



POWER Communication

Policy Outreach and Effective Results

POLICY AND ISSUE DISCUSSION SHEET

Ohio SB 52 and Property Rights

Defining the Issue

Senate Bill 52 is a legislative act that limited the property rights of private landowners to use their land for solar or wind development. Ohio Farm Bureau opposed the bill in the General Assembly, on the basis of our bedrock principle of protecting private property rights of all landowners. It is no secret that some groups have the ultimate goal of banning livestock farms and other agricultural activities, and have pointed to these same methods as how that could be accomplished. Ohio Farm Bureau's position was not based on the type of development at hand, but rather the principle of property rights and our concern for how this affects the ability of farmers to continue farming.

OFBF Policy

Energy

Ohio Farm Bureau supports energy development efforts that involve the project developer, utilities, regulatory agencies, government at the local, state and federal levels, economic development authorities and community groups. These efforts should focus on creation of projects that address environmental concerns, consider aesthetic needs and provide economic benefits for landowners and the community.

Ohio Farm Bureau recognizes the rights of landowners to enter into effective partnerships and agreements with developers to responsibly use land and resources to develop energy transportation, generation and distribution projects. We expect these partners to fully disclose all parts of the development process, including installation and operation of facilities as well as repair and remediation guidelines to put adjoining agricultural ground back into production.

Ohio Farm Bureau urges companies and government agencies responsible for the decommissioning of all power generation infrastructure to ensure the property and facilities can and will be used in a safe and viable manner to benefit all.

Ohio Farm Bureau should provide leadership in the on-going development of a comprehensive state energy policy that incorporates the use of coal, nuclear, natural gas, petroleum and competitive renewable technologies. These renewable technologies include, but are not limited to wind, solar, biomass, geothermal, hydroelectric and fuel cells.

Electric Utility Infrastructure Development

Ohio Farm Bureau supports coordination between federal and state regulatory authorities, regional transmission organizations, public utilities and energy service providers to update and modernize electric generation, transmission and distribution infrastructure collectively referred to as the electric grid.

Wind and Solar

We support Ohio Power Siting Board (OPSB) rules, regulations, stipulations, orders and amendments that provide landowner friendly, reasonable and uniform statewide procedures for siting, placement, construction and operation of utility-scale wind and solar farms. These should include:

- Examination of local zoning rules and development plans, as well as an explanation of what local rules and plans apply and do not apply as part of the OPSB process.
- Creation of an application that evaluates economic, environmental and aesthetic impacts on the community.
- The application is available by a variety of means and is posted as a matter of public record.
- Scheduling adjudicatory and local public hearings, enabling citizens, interest groups and governmental entities to present testimony.
- We support education and outreach activities for local government leaders and community planners as they work to create county, municipal and township zoning ordinances governing the use of on-site wind turbine and solar technology for farm, business and home use.
- We support wind turbine setback requirements that ensure safety and are based on scientific research.

Government Accountability

We support accountability to the general public by members of boards and commissions; members of other boards, commissions (i.e. planning commission, zoning commission), water districts and sanitary districts being appointed by the Board of County Commissioners or Board of Township Trustees.

Land Use Planning

We support:

- Farm Bureau members serving on zoning commissions and on boards of zoning appeals;

- Members being involved in the development and implementation of countywide comprehensive land-use plans;
- County or township zoning plans addressing the potential change of use of a parcel from agricultural to non-agricultural when larger parcels are subdivided.

Policy Backgrounder

SB 52 gives county commissioners the power to ban a state regulated and permitted industry in either the entire county or portions of the county. If a county passes a resolution banning solar and wind development, citizens can pursue a referendum of that ban. However, that referendum requires the citizens to collect signatures equal to 8% of the total number of votes cast in the most recent election for governor in that county. Those signatures must be collected and returned within 30 days of the resolution. By example, in Auglaize County that would be a little over 1,500 signatures, in Franklin County it would require nearly 39,000 signatures, and in Wood County, approximately 4,000 signatures.

