

Act No. 233
Public Acts of 2023
Approved by the Governor
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**STATE OF MICHIGAN
102ND LEGISLATURE
REGULAR SESSION OF 2023**

Introduced by Reps. Aiyash, Puri, Brenda Carter, Pohutsky, Rheingans, Hope, O'Neal, Byrnes, Stone, MacDonell, Tsernoglou, Morse, Breen, Martus, Andrews, Steckloff and Wilson

ENROLLED HOUSE BILL No. 5120

AN ACT to amend 2008 PA 295, entitled “An act to require certain providers of electric service to establish and recover costs for renewable energy programs; to require certain providers of electric or natural gas service to establish energy waste reduction programs; to authorize the use of certain energy systems to meet the requirements of those programs; to provide for the approval of energy waste reduction service companies; to reduce energy waste by state agencies and the public; to create a wind energy resource zone board and provide for its power and duties; to authorize the creation and implementation of wind energy resource zones; to provide for expedited transmission line siting certificates; to provide for customer generation and net metering programs and the responsibilities of certain providers of electric service and customers with respect to customer generation and net metering; to provide for fees; to prescribe the powers and duties of certain state agencies and officials; to require the promulgation of rules and the issuance of orders; to authorize the establishment of residential energy improvement programs by providers of electric or natural gas service; and to provide for civil sanctions, remedies, and penalties,” by amending the title and section 13 (MCL 460.1013), as amended by 2016 PA 342, and by adding part 8.

The People of the State of Michigan enact:

TITLE

An act to require certain providers of electric service to establish and recover costs for renewable energy and clean energy programs; to require certain providers of electric or natural gas service to establish, and recover costs for, energy waste reduction programs; to ensure that costs and savings from renewable energy, clean energy, and energy waste reduction programs are included in the determination of rates; to authorize the use of certain energy systems to meet the requirements of those programs; to provide for the approval of energy waste reduction service companies; to reduce energy waste by state agencies and the public; to create a wind energy resource zone board and provide for its power and duties; to authorize the creation and implementation of wind energy resource zones; to provide for expedited transmission line siting certificates; to provide for customer generation and net metering programs and the responsibilities of certain providers of electric service and customers with respect to customer generation and net metering; to provide for fees; to prescribe the powers and duties of certain state agencies and officials; to require the promulgation of rules and the issuance of orders; to authorize the establishment of residential energy improvement programs by providers of electric or natural gas service; to authorize certification by this state before the construction of certain wind and solar energy facilities and energy storage facilities; to regulate certain local ordinances; to protect personal property rights; and to provide for civil sanctions, remedies, and penalties.

Sec. 13. As used in this act:

(a) "Site", except as used in part 8, means a contiguous site, regardless of the number of meters at that site. A site that would be contiguous but for the presence of a street, road, or highway is considered to be contiguous for the purposes of this subdivision.

(b) "Transmission line" means all structures, equipment, and real property necessary to transfer electricity at system bulk supply voltage of 100 kilovolts or more.

(c) "Utility system resource cost test" means a standard that is met for an investment in energy waste reduction if, on a life cycle basis, using a real societal discount rate based on actual long-term United States Treasury bond yields, the total avoided supply-side costs to the provider, including representative values for electricity or natural gas supply, transmission, distribution, and other associated costs, are greater than the total costs to the provider of administering and delivering the energy waste reduction program, including net costs for any provider incentives paid by customers and capitalized costs recovered under section 89.

(d) "Wind energy conversion system" means a system that uses 1 or more wind turbines to generate electricity and has a nameplate capacity of 100 kilowatts or more.

(e) "Wind energy resource zone" or "wind zone" means an area designated by the commission under section 147.

PART 8.

WIND, SOLAR, AND STORAGE CERTIFICATION

Sec. 221. As used in this part:

(a) "Affected local unit" means a unit of local government in which all or part of a proposed energy facility will be located.

(b) "Aircraft detection lighting system" means a sensor-based system designed to detect aircraft as they approach a wind energy facility and that automatically activates obstruction lights until they are no longer needed.

