in ORC Section 5727.75. Department of Development administrative rules are found in Ohio Administrative Code Chapter 122:23-1. A qualified energy project is defined as one that provides electric power through energy resources including renewable energy (such as wind and solar, among others), clean coal technology, advanced nuclear technology, or cogeneration technology (generation of electricity and thermal output). Authorization to apply for a qualified energy project exemption for clean coal, advanced nuclear, or cogeneration technology expired at the end of 2017, but application deadlines for renewable energy projects have been extended repeatedly.

Under the process created by SB 232, commissioners have sign-off authority on applications for certification as a qualified energy project with a nameplate capacity of above a certain threshold. Originally, this threshold was 5 megawatts or higher, but it was increased to 20 megawatts or higher by House Bill 6 of the 133rd General Assembly. Applications for tax exemptions for projects below the 20 megawatt threshold that receive approval from the Director of Development do not need county commissioner approval.

After an energy company applies to the Director of Development for certification as a qualified energy project, the Director must forward a copy of the application to the board of county commissioners in each county the project will be in and to each taxing unit with territory in the affected county or counties.

The board of commissioners may exercise one of two options for considering an application for a tax exemption. The board's action is taken by a majority vote.

> Option 1. The board can consider each application on a case-by-case basis. Under this option, upon receiving a copy of an application for the tax exemption, the board of county commissioners has a period of 30 days in which to adopt a resolution to approve or reject the exemption. A longer period for consideration may be authorized at the discretion of

the Director. The board's failure to take any action within the thirty-day period, or the extended period authorized by the Director, results in a rejection of the request for tax exemption.

Option 2. The board may adopt a resolution declaring the county to be an "alternative energy zone," providing for blanket approval of applications for exemptions in the county for as long as the zone is in effect. This resolution may be repealed at any time.

If the project will be in more than one county, only the portions of the project in each county are affected by the respective board's resolution. For example, if a renewable energy project were to have territory in both Henry and Putnam County, if the Henry County commissioners approve of the tax exemption but the Putnam County commissioners do not, the company would still be required to pay applicable property taxes to Putnam County.

Initially under SB 232, a project would be eligible for a tax exemption only if it had received certification from OPSB and construction had begun between January 1, 2009, and January 1, 2012. The deadlines have been extended in many subsequent bills, including the main operating budgets for the 130th, 131st, 133rd, and 134th General Assemblies. As a result of HB 110, 134th General Assembly, current deadlines are the following:

- The applicant must apply for an OPSB certificate no later than December 31, 2024;
- Construction or installation of the project must begin before January 1, 2025.
- The facility must be placed into service before January 1, 2026.

3.02 PILOT PAYMENTS

If the board adopts a resolution approving the tax exemption, the owner or lessee of the project is required to make mandatory annual service payments to the county treasurer for the duration of the project. The amount to be paid will be determined based on calculations made with regard to the total "nameplate capacity" of the project located within that county and the percentage of Ohio employees that are used during the installation and construction phase of the project. These mandatory payments will be distributed on the basis of the proportionate millage rates of the various taxing jurisdictions with property tax levies in place in the project territory. The board can also choose to impose an additional annual service payment to be paid into the county general fund. These two payments cannot exceed $9,000.

There are multiple reasons why a board may decide to grant the tax exemption. A county that approves a property tax exemption may be more likely to attract projects than a county that does not, although this effect may not always be applicable for qualified energy projects given the unique environmental needs that they require. Additionally, a county may prefer the stability of PILOT payments rather than the variable property tax revenue. A more detailed walkthrough of PILOT payments can be found below.

3.03 Requirements to Remain a Qualified Energy Project

ORC Section 5727.75(F) establishes several requirements that the owner of a qualified energy project must comply with to keep its designation and (if applicable) its property tax exemption in addition to complying with other applicable regulations and timely payment of their PILOT.

Construction Progress Report

The owner must file a certified construction progress report containing the percentage of the project that has been completed and the project's nameplate capacity as of the preceding December 31st. These reports must be filed with the Director of Development by March 1st of each year the projection's construction or installation is occurring.

