

## Wolf, Jimmy

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**From:** Wolf, Jimmy  
**Sent:** Wednesday, June 21, 2017 3:49 PM  
**To:** 'Randazzo, Sam'  
**Subject:** RE: Wind setback amendment

Sam,

Thanks for the input. I will get this to Rep. Seitz right away.

## Jimmy Wolf

Legislative Aide to Representative Bill Seitz  
30<sup>th</sup> House District  
614.466.8258  
Jimmy.wolf@ohiohouse.gov

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**From:** Randazzo, Sam [mailto:sam@mwncmh.com]  
**Sent:** Wednesday, June 21, 2017 3:33 PM  
**To:** Wolf, Jimmy <Jimmy.Wolf@ohiohouse.gov>  
**Cc:** Elisar, Scott <selisar@mwncmh.com>  
**Subject:** Wind setback amendment

Jimmy

I have inserted notes in the attached PDF version of the setback amendment. I hope they are responsive and useful. Please let me know if there are questions or we can provide additional information.

Thanks for the opportunity.

Sam

Sam Randazzo  
McNees Wallace & Nurick LLC  
(founded 1935)

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**From:** [Jimmy.Wolf@ohiohouse.gov](mailto:Jimmy.Wolf@ohiohouse.gov) [mailto:Jimmy.Wolf@ohiohouse.gov]  
**Sent:** Wednesday, June 21, 2017 2:31 PM  
**To:** Randazzo, Sam <[sam@mwncmh.com](mailto:sam@mwncmh.com)>  
**Subject:** Wind setback amendment

Sam,

Rep. Seitz asked that I pass along the attached Senate wind setback amendment that got put into the omnibus. He would like to hear your detailed thoughts on it.

Thanks,

**Jimmy Wolf**

Legislative Aide to Representative Bill Seitz

30<sup>th</sup> House District

614.466.8258

[Jimmy.wolf@ohiohouse.gov](mailto:Jimmy.wolf@ohiohouse.gov)

Sub. H.B. 49  
As Pending in S. Finance

\_\_\_\_\_ moved to amend as follows:

In line 194 of the title, after "4906.13," insert "4906.20,  
4906.201," 1 2


In line 618, after "4906.13," insert "4906.20, 4906.201," 3

After line 76227, insert: 4

"Sec. 4906.20. (A) No person shall commence to construct an 5  
economically significant wind farm in this state without first 6  
having obtained a certificate from the power siting board. An 7  
economically significant wind farm with respect to which such a 8  
certificate is required shall be constructed, operated, and 9  
maintained in conformity with that certificate and any terms, 10  
conditions, and modifications it contains. A certificate shall be 11  
issued only pursuant to this section. The certificate may be 12  
transferred, subject to the approval of the board, to a person 13  
that agrees to comply with those terms, conditions, and 14  
modifications. 15

(B) The board shall adopt rules governing the certificating 16  
of economically significant wind farms under this section. Initial 17  
rules shall be adopted within one hundred twenty days after June 18  
24, 2008. 19

(1) The rules shall provide for an application process for 20

certificating economically significant wind farms that is 21  
identical to the extent practicable to the process applicable to 22  
certificating major utility facilities under sections 4906.06, 23  
4906.07, 4906.08, 4906.09, 4906.10, 4906.11, and 4906.12 of the 24  
Revised Code and shall prescribe a reasonable schedule of 25  
application filing fees structured in the manner of the schedule 26  
of filing fees required for major utility facilities. The rules 27  
shall require an applicant to do all of the following:  28

(a) Hold a public information meeting not later than ninety 29  
days prior to the filing of the application; 30

(b) Provide notice that includes information on both the 31  
meeting and the wind turbine setback requirements under division 32  
(B)(2) of this section through both of the following methods: 33

(i) Publication in a newspaper of general circulation in the 34  
area in which the economically significant wind farm is proposed 35  
to be constructed; 36

(ii) A letter to each property owner of, and each tenant 37  
residing on, property that abuts the property on which the 38  
economically significant wind farm is proposed to be constructed. 39