(c) "Applicant" means an applicant for a certificate.

(d) "Certificate" means a certificate issued for an energy facility under section 226(5).

(e) "Community-based organization" means a workforce development and training organization, labor union, local governmental entity, Michigan federally recognized tribe, environmental advocacy organization, or an organization that represents the interests of underserved communities.

(f) "Compatible renewable energy ordinance" means an ordinance that provides for the development of energy facilities within the local unit of government, the requirements of which are no more restrictive than the provisions included in section 226(8). A local unit of government is considered not to have a compatible renewable energy ordinance if it has a moratorium on the development of energy facilities in effect within its jurisdiction.

(g) "Construction" means any substantial action taken constituting the placement, erection, expansion, or repowering of an energy facility.

(h) "Dark sky-friendly lighting technology" means a light fixture that is designed to minimize the amount of light that escapes upward into the sky.

(i) "Energy facility" means an energy storage facility, solar energy facility, or wind energy facility. An energy facility may be located on more than 1 parcel of property, including noncontiguous parcels, but shares a single point of interconnection to the grid.

(j) "Energy storage facility" means a system that absorbs, stores, and discharges electricity. Energy storage facility does not include either of the following:

(i) Fossil fuel storage.

(ii) Power-to-gas storage that directly uses fossil fuel inputs.

(k) "Independent power producer", or "IPP", means a person that is not an electric provider but owns or operates facilities to generate electric power for sale to electric providers, this state, or local units of government.

(l) "Light intensity dimming solution technology" means obstruction lighting that provides a means of tailoring the intensity level of lights according to surrounding visibility.

(m) "Light-mitigating technology system" means an aircraft detection lighting system, a light intensity dimming solution technology, or a comparable solution that reduces the impact of nighttime lighting while maintaining night conspicuity sufficient to assist aircraft in identifying and avoiding collision with the wind energy facilities.

(n) “Local unit of government” or “local unit” means a county, township, city, or village.

(o) “Maximum blade tip height” means the nominal hub height plus the nominal blade length of a wind turbine, as listed in the wind turbine specifications provided by the wind turbine manufacturer. If not listed in the wind turbine specifications, maximum blade tip height means the actual hub height plus the actual blade length.

(p) “Nameplate capacity” means the designed full-load sustained generating output of an energy facility. Nameplate capacity shall be determined by reference to the sustained output of an energy facility even if components of the energy facility are located on different parcels, whether contiguous or noncontiguous.

(q) “Nonparticipating property” means a property that is adjacent to an energy facility and that is not a participating property.

(r) “Occupied community building” means a school, place of worship, day-care facility, public library, community center, or other similar building that the applicant knows or reasonably should know is used on a regular basis as a gathering place for community members.

(s) “Participating property” means real property that either is owned by an applicant or that is the subject of an agreement that provides for the payment by an applicant to a landowner of monetary compensation related to an energy facility regardless of whether any part of that energy facility is constructed on the property.

(t) “Person” means an individual, governmental entity authorized by this state, political subdivision of this state, business, proprietorship, firm, partnership, limited partnership, limited liability partnership, co-partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, subchapter S corporation, limited liability company, committee, receiver, estate, trust, or any other legal entity or combination or group of persons acting jointly as a unit.

(u) “Project labor agreement” means a prehire collective bargaining agreement with 1 or more labor organizations that establishes the terms and conditions of employment for a specific construction project and does all of the following:

(v) Binds all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents.

(ii) Allows all contractors and subcontractors on the construction project to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements.

(iii) Contains guarantees against strikes, lockouts, and similar job disruptions.

(iv) Sets forth the effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement.

(v) Provides other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health.

(vi) Complies with all state and federal laws, rules, and regulations.

(v) “Repowering”, with respect to an energy facility, means replacement of all or substantially all of the energy facility for the purpose of extending its life. Repowering does not include repairs related to the ongoing operations that do not increase the capacity or energy output of the energy facility.