Construction Employment Report

The owner must report to the Director of Development the total number of full-time equivalent employees who are employed in the construction or installation of the project, as well as the total number of full-time equivalent employees who reside in Ohio. The manner of this reporting requirement is prescribed by the Director. (OAC 122.23-1-03)

Infrastructure Repair

If the energy project has a nameplate capacity of 20 or greater megawatts, the owner must repair all roads, bridges, and culverts affected by the construction. The owner must work with the county engineer and the local jurisdiction responsible for the roads, bridges, and culverts to ensure they are restored to their preconstruction condition. If the county engineer determines that any are inadequate to support the construction or decommissioning of the energy facility, it must be rebuilt or reinforced by the county engineer prior to construction or decommissioning of the facility. The facility owner must post a bond in the amount established by the county engineer to ensure funding for the repairs needed. The board of county commissioners will hold the bond and must release the bond no later than one year after the repairs are completed. The owner and county engineer may enter a road use maintenance agreement if one is needed.

Public Safety Training

The owner of facility must provide or facilitate training for first responders on how to respond to emergency situations related to the energy project. If the nameplate capacity is 20 or greater megawatts, the owner must also provide first responders with the proper equipment reasonably required to enable them to respond to emergency situations related to the project.

Ohio Resident Percentage

Generally, during construction or installation of a qualified energy project the owner must maintain a certain ratio of full-time equivalent employees who are Ohio residents. If the project is a solar energy project, no less than 80% of the employees must be Ohio residents; for all other qualified energy projects no less than 50% of the employees must be Ohio residents.

University Partnership

If the energy project has a nameplate capacity of greater than 20 megawatts, the owner must establish a relationship with a member of the university system of Ohio or a person offering an apprenticeship program registered with the US Department of Labor or the Ohio apprenticeship

council. The purpose of these partnerships is to train individuals for careers in the wind or solar industry and may include endowments, internships, apprenticeships, research and development, and curriculum development.

Energy Credit Offer

Generally, the owner must offer to sell power or renewable energy credits to distribution utilities or electric service companies. If no distribution utilities or electric service companies requests or accepts an offer of the credits within a certain time, the owner may sell the credits to other entities or persons.

3.04 PILOT PAYMENT REQUIREMENTS

The owner or lessee of a qualified energy project that is exempted from property taxation by a board of commissioners is required to make mandatory annual service payments in lieu of real and tangible personal property taxes. This process is defined by ORC 5727.75. The Payment in Lieu of Taxes [P.I.L.O.T.] established by a board of county commissioners consists of two parts. There is a mandatory requirement that the energy project make annual service payments to the local taxing districts in which the project is located. This amount will be six, seven, or eight thousand dollars per megawatt of nameplate capacity depending upon the percentage of Ohio jobs that are used during the installation and construction phase of the project.

The board also may, at its discretion, choose to impose an additional annual service payment to be paid into the county general fund. The discretionary payment cannot exceed $2,000. These two amounts cannot exceed $9,000 per megawatt of nameplate capacity annually.

The amount of the payments is based on the project facility's nameplate capacity as well as the percentage of project construction and installation employees who are domiciled in Ohio. Payments are to be made to the county on or before the final dates for payment of taxes on public utility property for each tax year of which the project property is exempt. Payments are to be distributed to taxing districts on the basis of where the property is located and in the ratio of an individual taxing district’s proportionate share of the total millage levied by the taxing districts.

- For a solar energy project, the mandatory annual service payment equals $7,000 per megawatt of nameplate capacity;

- For any other renewable energy project, the payment for a tax year equals one of the following amounts, scaled according to Ohio-resident construction and installation employment ratios:

    - $6,000 per megawatt of nameplate capacity as of the preceding December 31, if the Ohio-domiciled full-time equivalent employee to total full-time equivalent employee ratio is at least 75%;
    - $7,000 per megawatt of nameplate capacity as of the preceding December 31, if the ratio is less than 75% but at least 60%;
    - $8,000 per megawatt of nameplate capacity as of the preceding December 31, if the ratio is less than 60% but at least 50%.

Additional Annual Service Payment

The board may include a requirement in its resolution approving the application for tax exemption of a qualified energy project that an additional annual service payment be made in addition to the mandatory service payment required to be made to the local taxing districts. Since the amount of the mandatory service payment and the additional service payment required by the board cannot exceed $9,000 per megawatt of nameplate capacity, the additional amount cannot exceed $2,000 for an eligible solar project, and between $1,000 and $3,000 for all other eligible alternative energy projects, depending upon the amount of the mandatory payment. It is important to note that, unlike the mandatory service payment, the law specifically states that this additional annual service payment shall be deposited "to the credit of the county's general fund to be used for any purpose for which money credited to that fund may be used."

