Another Year, Another Round of Changes to Renewable Energy Siting and Battery Storage (BESS) Regulation in Kentucky

May 15, 2026

Categories:

Data Centers
Publications

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House Bill (HB) 677 became law without Governor Beshear's signature on April 14, 2026. HB 677 originally focused on regulating the carbon sequestration industry but subsequent additions included sweeping new controls impacting wind development and decommissioning electric generation facilities. However, the last-minute enactment of HB 869, signed by Governor Beshear on April 27, 2026, has created potential ambiguity to the regulatory status of Battery Energy Storage Systems (BESS) with respect to the Siting Board.

Ambiguity as to Siting Board Authority Over Battery Energy Storage Systems

HB 677 amended the Siting Board's governing statutes to BESS co-located with Merchant Electric Generation Facilities (MEGFs) to minimum setbacks and application requirements. The subsequent enactment of HB 869, however, largely removed BESS-related language from those statutes, creating uncertainty regarding whether—and to what extent—the Siting Board has authority to regulate BESS facilities.

To date, the Siting Board has not directly addressed its jurisdiction over stand-alone BESS, and the recent statutes do not provide extensive clarity regarding the Board's jurisdiction. However, the Board has exercised jurisdiction over BESS facilities co-located with solar projects.

HB 869 introduced potentially conflicting provisions. Section 56 removed "storage" from KRS 278.704, thus excluding BESS facilities from the 2,000-foot setback requirement. Section 57, however, retained "storage" in KRS 278.706(2)(e), requiring applicants to

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provide a statement that facilities used for the generation or storage of electricity comply with that same setback. As a result, applicants may be required to certify setback compliance for BESS facilities that are not themselves subject to the statutory setback. Implementation of this provision is likely to be further clarified by the Board's orders over the coming year.

Decommissioning Plans and Bonds: Higher Costs, Fewer Offsets

HB 677 includes amendments to decommissioning requirements that affect the decommissioning plan and bond necessary for every merchant electric generating facility, including:

- Deviations requested by a landowner from component removal requirements under KRS 278.706(2)(m) must now be made by the "current landowner at time of decommissioning".
- The calculation of the estimated decommissioning cost can no longer incorporate net salvage value.
- If a government entity is forced to draw on the decommissioning bond, it will be entitled to proceeds from the sale of any salvaged materials or facility components recovered during the decommissioning process.
- If the Energy and Environment Cabinet carries out the decommissioning process, any proceeds from salvaged materials or components in excess of the decommissioning bond amount will be deposited in the monitoring and enforcement fund established under KRS 224.10-285(3).

Wind Energy: New Height Restrictions and Application Requirements

Section 25 of HB 677 establishes height limitations for wind-powered merchant electric generating facilities.

The bill establishes a 350-foot maximum height for a wind turbine, as measured from the natural grade to the top of the hub where the rotor attaches. A deviation from this height restriction can be granted by the Siting Board if made during the processing of the

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wind project's Siting Board application. Local jurisdictions with a maximum height established by a planning and zoning commission will retain primacy over statutory height limits.

For application purposes, HB 677 requires a construction certificate application for a wind energy facility to include a statement certifying that:

- Any wind turbine will not be artificially lighted except as required by law;
- Wind power facilities will be sited in a manner that minimizes shadowing or flicker impacts; and
- Any showing or flicker impacts will not have a significant adverse impact on neighboring or adjacent property uses through siting or mitigation.

At FBT Gibbons, we pride ourselves on understanding each client's objectives in the face of an evolving legal landscape. For more information how these statutory changes could impact your business, please contact the authors or any member of FBT Gibbons' Renewables team.

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