(w) “Solar energy facility” means a system that captures and converts solar energy into electricity, for the purpose of sale or for use in locations other than solely the solar energy facility property. Solar energy facility includes, but is not limited to, the following equipment and facilities to be constructed by an electric provider or independent power producer: photovoltaic solar panels; solar inverters; access roads; distribution, collection, and feeder lines; wires and cables; conduit; footings; foundations; towers; poles; crossarms; guy lines and anchors; substations; interconnection or switching facilities; circuit breakers and transformers; energy storage facilities; overhead and underground control; communications and radio relay systems and telecommunications equipment; utility lines and installations; generation tie lines; solar monitoring stations; and accessory equipment and structures.

(x) “Wind energy facility” means a system that captures and converts wind into electricity, for the purpose of sale or for use in locations other than solely the wind energy facility property. Wind energy facility includes, but is not limited to, the following equipment and facilities to be constructed by an electric provider or independent power producer: wind towers; wind turbines; access roads; distribution, collection, and feeder lines; wires and cables; conduit; footings; foundations; towers; poles; crossarms; guy lines and anchors; substations; interconnection or switching facilities; circuit breakers and transformers; energy storage facilities; overhead and underground control; communications and radio relay systems and telecommunications equipment; monitoring and recording equipment and facilities; erosion control facilities; utility lines and installations; generation tie lines; ancillary buildings; wind monitoring stations; and accessory equipment and structures.

Sec. 222. (1) This part applies to all of the following:

(a) Any solar energy facility with a nameplate capacity of 50 megawatts or more.

(b) Any wind energy facility with a nameplate capacity of 100 megawatts or more.

(c) Any energy storage facility with a nameplate capacity of 50 megawatts or more and an energy discharge capability of 200 megawatt hours or more.

(2) Before beginning construction of an energy facility, an electric provider or independent power producer may, pursuant to this part, obtain a certificate for that energy facility from the commission. A local unit of government exercising zoning jurisdiction may request the commission to require an electric provider or independent power producer that proposes to construct an energy facility in that local unit to obtain a certificate for that energy facility from the commission. To obtain a certificate for an energy facility, an electric provider or IPP must comply with the requirements of sections 223 and 224, and then submit to the commission an application as described in section 225.

(3) If the commission has issued a certificate for an energy facility, the electric provider or IPP may make minor changes, as defined by the commission, to the site plan if the changes are within the footprint of the previously approved site plan.

(4) If an energy facility that would otherwise be subject to subsection (2) is located entirely within a city or village, the city or village is exempt from this part as it relates to the energy facility if the city or village is the owner of participating property, is a developer of the facility, or owns an electric utility that will take service from the energy facility.

Sec. 223. (1) An electric provider or independent power producer that, at its option or as required by the commission, proposes to obtain a certificate for and construct an energy facility shall hold a public meeting in each affected local unit. At least 30 days before a meeting, the electric provider or IPP shall notify the clerk of the affected local unit in which a public meeting will be held of the time, date, location, and purpose of the meeting and provide a copy of the site plan as described in section 224 or the address of an internet site where a site plan for the energy facility is available for review. At least 14 days before the meeting, the electric provider or IPP shall publish notice of the meeting in a newspaper of general circulation in the affected local unit or in a comparable digital alternative. The notice shall include a copy of the site plan or the address of an internet site where the site plan is available for review. The commission shall further prescribe the format and content of the notice. For the purposes of this subsection, a public meeting held in a township is considered to be held in each village located within the township.

(2) At least 60 days before a public meeting held under subsection (1), the electric provider or IPP planning to construct an energy facility shall offer in writing to meet with the chief elected official of each affected local unit, or the chief elected official's designee, to discuss the site plan.

(3) If, within 30 days following a meeting described in subsection (2), the chief elected official of each affected local unit notifies the electric provider or IPP planning to construct the energy facility that the affected local unit has a compatible renewable energy ordinance, then the electric provider or IPP shall file for approval with each affected local unit, subject to all of the following:

(a) An application submitted under this subsection shall comply with the requirements of section 225(1), except for section 225(1)(j) and (s). An affected local unit may require other information necessary to determine compliance with the compatible renewable energy ordinance.