3.05 Energy Facility's Effect on CAUV

Generally, solar or wind project development involves the conversion of land from agricultural use. Current law allows an owner of agricultural land to file, and subsequently renew, an application requesting the county auditor of the county in which such land is located to value the land for real property tax purposes at the current value such land has for agricultural use (Current Agricultural Use Value, or CAUV) (ORC Sections 5713.30 through .37). If the land is converted to a non-agricultural use, a portion of the tax savings authorized for the land is recouped by levying a charge on the land in an amount equal to the amount of the tax savings on the converted land during the three tax years immediately preceding the year in which the conversion occurs.

The law specifies that if an energy facility is constructed or installed on a portion of a tract, lot, or parcel of land that is devoted exclusively to agricultural use, the remaining part of the land will not be considered a conversion of agricultural land if it continues to be devoted exclusively to agricultural use (ORC 5713.30(b)(4)). The bill also prohibits levying a recoupment charge for conversion of a portion of a tract, lot, or parcel of land devoted to agricultural use if the conversion is incidental to the construction or installation of an energy facility and the remaining portion of the tract, lot, or parcel continues to be devoted exclusively to agricultural use (ORC 5713.34(A)(3)).

Revenue from the PILOT payments can be expected to far exceed the revenue stream generated by land in CAUV status. Nonetheless, if a PILOT payment is agreed to, the removal of real property from the property tax base may affect fixed sum levies (levies that must generate a specified amount, typically for debt service or an emergency school levy). In this case, other property owners may see small increases in their taxes to make up the difference. However, a taxing district with a fixed sum levy may decide to deposit some of PILOT payments into the same fund as the levy proceeds in order to make up the difference, thus preventing the need to raise millage rates on other property owners. Commissioners and taxing districts are advised to consult the Auditor of State to ensure that proper procedures are followed when making this decision.

3.06 Comparing PILOT Revenues to Property Taxes

In the absence of a qualified energy project exemption, renewable energy projects have property tax liability for the real property and tangible personal property installed at the facility. Land converted from agricultural use will be classified as Class II real property. Real property will

comprise a small portion of the overall value of the site, but its value can be expected to increase gradually over time.

Tangible personal property used in electric generation will be assessed at 24% of true value, and transmission equipment assessed at 85% of true value. Valuation of public utility tangible personal property is determined by the Ohio Department of Taxation rather than the county auditor. Property tax millage rates are applied to the taxable value of the production property physically located in each taxing district. Production property can be expected to comprise the vast majority of the taxable value of the equipment at the site. The taxable value of transmission equipment is apportioned according to the cost of this property physically located in each taxing district as a proportion of the total cost of all such taxable personal property physically located in the state. Millage rates are applied to the tangible property without regard to the H.B. 920 "tax reduction factors," but the value of the equipment will decline over time due to depreciation. Taxpayers must follow the depreciation schedule specified by the Ohio Department of Taxation. After twenty years, the depreciation schedule allows production equipment to be valued at approximately 30% of its original cost. The expected useful life of a facility is approximately 30 years.

Taxpayers may also appeal the valuation of their tangible personal property to the Ohio Department of Taxation. The ability to appeal and potentially achieve a reduction in value introduces an element of uncertainty into any long-term estimates of tax revenue from a project. It also raises the possibility of taxing districts having to refund significant amounts of money at some time in the future. In contrast, the revenue stream generated by PILOT payments will be stable over the life of the facility, unless there is an unexpected reduction in its nameplate capacity. This stability may enable the County Budget Commission to lower tax rates for taxing districts that are fully funding their needed services. Commissioners should work closely with the County Auditor to understand the potential impact of PILOT payments.

An element of PILOT payments that is attractive to school districts is that the property value of the facility is not included in the funding formula. In brief, the school funding formula enacted in H.B. 110 of the 134th General Assembly distributes state aid by determining each district's local capacity to raise its own revenue. Sixty percent of the local capacity calculation is based on the total taxable property value in the district. If a qualified energy project is paying a PILOT, the taxable value of the project is not included in the local capacity calculation. This makes the district appear less capable of generating its own revenue and therefore directs more state aid to it. It is important for commissioners to encourage school districts to calculate the potential long-term financial impact of a renewable project with and without a PILOT payment. Despite the interaction with state aid, a district that lacks significant commercial and industrial property and expects to go to the ballot for an increased levy may welcome the addition of tangible personal property to its tax base in order to reduce the tax burden on residential property owners.