(2) Additionally, the rules shall prescribe reasonable 40  
regulations regarding any wind turbines and associated facilities 41  
of an economically significant wind farm, including, but not 42  
limited to, their location, erection, construction, 43  
reconstruction, change, alteration, maintenance, removal, use, or 44  
enlargement and including erosion control, aesthetics, 45  
recreational land use, wildlife protection, interconnection with 46  
power lines and with regional transmission organizations, 47  
independent transmission system operators, or similar 48  
organizations, ice throw, sound and noise levels, blade shear, 49  
shadow flicker, decommissioning, and necessary cooperation for 50

# Summary of Comments on C0102670.pdf

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Page: 2

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Number: 1 Author: srandazzo Subject: Note Date: 6/21/2017 3:27:48 PM -04'00'

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The language added at lines 27 through 39 appears to be designed to reduce a wind developers duty to communicate at the local level and, in any event, assumes that the OPSB will timely and faithfully comply with all the requirements to adopt rules in the face of OPSB's non-compliance for the past 8 years.

site visits and enforcement investigations. 51

(a) The rules also shall prescribe a minimum setback for a 52  
 wind turbine of an economically significant wind farm. That 53  
 minimum shall be equal to a horizontal distance, from the 54  
 turbine's base to the property line of the wind farm property, 55  
 equal to one and ~~one-tenth~~ two-tenths<sup>1</sup> times the total height of 56  
 the turbine structure as measured from its base to the tip of its 57  
 highest blade and be at least one thousand ~~one~~ two hundred 58  
 twenty-five feet in horizontal distance from the tip of the 59  
 turbine's nearest blade at ninety degrees to ~~property line the~~ 60  
~~exterior~~ of the nearest, habitable, residential structure<sup>2</sup> any, 61  
located on adjacent property at the time of the certification 62  
 application. 63


(b) ~~(i)~~ For any existing certificates and amendments thereto, 64  
 and existing certification applications that have been found by 65  
 the chairperson to be in compliance with division (A) of section 66  
 4906.06 of the Revised Code before the effective date of the 67  
 amendment of this section by H.B. 59 of the 130th general 68  
 assembly, September 29, 2013, the distance to the exterior of the 69  
~~nearest, habitable, residential structure~~<sup>3</sup> shall be seven hundred 70  
 fifty feet ~~instead of one thousand one hundred twenty five feet.~~ 71

~~(ii) Any amendment made to an existing certificate after the~~ 72  
~~effective date of the amendment of this section by H.B. 483 of the~~ 73  
~~130th general assembly shall be subject to the setback provision~~ 74  
~~of this section as amended by that act. The amendments to this~~ 75  
~~section by that act shall not be construed to limit or abridge any~~ 76  
~~rights or remedies in equity or under the common law.~~<sup>4</sup> 77


(c) The setback shall apply in all cases except those ~~in~~ 78  
~~which all owners~~ when an owner of property adjacent to the a 79  
parcel that abuts a parcel where a<sup>5</sup> ~~wind farm property waive~~ 80

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- Number: 1 Author: srandazzo Subject: Note Date: 6/21/2017 3:25:06 PM -04'00'
- The change to two-tenths works to reduce the minimum setback requirement as it is combined with the other proposed changes. Information provided in recent senate hearings by stakeholders including Julie Johnson shows that Ohio's setback distances should be increased (not decreased).
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- Number: 2 Author: srandazzo Subject: Note Date: 6/21/2017 3:05:47 PM -04'00'
- The language calls for the setback to be measured from a habitable residential structure rather than the property line. this means that wind farm developer obtains an uncompensated-for right to use and enjoy property of non-participating land owners to the disadvantage of the non-participating land owner (a trespass in any other context). Also the setback measurement process is static; it does not compute a setback distance based on the maximum high or size of turbines that may be installed at the location and it only considers structures that are located on adjacent property at the time the certification application is filed.
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- Number: 3 Author: srandazzo Subject: Note Date: 6/21/2017 3:07:08 PM -04'00'
- Same problem -- measurement is from nearest habitable structure
- 
- Number: 4 Author: srandazzo Subject: Note Date: 6/21/2017 3:14:05 PM -04'00'
- The deletion of the language that calls for the new setbacks to attach when certificates are amended makes the problems created by the one-time and static measurement of the minimum setback worse. In other words, the OPSB approves a certificate to construct and operate 400 foot turbine towers with specified turbine blade lengths. Then the wind farm developer seeks an amendment to install 600 foot towers and turbines that have a much longer blade length. The larger turbines are designed to increase the duration and frequency of the operation of the wind turbines made possible by elevating the turbines into better wind resources. All of this compounds the problems created by not measuring the setback distance for the property line.
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- Number: 5 Author: srandazzo Subject: Note Date: 6/21/2017 3:23:59 PM -04'00'
- The proposed change to division (c) conforms the statutory language to the wind developers previously asserted (and rejected) claim that a it can evade the minimum setback waiver need only be secured from an owner of property that abuts a parcel which hosts a turbine that penetrates the minimum setback (which this amendment measures from a habitable residential structure at the location at the time of the certificate application). There is no regard for impacts on other owners of property that adjoins the wind farm property and may have their use and property enjoyment rights diminished as a matter of physics simply because their property does not abut the parcel on which the non-compliant turbine is located. And as you know, the OPSB has, for years, been obligated to establish, by rule, the procedure by which minimum setback waiver must be secured and as no done so.