(b) A local unit of government with which an application is filed under this subsection shall approve or deny the application within 120 days after receiving the application. The applicant and local unit of government may jointly agree to extend this deadline by up to 120 days.

(c) The electric provider or IPP may submit its application to the commission if any of the following apply:

(i) An affected local unit fails to timely approve or deny an application.

(ii) The application complies with the requirements of section 226(8), but an affected local unit denies the application.

(iii) An affected local unit amends its zoning ordinance after the chief elected official notifies the electric provider or IPP that it has a compatible renewable energy ordinance, and the amendment imposes additional requirements on the development of energy facilities that are more restrictive than those in section 226(8).

(d) An electric provider or IPP that submits an application to the commission pursuant to this subsection is not required to comply with subsection (1) or section 226(1), or the requirement to submit a summary of community outreach and education efforts pursuant to section 225(1)(j).

(4) If a local unit of government approves an application pursuant to subsection (3), construction of the proposed energy facility must begin within 5 years after the date the permit is granted and any challenges to the grant of the permit are concluded. The local unit of government may extend this timeline at the request of the electric provider or IPP without requiring a new application. The local unit shall not revoke a permit issued under subsection (3) except for material noncompliance with the permit by the electric provider or IPP.

(5) If the commission approves an applicant for a certificate submitted under subsection (3)(c), the local unit of government is considered to no longer have a compatible renewable energy ordinance, unless the commission finds that the local unit of government's denial of the application was reasonably related to the applicant's failure to provide information required by subsection (3)(a).

(6) Nothing in this section shall be construed to limit remedies available to an applicant to appeal a denial by a local unit of government under any other law of this State.

Sec. 224. (1) A site plan required under section 223 or 225 shall meet application filing requirements established by commission rule or order to maintain consistency between applications. The site plan shall include the following:

(a) The location and a description of the energy facility.

(b) A description of the anticipated effects of the energy facility on the environment, natural resources, and solid waste disposal capacity, which may include records of consultation with relevant state, tribal, and federal agencies.

(c) Additional information required by commission rule or order that directly relates to the site plan.

(2) When it submits a site plan required under section 223 or 225 to the commission, an electric provider or independent power producer shall, for informational purposes, submit a copy to the clerk of each affected local unit.

Sec. 225. (1) An application for a certificate submitted to the commission under section 222(2) shall contain all of the following:

(a) The complete name, address, and telephone number of the applicant.

(b) The planned date for the start of construction and the expected duration of construction.

(c) A description of the energy facility, including a site plan as described in section 224.

(d) A description of the expected use of the energy facility.

(e) Expected public benefits of the proposed energy facility.

(f) The expected direct impacts of the proposed energy facility on the environment and natural resources and how the applicant intends to address and mitigate these impacts.

(g) Information on the effects of the proposed energy facility on public health and safety.

(h) A description of the portion of the community where the energy facility will be located.

(i) A statement and reasonable evidence that the proposed energy facility will not commence commercial operation until it complies with applicable state and federal environmental laws, including, but not limited to, the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106.

(j) A summary of the community outreach and education efforts undertaken by the electric provider or independent power producer, including a description of the public meetings and meetings with elected officials under section 223.

(k) Evidence of consultation, before submission of the application, with the department of environment, Great Lakes, and energy and other relevant state and federal agencies before submitting the application, including, but not limited to, the department of natural resources and the department of agriculture and rural development.

(l) The soil and economic survey report under section 60303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.60303, for the county where the proposed energy facility will be located.

(m) Interconnection queue information for the applicable regional transmission organization.

(n) If the proposed site of the energy facility is undeveloped land, a description of feasible alternative developed locations, including, but not limited to, vacant industrial property and brownfields, and an explanation of why they were not chosen.

(o) If the energy facility is reasonably expected to have an impact on television signals, microwave signals, agricultural global position systems, military defense radar, radio reception, or weather and doppler radio, a plan to minimize and mitigate that impact. Information in the plan concerning military defense radar is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed by the commission or the electric provider or independent power producer except pursuant to court order.