Pilot Payments: Hypothetical Scenario

The following hypothetical scenario illustrates a comparison of estimated PILOT payments and revenue generated over the thirty-year lifecycle of solar project in a rural Ohio county. The assumptions used for the estimates are the following:

- The project nameplate capacity is 150 Megawatts, requiring 900 acres

- The county requests its full $2,000/MW payment, making the annual PILOT payment $9,000/MW or $1,350,000

- Equipment is valued at $1 million/MW, 90% production and 10% transmission

- Initial CAUV is $1,500/acre, $4,500 market value

- Real property valuation increases 2% per year

- Gross millage rate is a constant 47.35 with the school district and JVSD accounting for 32.1 mills of the total.

- The effective rate for Class II property is 40.6.

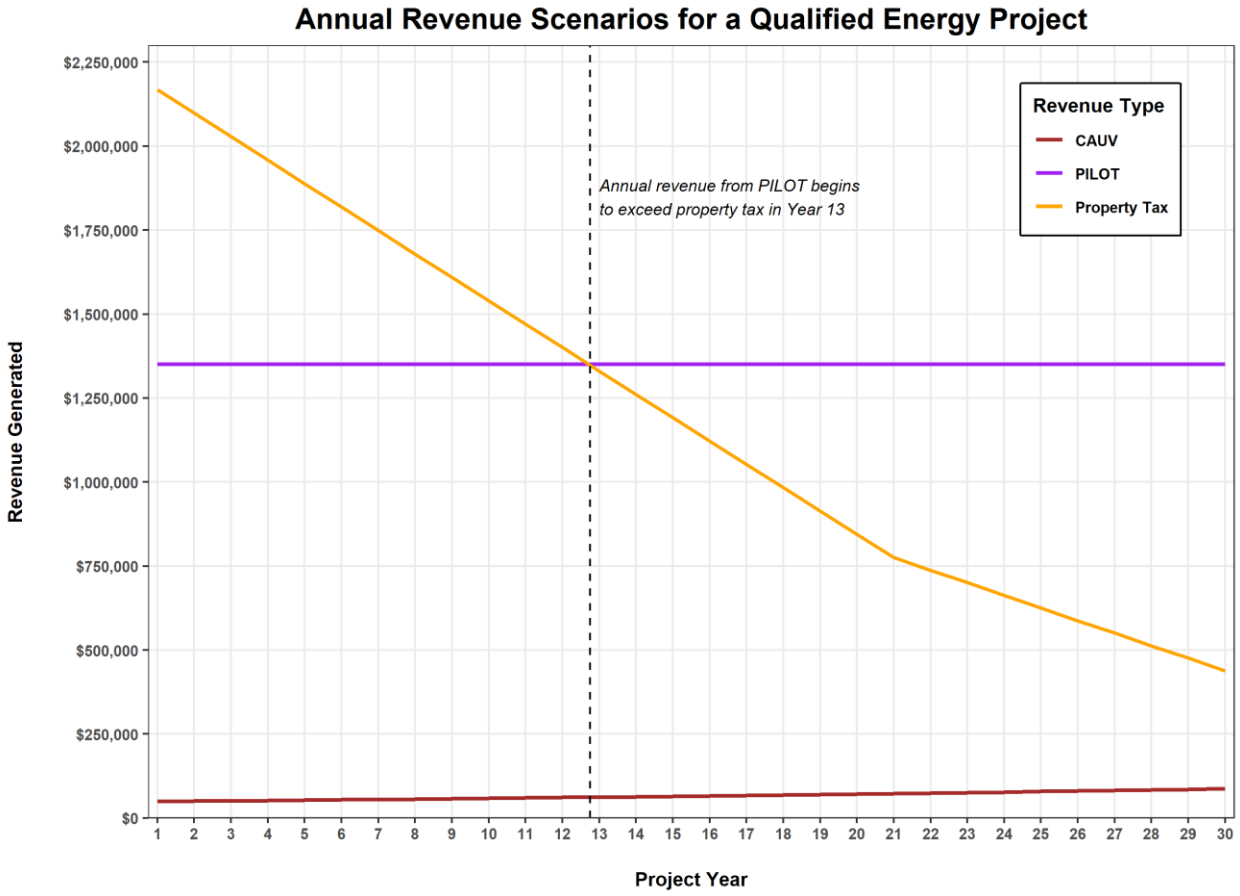
- The depreciation schedule follows the Ohio Department of Taxation Energy Company Annual Report for production and transmission property.

