

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5120

A bill to amend 2008 PA 295, entitled
"Clean and renewable energy and energy waste reduction act,"
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:

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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

1 systems to meet the requirements of those programs; to provide for
2 the approval of energy waste reduction service companies; to reduce
3 energy waste by state agencies and the public; to create a wind
4 energy resource zone board and provide for its power and duties; to
5 authorize the creation and implementation of wind energy resource
6 zones; to provide for expedited transmission line siting
7 certificates; to provide for customer generation and net metering
8 programs and the responsibilities of certain providers of electric
9 service and customers with respect to customer generation and net
10 metering; to provide for fees; to prescribe the powers and duties
11 of certain state agencies and officials; to require the
12 promulgation of rules and the issuance of orders; to authorize the
13 establishment of residential energy improvement programs by
14 providers of electric or natural gas service; **to authorize**
15 **certification by this state before the construction of certain wind**
16 **and solar energy facilities and energy storage facilities; to**
17 **regulate certain local ordinances; to protect personal property**
18 **rights;** and to provide for civil sanctions, remedies, and
19 penalties.

20 Sec. 13. As used in this act:

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

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

28 ~~(c) "True net metering" means a utility billing method that~~
29 ~~applies the full retail rate to the net of the bidirectional flow~~

1 ~~of kilowatt hours across the customer interconnection with the~~
 2 ~~utility distribution system, during a billing period or time-of-use~~
 3 ~~pricing period. A negative net metered quantity during the billing~~
 4 ~~period or during each time-of-use pricing period within the billing~~
 5 ~~period reflects net excess generation for which the customer is~~
 6 ~~entitled to receive credit under section 177(4). This subdivision~~
 7 ~~is subject to section 177(5).~~

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

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

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

24 PART 8.

25 WIND, SOLAR, AND STORAGE CERTIFICATION

26 Sec. 221. As used in this part:

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

29 (b) "Aircraft detection lighting system" means a sensor-based

1 system designed to detect aircraft as they approach a wind energy
2 facility and that automatically activates obstruction lights until
3 they are no longer needed.

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

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

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

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

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

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

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

29 (j) "Energy storage facility" means a system that absorbs,

1 stores, and discharges electricity. Energy storage facility does
2 not include either of the following:

3 (i) Fossil fuel storage.

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

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

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

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

19 (n) "Local unit of government" or "local unit" means a county,
20 township, city, or village.

21 (o) "Maximum blade tip height" means the nominal hub height
22 plus the nominal blade length of a wind turbine, as listed in the
23 wind turbine specifications provided by the wind turbine
24 manufacturer. If not listed in the wind turbine specifications,
25 maximum blade tip height means the actual hub height plus the
26 actual blade length.

27 (p) "Nameplate capacity" means the designed full-load
28 sustained generating output of an energy facility. Nameplate
29 capacity shall be determined by reference to the sustained output

1 of an energy facility even if components of the energy facility are
2 located on different parcels, whether contiguous or noncontiguous.

3 (q) "Nonparticipating property" means a property that is
4 adjacent to an energy facility and that is not a participating
5 property.

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

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

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

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

1 (i) Binds all contractors and subcontractors on the
2 construction project through the inclusion of appropriate
3 specifications in all relevant solicitation provisions and contract
4 documents.

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

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

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

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

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

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

24 (w) "Solar energy facility" means a system that captures and
25 converts solar energy into electricity, for the purpose of sale or
26 for use in locations other than solely the solar energy facility
27 property. Solar energy facility includes, but is not limited to,
28 the following equipment and facilities to be constructed by an
29 electric provider or independent power producer: photovoltaic solar

1 panels; solar inverters; access roads; distribution, collection,
2 and feeder lines; wires and cables; conduit; footings; foundations;
3 towers; poles; crossarms; guy lines and anchors; substations;
4 interconnection or switching facilities; circuit breakers and
5 transformers; energy storage facilities; overhead and underground
6 control; communications and radio relay systems and
7 telecommunications equipment; utility lines and installations;
8 generation tie lines; solar monitoring stations; and accessory
9 equipment and structures.

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

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

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

29 (b) Any wind energy facility with a nameplate capacity of 100

1 megawatts or more.

2 (c) Any energy storage facility with a nameplate capacity of
3 50 megawatts or more and an energy discharge capability of 200
4 megawatt hours or more.