(p) A stormwater assessment and a plan to minimize, mitigate, and repair any drainage impacts at the expense of the electric provider or IPP. The applicant shall make reasonable efforts to consult with the county drain commissioner before submitting the application and shall include evidence of those efforts in its application.

(q) A fire response plan and an emergency response plan.

(r) A decommissioning plan that is consistent with agreements reached between the applicant and other landowners of participating properties and that ensures the return of all participating properties to a useful condition similar to that which existed before construction, including removal of above-surface facilities and infrastructure that have no ongoing purpose. The decommissioning plan shall include, but is not limited to, financial assurance in the form of a bond, a parent company guarantee, or an irrevocable letter of credit, but excluding cash. The amount of the financial assurance shall not be less than the estimated cost of decommissioning the energy facility, after deducting salvage value, as calculated by a third party with expertise in decommissioning, hired by the applicant. However, the financial assurance may be posted in increments as follows:

(i) At least 25% by the start of full commercial operation.

(ii) At least 50% by the start of the fifth year of commercial operation.

(iii) 100% by the start of the tenth year of commercial operation.

(s) Other information reasonably required by the commission.

(2) Within 60 days after receipt of an application, the commission shall determine whether the application is complete. If the commission determines that the application is incomplete, the commission shall advise the applicant in writing of the information necessary to make the application complete. If the commission fails to timely notify the applicant that an application is incomplete, the application is considered to be complete.

Sec. 226. (1) Upon filing an application with the commission, the applicant shall make a 1-time grant to each affected local unit for an amount determined by the commission but not more than \$75,000.00 per affected local unit and not more than \$150,000.00 in total. Each affected local unit shall deposit the grant in a local intervenor compensation fund to be used to cover costs associated with participation in the contested case proceeding on the application for a certificate.

(2) Upon filing an application with the commission, the applicant shall provide notice of the opportunity to comment on the application in a form and manner prescribed by the commission. The notice shall be published in a newspaper of general circulation in each affected local unit or a comparable digital alternative. The notice shall be written in plain, nontechnical, and easily understood terms and shall contain a title that includes the name of the applicant and the words “NOTICE OF INTENT TO CONSTRUCT _____ FACILITY”, with the words “WIND ENERGY”, “SOLAR ENERGY”, or “ENERGY STORAGE”, as applicable, entered in the blank space. The commission shall further prescribe the format and contents of the notice.

(3) The commission shall conduct a proceeding on the application for a certificate as a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. An affected local unit, participating property owner, or nonparticipating property owner may intervene by right.

(4) The commission may assess reasonable application fees to the applicant to cover the commission’s administrative costs in processing the application, including costs for consultants to assist the commission in evaluating issues raised by the application. The commission may retain consultants to assist the commission in evaluating issues raised by the application and may require the applicant to pay the cost of the services.

(5) The commission shall grant the application and issue a certificate or deny the application not later than 1 year after a complete application is filed.

(6) In evaluating the application, the commission shall consider the feasible alternative developed locations described under section 225(1)(n), if applicable, and the impact of the proposed facility on local land use, including the percentage of land within the local unit of government dedicated to energy generation. The commission may condition its grant of the application on the applicant taking additional reasonable action related to the impacts of the proposed energy facility, including, but not limited to, the following:

(a) Establishing and maintaining for the life of the facility vegetative ground cover. This subdivision does not apply to an application for an energy facility that is proposed to be located entirely on brownfield land.

(b) Meeting or exceeding pollinator standards throughout the lifetime of the facility, as established by the “Michigan Pollinator Habitat Planning Scorecard for Solar Sites” developed by the Michigan State University Department of Entomology in effect on the effective date of the amendatory act that added this section or any applicable successor standards approved by the commission as reasonable and consistent with the purposes of this subdivision. Seed mix used to establish pollinator plantings shall not include invasive species as identified by the Midwest Invasive Species Information Network, led by researchers at the Michigan State University Department of Entomology and supporting regional partners. This subdivision does not apply to an application for an energy facility that is proposed to be located entirely on brownfield land.

(c) Providing for community improvements in the affected local unit.