The first column in the table below shows CAUV payments if the land remains in agricultural production. The second column shows constant annual PILOT payments. The third column displays total combined payments resulting from liability on public utility tangible personal property and real property tax. Property tax payments decline over time due to depreciation. Over 30 years, total PILOT payments exceed standard property tax liability by $4.3 million, but the standard property tax payments are front-loaded. During the first fifteen years of the project, standard property tax payments exceed PILOT payments by nearly $5 million ($25.16 million vs. $20.25 million). Annual PILOT payments start to exceed estimated property tax payments in Year 13 (see graphic below).

The scenario illustrates the trade-off between the stability and predictability of the PILOT payments vs. higher initial payments. The county should calculate the present value of projected cash flows under different assumptions in order to help guide its decision. As mentioned above, PILOT payments do not influence the level of state support under the school funding formula. Also, there are a number of risks in making any long-term estimates, including the possibility that the developer may successfully challenge the valuation of its tangible personal property.

Comparison of Annual Revenue from Qualified Energy Project / PILOT
Hypothetical Scenario

YEAR	CAUV	Qualified Energy Project PILOT	Property Tax (No PILOT)
1	$49,235	$1,350,000	$2,167,565
2	$50,219	$1,350,000	$2,098,336
3	$51,224	$1,350,000	$2,029,135
4	$52,248	$1,350,000	$1,957,822
5	$53,293	$1,350,000	$1,888,675
6	$54,359	$1,350,000	$1,819,556
7	$55,446	$1,350,000	$1,748,328
8	$56,555	$1,350,000	$1,679,266
9	$57,686	$1,350,000	$1,610,235
10	$58,840	$1,350,000	$1,539,096
11	$60,017	$1,350,000	$1,470,125
12	$61,217	$1,350,000	$1,401,187
13	$62,441	$1,350,000	$1,330,142
14	$63,690	$1,350,000	$1,261,269
15	$64,964	$1,350,000	$1,192,429
16	$66,263	$1,350,000	$1,122,401
17	$67,588	$1,350,000	$1,052,943
18	$68,940	$1,350,000	$983,520
19	$70,319	$1,350,000	$913,141
20	$71,725	$1,350,000	$844,479
21	$73,160	$1,350,000	$775,854
22	$74,623	$1,350,000	$737,198
23	$76,116	$1,350,000	$700,719
24	$77,638	$1,350,000	$662,142
25	$79,191	$1,350,000	$625,744
26	$80,774	$1,350,000	$587,250
27	$82,390	$1,350,000	$550,936
28	$84,038	$1,350,000	$512,528
29	$85,718	$1,350,000	$476,301
30	$87,433	$1,350,000	$437,982
Total	$1,997,349	$40,500,000	$36,176,305



3.07 Air Quality Development Authority Tax Exemption

An alternative process for obtaining a tax exemption for a wind or solar utility facility is to finance the project though the Ohio Air Quality Development Authority, a state agency established under ORC Chapter 3706. The governing board of the Authority is comprised of seven members, five of whom are appointed by the governor, as well as one by both the director of the Ohio EPA and the director of the Department of Health. The main function of the Authority is to provide third-party "conduit" financing for a public or private organization that installs an "air quality facility." In conduit financing, the Authority issues the bonds but the entity that benefits from the funds is responsible for the principal and interest payments.

The definition of an air quality facility includes equipment used to generate renewable energy. By statute, property comprising an air quality project is exempt from real and personal property taxes and from sales and use taxes (ORC Section 3706.15). The property tax exemption lasts until the bonds are retired, but the sales and use tax exemption is generally intended to be used for parts and materials necessary to install the project. Replacement parts do not qualify for the sales tax exemption unless they are specifically designed by the Authority. After issuing the bonds, the Authority will issue a tax exemption certificate for the project, a copy of which is provided to the county auditor.