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

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

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

26 Sec. 223. (1) An electric provider or independent power
27 producer that, at its option or as required by the commission,
28 proposes to obtain a certificate for and construct an energy
29 facility shall hold a public meeting in each affected local unit.

1 At least 30 days before a meeting, the electric provider or IPP
2 shall notify the clerk of the affected local unit in which a public
3 meeting will be held of the time, date, location, and purpose of
4 the meeting and provide a copy of the site plan as described in
5 section 224 or the address of an internet site where a site plan
6 for the energy facility is available for review. At least 14 days
7 before the meeting, the electric provider or IPP shall publish
8 notice of the meeting in a newspaper of general circulation in the
9 affected local unit or in a comparable digital alternative. The
10 notice shall include a copy of the site plan or the address of an
11 internet site where the site plan is available for review. The
12 commission shall further prescribe the format and content of the
13 notice. For the purposes of this subsection, a public meeting held
14 in a township is considered to be held in each village located
15 within the township.

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

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

28 (a) An application submitted under this subsection shall
29 comply with the requirements of section 225(1), except for section

1 225(1)(j) and (s). An affected local unit may require other
2 information necessary to determine compliance with the compatible
3 renewable energy ordinance.

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

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

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

13 (ii) The application complies with the requirements of section
14 226(8), but an affected local unit denies the application.

15 (iii) An affected local unit amends its zoning ordinance after
16 the chief elected official notifies the electric provider or IPP
17 that it has a compatible renewable energy ordinance, and the
18 amendment imposes additional requirements on the development of
19 energy facilities that are more restrictive than those in section
20 226(8).

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

26 (4) If a local unit of government approves an application
27 pursuant to subsection (3), construction of the proposed energy
28 facility must begin within 5 years after the date the permit is
29 granted and any challenges to the grant of the permit are

1 concluded. The local unit of government may extend this timeline at
2 the request of the electric provider or IPP without requiring a new
3 application. The local unit shall not revoke a permit issued under
4 subsection (3) except for material noncompliance with the permit by
5 the electric provider or IPP.

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

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

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

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

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

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

27 (2) When it submits a site plan required under section 223 or
28 225 to the commission, an electric provider or independent power
29 producer shall, for informational purposes, submit a copy to the

1 clerk of each affected local unit.

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

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

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

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

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

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

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

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

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

20 (i) A statement and reasonable evidence that the proposed
21 energy facility will not commence commercial operation until it
22 complies with applicable state and federal environmental laws,
23 including, but not limited to, the natural resources and
24 environmental protection act, 1994 PA 451, MCL 324.101 to
25 324.90106.

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

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

7 (l) The soil and economic survey report under section 60303 of
8 the natural resources and environmental protection act, 1994 PA
9 451, MCL 324.60303, for the county where the proposed energy
10 facility will be located.

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

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

17 (o) If the energy facility is reasonably expected to have an
18 impact on television signals, microwave signals, agricultural
19 global position systems, military defense radar, radio reception,
20 or weather and doppler radio, a plan to minimize and mitigate that
21 impact. Information in the plan concerning military defense radar
22 is exempt from disclosure under the freedom of information act,
23 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed by
24 the commission or the electric provider or independent power
25 producer except pursuant to court order.

26 (p) A stormwater assessment and a plan to minimize, mitigate,
27 and repair any drainage impacts at the expense of the electric
28 provider or IPP. The applicant shall make reasonable efforts to
29 consult with the county drain commissioner before submitting the

1 application and shall include evidence of those efforts in its
2 application.

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

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

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

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

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

23 (s) Other information reasonably required by the commission.

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

1 the application is considered to be complete.

2 Sec. 226. (1) Upon filing an application with the commission,
3 the applicant shall make a 1-time grant to each affected local unit
4 for an amount determined by the commission but not more than
5 \$75,000.00 per affected local unit and not more than \$150,000.00 in
6 total. Each affected local unit shall deposit the grant in a local
7 intervenor compensation fund to be used to cover costs associated
8 with participation in the contested case proceeding on the
9 application for a certificate.

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

22 (3) The commission shall conduct a proceeding on the
23 application for a certificate as a contested case under the
24 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
25 24.328. An affected local unit, participating property owner, or
26 nonparticipating property owner may intervene by right.