(d) Making a good-faith effort to maintain and provide proper care of the property where the energy facility is proposed to be located during construction and operation of the facility.

(7) The commission shall grant the application and issue a certificate if it determines all of the following:

(a) The public benefits of the proposed energy facility justify its construction. For the purposes of this subdivision, public benefits include, but are not limited to, expected tax revenue paid by the energy facility to local taxing districts, payments to owners of participating property, community benefits agreements, local job creation, and any contributions to meeting identified energy, capacity, reliability, or resource adequacy needs of this state. In determining any contributions to meeting identified energy, capacity, reliability, or resource adequacy needs of this state, the commission may consider approved integrated resource plans under section 6t of 1939 PA 3, MCL 460.6t, renewable energy plans, annual electric provider capacity demonstrations under section 6w of 1939 PA 3, MCL 460.6w, or other proceedings before the commission, at the applicable regional transmission organization, or before the Federal Energy Regulatory Commission, as determined relevant by the commission.

(b) The energy facility complies with the standard in section 1705(2) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.1705.

(c) The applicant has considered and addressed impacts to the environment and natural resources, including, but not limited to, sensitive habitats and waterways, wetlands and floodplains, wildlife corridors, parks, historic and cultural sites, and threatened or endangered species.

(d) The applicant has met the conditions established in section 227.

(e) All of the following apply:

(i) The installation, construction, or construction maintenance of the energy facility will use apprenticeship programs registered and in good standing with the United States Department of Labor under the national apprenticeship act, 29 USC 50 to 50c.

(ii) The workers employed for the construction or construction maintenance of the energy facility will be paid a minimum wage standard not less than the wage and fringe benefit rates prevailing in the locality in which the work is to be performed as determined under 2023 PA 10, MCL 408.1101 to 408.1126, or 40 USC 3141 to 3148, whichever provides the higher wage and fringe benefit rates.

(iii) To the extent permitted by law, the entities performing the construction or construction maintenance work will enter into a project labor agreement or operate under a collective bargaining agreement for the work to be performed.

(f) The proposed energy facility will not unreasonably diminish farmland, including, but not limited to, prime farmland and, to the extent that evidence of such farmland is available in the evidentiary record, farmland dedicated to the cultivation of specialty crops.

(g) The proposed energy facility does not present an unreasonable threat to public health or safety.

(8) An energy facility meets the requirements of subsection (7)(g) if it will comply with the following standards, as applicable:

(a) For a solar energy facility, all of the following:

(i) The following minimum setback requirements, with setback distances measured from the nearest edge of the perimeter fencing of the facility:

<u>Setback Description</u>	<u>Setback Distance</u>
Occupied community buildings and dwellings on nonparticipating properties	300 feet from the nearest point on the outer wall
Public road right-of-way	50 feet measured from the nearest edge of a public road right-of-way
Nonparticipating parties	50 feet measured from the nearest shared property line

(ii) Fencing for the solar energy facility complies with the latest version of the National Electric Code as of the effective date of the amendatory act that added this section or any applicable successor standard approved by the commission as reasonable and consistent with the purposes of this subsection.

(iii) Solar panel components do not exceed a maximum height of 25 feet above ground when the arrays are at full tilt.

(iv) The solar energy facility does not generate a maximum sound in excess of 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property. Decibel modeling shall use the A-weighted scale as designed by the American National Standards Institute.

(v) The solar energy facility will implement dark sky-friendly lighting solutions.

(vi) The solar energy facility will comply with any more stringent requirements adopted by the commission. Before adopting such requirements, the commission must determine that the requirements are necessary for compliance with state or federal environmental regulations.