Counties and other local governments have input into the Authority's decision-making about a project. Although the Authority cannot grant a partial tax exemption, it may help to negotiate compensation agreements with local taxing authorities. One approach is to negotiate an arrangement that creates that same payment structure as a standard PILOT agreement. Structuring these payments should be handled with care and take into account the initial revenue loss from the sales tax exemption, a factor that is not present in the qualified energy project tax abatement.

SECTION 4: APPENDICES

4.01 FORM OF REFERENDUM PETITION (ORC 303.59)

PETITION FOR REFERENDUM ON THE DESIGNATION OF A RESTRICTED AREA PROHIBITING THE CONSTRUCTION OF UTILITY FACILITIES

(if the proposal is identified by a particular name or number, or both, these should be inserted here)_____

A proposal to designate a restricted area prohibiting the construction of utility facilities in the unincorporated area of _____ county, Ohio, adopted _____(date) (followed by brief summary of the resolution).

To the board of county commissioners of _____ county, Ohio:

We, the undersigned, being electors residing in _____county, equal to not less than eight per cent of the total vote cast for all candidates for governor in the county at the preceding general election at which a governor was elected, request the board of county commissioners to submit this designation of a restricted area to the electors of _____ county, for approval or rejection at a special election to be held on the day of the primary or general election to be held on _____ (date), pursuant to section 303.59 of the Revised Code.

_____ Signature

_____ Residence address

_____ Date of signing

STATEMENT OF CIRCULATOR

I, _____ (name of circulator), declare under penalty of election falsification that I reside at the address appearing below my signature; that I am the circulator of the foregoing part petition containing _____ (number) signatures; that I have witnessed the affixing of every signature; that all signers were to the best of my knowledge and belief qualified to sign; and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

_____ (Signature of circulator)

_____ (Circulator's residence address)

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.

4.02 Designation of a Restricted Area and Referendum

(ORC 303.58 and 303.59)

Commissioners Set a Date to Consider a Resolution Designating a Restricted Area

- The resolution may be adopted at a regular or special session and must include a map of the area

Certain Notices Must Be Provided at Least 30 Days Prior to the Session Date

- Provide notice in a newspaper of general circulation
- Post a map of the proposed project in all public libraries in the county
- Provide written notice by first class mail to school districts, municipalities, and townships in the project area

Resolution Becomes Effective 30 days After Adoption Unless Referendum Petition is Filed

- Copies of the resolution and map must be filed within 5 days of the effective date with the county auditor and the county or regional planning commission

If Petitions are Filed with the Board of County Commissioners

- Valid petition requires signatures from 8% of voters in most recent gubernatorial election
- Must contain a resolution summary, the resolution number, and a complete and accurate resolution title
- Commissioners must certify the petitions to the board of elections within two weeks of receipt

Board of Elections Determines the Sufficiency and Validity of the Petitions

The question will be placed on the ballot at the next primary or general election at least 120 days after the petition was filed with the commissioners

If the voters approve the restricted area, it goes into effect upon certification of the results by the board of elections

4.03 Procedure for a Proposed Individual Project

(ORC 303.61, 303.62)

Project Developer Mandatory Public Meeting

- Developer must provide written notice to the boards of county commissioners and boards of township trustees in the project area at least 14 days before the public meeting
- Information must include the facility type, nameplate capacity, and project boundaries
- Meeting must take place at least 90 - 300 days prior to filing an application with the OPSB

After the meeting, Commissioners have 90 days in which to Respond

- Commissioners may take one of two actions:
  - Prohibit the construction of the facility (which prevents the developer from applying)
  - Limit the boundaries of the facility to a smaller geographic area
- If no action is taken within 90 days, project developer may proceed with the application without any modifications

Ohio Power Siting Board - Pre-Application Steps (OAC 4906-3-03)

(if the project is allowed to move forward)

- Developer files a pre-application notice letter with the OPSB
- Developer holds a second public informational meeting no more than 90 days before applying, with prior notice in newspapers and written notice via first class mail to affected property owners and tenants

Application filed with the OPSB

- Commissioners may choose to become an official intervenor
- President of board of county commissioners designates the Ad Hoc Member of the OPSB no later than 30 days after receiving notice from the OPSB that the application is complete and accepted