turbine is located waives application of the setback to that 81  
 property parcel pursuant to a procedure the board shall establish 82  
 by rule and except in which, in a particular case, the board 83  
 determines that a setback greater than the minimum is necessary. 84

(C) As used in this section, "parcel" has the same meaning as 85  
 in section 2329.66 of the Revised Code.  86

Sec. 4906.201. (A) An electric generating plant that consists 87  
 of wind turbines and associated facilities with a single 88  
 interconnection to the electrical grid that is designed for, or 89  
 capable of, operation at an aggregate capacity of fifty megawatts 90  
 or more is subject to the minimum setback requirements established 91  
 in rules adopted by the power siting board under division (B) (2) 92  
 of section 4906.20 of the Revised Code. 93

(B) ~~(1)~~ For any existing certificates and amendments thereto, 94  
 and existing certification applications that have been found by 95  
 the chairperson to be in compliance with division (A) of section 96  
 4906.06 of the Revised Code before the effective date of the 97  
 amendment of this section by H.B. 59 of the 130th general 98  
 assembly, September 29, 2013, the distance to the exterior of the  99  
nearest, habitable, residential structure shall be seven hundred 100  
 fifty feet ~~instead of one thousand one hundred twenty five feet.~~ 101

~~(2) Any amendment made to an existing certificate after the 102  
 effective date of the amendment of this section by H.B. 483 of the 103  
 130th general assembly, shall be subject to the setback provision 104  
 of this section as amended by that act. The amendments to this 105  
 section by that act shall not be construed to limit or abridge any 106  
 rights or remedies in equity or under the common law."~~ 107

In line 102772, after "4906.13," insert "4906.20, 4906.201," 108



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Number: 1 Author: srandazzo Subject: Note Date: 6/21/2017 3:26:52 PM -04'00'

2329.66 identifies type of property that is exempt from execution, garnishment, attachment or sale to satisfy a judgment or order and the scope of the exemption. There is definition of "parcel" in division (A)(1)(c) but the definition is designed to limit the scope of the exemption and not to generally define the term "parcel".

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Number: 2 Author: srandazzo Subject: Note Date: 6/21/2017 3:27:11 PM -04'00'

The changes made in lines 99 through 107 simply repeat the problems discussed above but do so with regard to wind farms of 50 megawatts or more.

The motion was \_\_\_\_\_ agreed to.

### SYNOPSIS

Revises wind farm setbacks	109
R.C. 4906.20 and 4906.201	110
Alters the minimum setback for wind turbines of wind farms	111
with generating capacity of five megawatts or more by changing the	112
two applicable horizontal distances used to calculate the setback	113
requirement as follows:	114
- Makes the distance requirement from the turbine's base to	115
the wind farm property line equal to 1.2 times the total turbine	116
height to its highest blade (current law is 1.1 times); and	117
- Measures the 1,225 foot distance requirement from the tip	118
of the turbine's nearest blade at 90° to the exterior of the	119
nearest, habitable residential structure, if any, located on	120
adjacent property (current law measures the distance to the	121
property line of the nearest adjacent property).	122
Changes the setback waiver provision to permit "an owner of a	123
parcel that abuts a parcel where a wind turbine is located" to	124
waive the setback requirement (current law permits "all owners of	125
property adjacent to the wind farm property" to make the waiver).	126
Removes the provision, both for wind farms that are	127
economically significant and that are major utility facilities,	128
that amendments to certificates made after the effective date of	129
H.B. 483 of the 130th General Assembly are subject to that act's	130
provisions.	131