(b) For a wind energy facility, all of the following:

(i) The following minimum setback distances, measured from the center of the base of the wind tower:

<u>Setback Description</u>	<u>Setback Distance</u>
Occupied community buildings and residences on nonparticipating properties	2.1 times the maximum blade tip height to the nearest point on the outside wall of the structure
Residences and other structures on participating properties	1.1 times the maximum blade tip height to the nearest point on the outside wall of the structure
Nonparticipating property lines	1.1 times the maximum blade tip height
Public road right-of-way	1.1 times the maximum blade tip height to the center line of the public road right-of-way
Overhead communication and electric transmission, not including utility service lines to individual houses or outbuildings	1.1 times the maximum blade tip height to the center line of the easement containing the overhead line

(ii) Each wind tower is sited such that any occupied community building or nonparticipating residence will not experience more than 30 hours per year of shadow flicker under planned operating conditions as indicated by industry standard computer modeling.

(iii) Each wind tower blade tip does not exceed the height allowed under a Determination of No Hazard to Air Navigation by the Federal Aviation Administration under 14 CFR part 77.

(iv) The wind energy facility does not generate a maximum sound in excess of 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property. Decibel modeling shall use the A-weighted scale as designed by the American National Standards Institute.

(v) The wind energy facility is equipped with a functioning light-mitigating technology. To allow proper conspicuity of a wind turbine at night during construction, a turbine may be lighted with temporary lighting until the permanent lighting configuration, including the light-mitigating technology, is implemented. The commission may grant a temporary exemption from the requirements of this subparagraph if installation of appropriate light-mitigating technology is not feasible. A request for a temporary exemption must be in writing and state all of the following:

(A) The purpose of the exemption.

(B) The proposed length of the exemption.

(C) A description of the light-mitigating technologies submitted to the Federal Aviation Administration.

(D) The technical or economic reason a light-mitigating technology is not feasible.

(E) Any other relevant information requested by the commission.

(vi) The wind energy facility meets any standards concerning radar interference, lighting, subject to subparagraph (v), or other relevant issues as determined by the commission.

(vii) The wind energy facility will comply with any more stringent requirements adopted by the commission. Before adopting such requirements, the commission must determine that the requirements are necessary for compliance with state or federal environmental regulations.

(c) For an energy storage facility, all of the following:

(i) The following minimum setback requirements, with setback distances measured from the nearest edge of the perimeter fencing of the facility:

<u>Setback Description</u>	<u>Setback Distance</u>
Occupied community buildings and dwellings on nonparticipating properties	300 feet from the nearest point on the outer wall
Public road right-of-way	50 feet measured from the nearest edge of a public road right-of-way
Nonparticipating parties	50 feet measured from the nearest shared property line

(ii) The energy storage facility complies with the version of NFPA 855 "Standard for the Installation of Stationary Energy Storage Systems" in effect on the effective date of the amendatory act that added this section or any applicable successor standard adopted by the commission as reasonable and consistent with the purposes of this subdivision.

(iii) The energy storage facility does not generate a maximum sound in excess of 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property. Decibel modeling shall use the A-weighted scale as designed by the American National Standards Institute.

(iv) The energy storage facility will implement dark sky-friendly lighting solutions.

(v) The energy storage facility will comply with any more stringent requirements adopted by the commission. Before adopting such requirements, the commission must determine that the requirements are necessary for compliance with state or federal environmental regulations.

(9) The certificate shall identify the location of the energy facility and its nameplate capacity.

(10) If construction of an energy facility is not commenced within 5 years after the date that a certificate is issued, the certificate is invalid, but the electric provider or IPP may seek a new certificate for the proposed energy facility. If the certificate is appealed in proceedings before the commission or to a court of competent jurisdiction, the running of the 5-year period is tolled from the date of filing the appeal until 60 days after issuance of a final nonappealable decision. The commission may extend the 5-year period at the request of the applicant and upon a showing of good cause without requiring a new contested case proceeding.

Sec. 227. (1) The applicant for a certificate shall enter into a host community agreement with each affected local unit. The host community agreement shall require that, upon commencement of any operation, the energy facility owner must pay the affected local unit \$2,000.00 per megawatt of nameplate capacity located within the affected local unit. The payment shall be used as determined by the affected local unit for police, fire, public safety, or other infrastructure, or for other projects as agreed to by the local unit and the applicant.