27 (4) The commission may assess reasonable application fees to
28 the applicant to cover the commission's administrative costs in
29 processing the application, including costs for consultants to

1 assist the commission in evaluating issues raised by the
2 application. The commission may retain consultants to assist the
3 commission in evaluating issues raised by the application and may
4 require the applicant to pay the cost of the services.

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

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

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

21 (b) Meeting or exceeding pollinator standards throughout the
22 lifetime of the facility, as established by the "Michigan
23 Pollinator Habitat Planning Scorecard for Solar Sites" developed by
24 the Michigan State University Department of Entomology in effect on
25 the effective date of the amendatory act that added this section or
26 any applicable successor standards approved by the commission as
27 reasonable and consistent with the purposes of this subdivision.
28 Seed mix used to establish pollinator plantings shall not include
29 invasive species as identified by the Midwest Invasive Species

1 Information Network, led by researchers at the Michigan State
2 University Department of Entomology and supporting regional
3 partners. This subdivision does not apply to an application for an
4 energy facility that is proposed to be located entirely on
5 brownfield land.

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

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

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

13 (a) The public benefits of the proposed energy facility
14 justify its construction. For the purposes of this subdivision,
15 public benefits include, but are not limited to, expected tax
16 revenue paid by the energy facility to local taxing districts,
17 payments to owners of participating property, community benefits
18 agreements, local job creation, and any contributions to meeting
19 identified energy, capacity, reliability, or resource adequacy
20 needs of this state. In determining any contributions to meeting
21 identified energy, capacity, reliability, or resource adequacy
22 needs of this state, the commission may consider approved
23 integrated resource plans under section 6t of 1939 PA 3, MCL
24 460.6t, renewable energy plans, annual electric provider capacity
25 demonstrations under section 6w of 1939 PA 3, MCL 460.6w, or other
26 proceedings before the commission, at the applicable regional
27 transmission organization, or before the Federal Energy Regulatory
28 Commission, as determined relevant by the commission.

29 (b) The energy facility complies with the standard in section

1 1705(2) of the natural resources and environmental protection act,
2 1994 PA 451, MCL 324.1705.

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

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

10 (e) All of the following apply:

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

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

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

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

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

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

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

7 (i) The following minimum setback requirements, with setback
8 distances measured from the nearest edge of the perimeter fencing
9 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

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

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

26 (iv) The solar energy facility does not generate a maximum
27 sound in excess of 55 average hourly decibels as modeled at the
28 nearest outer wall of the nearest dwelling located on an adjacent
29 nonparticipating property. Decibel modeling shall use the A-

1 weighted scale as designed by the American National Standards
2 Institute.

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

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

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

11 (i) The following minimum setback distances, measured from the
12 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

1 Overhead communication and 1.1 times the maximum blade tip
 2 electric transmission, not height to the center line of
 3 including utility service lines the easement containing the
 4 to individual houses or overhead line
 5 outbuildings

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

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

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

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

28 (A) The purpose of the exemption.

29 (B) The proposed length of the exemption.

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

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

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

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

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

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

16 (i) The following minimum setback requirements, with setback
 17 distances measured from the nearest edge of the perimeter fencing
 18 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

27
 28 (ii) The energy storage facility complies with the version of
 29 NFPA 855 "Standard for the Installation of Stationary Energy

1 Storage Systems" in effect on the effective date of the amendatory
2 act that added this section or any applicable successor standard
3 adopted by the commission as reasonable and consistent with the
4 purposes of this subdivision.

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

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

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

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

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

1 proceeding.

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

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

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

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

28 (ii) Worker recruitment, screening, and hiring strategies and
29 practices, targeted hiring planning and execution, investment in

1 workforce training and education, and worker input and
2 representation in decision making affecting employment and
3 training.

4 (b) Funding for or providing specific environmental benefits.

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

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

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

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

19 Sec. 228. (1) Except as otherwise provided in this part,
20 information obtained by the commission under this part is a public
21 record under the freedom of information act, 1976 PA 442, MCL
22 15.231 to 15.246.

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

1 Sec. 229. A commission order relating to a certificate or
2 other matter provided for under this part is subject to review in
3 the same manner as provided in section 26 of 1909 PA 300, MCL
4 462.26.

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

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

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

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

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

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

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

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

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

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

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

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