SB 52 also requires any solar or wind developer to hold a public meeting in each county where a facility will be located at least 90 days prior to filing an application with the OPSB. (Note that the OPSB currently requires developers to hold a meeting no more than 90 days prior to submitting their application, in addition to local hearings after the application is submitted). The county board then has 90 days to adopt a resolution prohibiting or reducing the proposed project in size, and such resolution is binding on the OPSB. This is in addition to the power discussed above to generally ban all solar and wind development in a county or in certain areas of a county.

SB 52 also adds that the chairperson of the township trustees and the president of the county commissioners will serve as ad hoc members of the OPSB, and will vote on any grant of a certificate by the OPSB. This is subject to conflicts of interest provisions.

Finally, SB 52 modified decommissioning requirements for solar and wind. While decommissioning requirements were always included in solar and wind project certificates, the legislation clarifies that a bond for decommissioning must be secured, and the amount of the bond cannot consider any credit for salvage value.

What did Farm Bureau propose?

OFBF understands that members have concerns about the transparency of the process of solar and wind siting. In accordance with our member-developed policy, OFBF proposed a number of reforms that would have increased communication and transparency for local landowners well before a project reaches the OPSB stage. We also proposed better defining the standards by which the OPSB approves a project.

Zoning limits private property rights too, why is this different?

It is certainly correct that zoning limits private property rights. However, zoning within a township or county must be approved by the citizens before it can take effect. The citizens of an area must first consent to being regulated in such a way and approve the districts, plans and ordinances that are implemented. Zoning is used to organize land uses, not necessarily to ban them. In contrast, SB 52 allows county commissioners to control the land use of private property without any such prior general consent, without any prior specific approval and completely bans a legal and state-regulated land use. Additionally, land uses that are regulated and permitted by the state generally cannot be prohibited by local officials. This applies to things like oil and gas wells, large livestock farms, and highly regulated entities which go through extensive regulatory reviews that include siting criteria at the state level.

Why does Farm Bureau keep talking about the bigger impacts of this bill if it only affects wind and solar?

This is an incredibly concerning erosion of private property rights and the social contract we have with our local officials that they serve at our pleasure and with our consent to be governed. Anti-agricultural advocates have argued for years that other legal and state-regulated agricultural uses, such as livestock farms, should be subject to local control and bans by local officials. While this bill only applies to wind and solar today, it creates more momentum to allow local officials to limit and prohibit agricultural operations and land uses. Already we have seen letters to the editor asking for the same treatment for livestock farms, and legislation introduced to create a moratorium and possible ban on new concentrated animal feeding operations in certain areas of the state.

Doesn't Farm Bureau care about farmland preservation?

Of course, farmland preservation is of vital concern to our members and our organization. It is our goal to always provide our members with the tools, resources and information they need to preserve their land for future generations. But we also must recognize that each individual landowner has the right to make decisions for their own operation and their own property. And more so, the private landowner is in the best position to make those decisions, not legislators in Columbus, local officials, or their neighbors who dislike what they are doing.

Didn't Farm Bureau just oppose this bill because they support wind and solar?

OFBF has always supported an "all of the above" energy strategy. Just weeks before this bill, OFBF testified in support of HB 201. The legislation prevented local governments from using the building or fire codes to prohibit the use of natural gas in new buildings. This was in line with our principle that all types of energy should be available. Agriculture is an energy intensive industry, and it is important that we continue to look to a diverse set of energy sources to ensure our energy needs can be met. While OFBF opposed the bill, the wind and solar energy industries did not oppose this legislation.

Discussion Questions

1. A landowner makes a decision to use his/her property that concerns a neighbor. When and under what conditions should that neighbor have the right to influence control and use of that property?
2. While having local community and government input in power siting issues is vital, allowing it to preempt state and federal government regulations could lead to unexpected consequences. How would you “strike the balance” between the areas of local and state jurisdiction and control?
3. Some stakeholders agree that Ohio’s adjudicatory evaluation process focuses on facts and evidence to determine power siting issues. Others agree that the process should be changed where local popular vote or decree determines what is done. Besides power siting, what other development issues can you identify where these two positions could be in conflict?
4. Given the need for local input and involvement in power siting issues, how and when would your community council members want to be involved in the process?