(2) If an affected local unit refuses to enter into a host community agreement after good-faith negotiations with the applicant, the applicant may enter into a community benefits agreement with 1 or more community-based organizations within, or that serve residents of, the affected local unit. The amount paid by the applicant under this subsection must be equal to, or greater than, what the applicant would pay to the affected local unit under subsection (1). Community benefits agreements shall prioritize benefits to the community in which the energy facility is to be located. The topics and specific terms of the agreements may vary and may include, but are not limited to, any of the following:

(a) Workforce development, job quality, and job access provisions that include, but are not limited to, any of the following:

(i) Terms of employment, such as wages and benefits, employment status, workplace health and safety, scheduling, and career advancement opportunities.

(ii) Worker recruitment, screening, and hiring strategies and practices, targeted hiring planning and execution, investment in workforce training and education, and worker input and representation in decision making affecting employment and training.

(b) Funding for or providing specific environmental benefits.

(c) Funding for or providing specific community improvements or amenities, such as park and playground equipment, urban greening, enhanced safety crossings, paving roads, and bike paths.

(d) Annual contributions to a nonprofit or community-based organization that awards grants.

(3) A host community agreement or community benefits agreement is legally binding and inures to the benefit of the parties and their successors and assigns. The commission shall enforce this requirement, but not the actual agreements, which are enforceable in a court of competent jurisdiction.

Sec. 227a. Before commencing commercial operations, an applicant shall file a completion report certifying compliance with the requirements of this act and any conditions contained in the commission's certificate.

Sec. 228. (1) Except as otherwise provided in this part, information obtained by the commission under this part is a public record under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(2) The commission shall issue orders necessary to protect the information in an application for a certificate, or in other documents required by the commission for the purposes of certification, if the commission reasonably finds the information to be confidential. Information that is confidential under a protective order is exempted from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

Sec. 229. A commission order relating to a certificate or other matter provided for under this part is subject to review in the same manner as provided in section 26 of 1909 PA 300, MCL 462.26.

Sec. 230. (1) In administering this part, the commission has only those powers and duties granted to the commission under this part.

(2) The commission may consolidate proceedings under this part with contract approval or other certificate of need cases relating to the same energy facility.

(3) This part shall control in any conflict between this part and any other law of this state. However, the electric transmission line certification act, 1995 PA 30, MCL 460.561 to 460.575, controls in any conflict with this part.

(4) Commission approval of a certificate does not confer the power of eminent domain and is not a determination of public convenience and necessity for the purposes of the power of eminent domain or a condemnation action filed pursuant to the uniform condemnation procedures act, 1980 PA 87, MCL 213.51 to 213.75.

Sec. 231. (1) A local ordinance shall not prohibit or regulate testing activities undertaken by an electric provider or independent power producer for purposes of determining the suitability of a site for the placement of an energy facility.

(2) If a certificate is issued for an energy facility under this part, a zoning ordinance or limitation imposed after the electric provider or IPP submitted the application for the certificate to the commission shall not be construed to limit or impair the construction, operation, or maintenance of the energy facility.

(3) If a certificate is issued, the certificate and this part preempt a local policy, practice, regulation, rule, or other ordinance that prohibits, regulates, or imposes additional or more restrictive requirements than those specified in the commission's certificate.

(4) If a certificate is not issued, all local policies, practices, regulations, rules, or ordinances relating to the siting of energy facilities, including, but not limited to, the local zoning authority's power to grant variances, remain in full force and effect.

(5) Except as provided in this section, this part does not exempt an electric provider or IPP to whom a certificate is issued from obtaining any other permit, license, or permission to engage in the construction or operation of an energy facility that is required by federal law, any other law of this state, including, but not limited to, the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, any rule promulgated under a law of this state, or a local ordinance.

Sec. 232. Section 5 of 1846 RS 1, MCL 8.5, applies to the amendatory act that added this section.

Enacting section 1. This amendatory act takes effect 1 year after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 588 or House Bill No. 5121 of the 102nd Legislature is enacted into law.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor

Compiler's note: House Bill No. 5121, referred to in enacting section 2, was filed with the Secretary of State November 29, 2023, and became 2023 PA 234, Eff. Feb. 13, 2024.