

HOUSE BILL NO. 5122

October 10, 2023, Introduced by Reps. Skaggs, Aiyash, Puri, Brenda Carter, Pohutsky, Rheingans, Hope, O'Neal, Byrnes, Stone, MacDonell, Tsernoglou, Morse, Breen, Martus, Andrews, Steckloff and Wilson and referred to the Committee on Energy, Communications, and Technology.

A bill to amend 2008 PA 295, entitled
"Clean and renewable energy and energy waste reduction act,"
(MCL 460.1001 to 460.1211) by amending the title and by adding part
8.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

2

An act to require certain providers of electric service to

3

establish and recover costs for renewable energy programs; to

4

require certain providers of electric or natural gas service to

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

20 **PART 8.**

21 **SOLAR AND STORAGE CERTIFICATION**

22 **Sec. 221. As used in this part:**

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

25 (b) "Applicant" means an applicant for a certificate.

26 (c) "Certificate" means a certificate issued for an energy
27 facility under section 226(4).

28 (d) "Community-based organization" means a workforce
29 development and training organization, labor union, local

1 governmental entity, Michigan federally recognized tribe,
2 environmental advocacy organization, or an organization that
3 represents the interests of underserved communities.

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

7 (f) "Energy facility" means an energy storage facility or
8 solar energy facility. An energy facility may be located on more
9 than 1 parcel of property, including noncontiguous parcels.

10 (g) "Energy storage facility" means a system that absorbs,
11 stores, and discharges electricity.

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

16 (i) "Local unit of government" means a county, township, city,
17 or village.

18 (j) "Nameplate capacity" means the designed full-load
19 sustained generating output of an energy facility. Nameplate
20 capacity shall be determined by reference to the sustained output
21 of an energy facility even if components of the energy facility are
22 located on different parcels, whether contiguous or noncontiguous.

23 (k) "Nonparticipating property" means a property that is
24 adjacent to a solar energy facility and that is not a participating
25 property.

26 (l) "Occupied community building" means a school, place of
27 worship, day-care facility, public library, community center, or
28 other similar building that the applicant knows or reasonably
29 should know is used on a regular basis as a gathering place for

1 community members.

2 (m) "Participating property" means real property that either
3 is owned by an applicant or that is the subject of an agreement
4 that provides for the payment by an applicant to a landowner of
5 monetary compensation related to an energy facility regardless of
6 whether any part of that energy facility is constructed on the
7 property.

8 (n) "Person" means an individual, governmental entity
9 authorized by this state, political subdivision of this state,
10 business, proprietorship, firm, partnership, limited partnership,
11 limited liability partnership, co-partnership, joint venture,
12 syndicate, business trust, labor organization, company,
13 corporation, association, subchapter S corporation, limited
14 liability company, committee, receiver, estate, trust, or any other
15 legal entity or combination or group of persons acting jointly as a
16 unit.

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

22 (p) "Solar energy facility" means a system that captures and
23 converts solar energy into electricity, for the purpose of sale or
24 for use in locations other than solely the solar energy facility
25 property. Solar energy facility includes, but is not limited to,
26 the following equipment and facilities to be constructed by an
27 electric provider or independent power producer: photovoltaic solar
28 panels; solar inverters; access roads; distribution, collection,
29 and feeder lines; wires and cables; conduit; footings; foundations;

1 towers; poles; crossarms; guy lines and anchors; substations;
2 interconnection or switching facilities; circuit breakers and
3 transformers; energy storage facilities; overhead and underground
4 control; communications and radio relay systems and
5 telecommunications equipment; utility lines and installations;
6 generation tie lines; substations; solar monitoring stations; and
7 accessory equipment and structures.

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

9 (a) Any solar energy facility with a nameplate capacity of 50
10 megawatts or more but less than 100 megawatts.

11 (b) Any energy storage facility with a nameplate capacity of
12 50 megawatts or more but less than 100 megawatts and an energy
13 discharge capability of 200 megawatt hours or more.

14 (2) Before beginning construction of an energy facility, an
15 electric provider or independent power producer may, pursuant to
16 this part, obtain a certificate for that energy facility from the
17 commission. To obtain a certificate for an energy facility, an
18 electric provider or IPP must comply with the requirements of
19 sections 223 and 224, and then submit to the commission an
20 application as described in section 225.

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

25 Sec. 223. (1) An electric provider or independent power
26 producer that proposes to obtain a certificate for and construct an
27 energy facility shall hold a public meeting in each affected local
28 unit. At least 30 days before a meeting, the electric provider or
29 IPP shall notify the clerk of the affected local unit in which a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (i) A statement and reasonable evidence that the proposed
24 energy facility will not commence commercial operation until it is
25 in compliance with applicable state and federal environmental laws.

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) Interconnection queue information for the applicable
8 regional transmission organization.

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

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

22 (o) If the energy facility is reasonably expected to have an
23 impact on drainage systems within or surrounding the energy
24 facility, a plan to minimize, mitigate, and repair that impact at
25 the expense of the electric provider or IPP.

26 (p) If the energy facility is or includes an energy storage
27 facility, an emergency response plan.

28 (q) A decommissioning plan that includes, but is not limited
29 to, financial assurance in the form of a bond, a parent company

1 guarantee, or an irrevocable letter of credit, but excluding cash.
2 The amount of the financial assurance shall not be less than the
3 estimated cost of decommissioning the energy facility, after
4 deducting salvage value, as calculated by a third party with
5 expertise in decommissioning, hired by the applicant. However, the
6 financial assurance may be posted in increments as follows:

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

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

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

12 (r) Other information reasonably required by the commission.

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

20 Sec. 226. (1) Not more than 30 days after the commission
21 determines under section 225 that an application is complete, the
22 applicant shall send to the clerk of each affected local unit and
23 publish notice of an opportunity to comment on the application. The
24 notice shall be published in a newspaper of general circulation in
25 each affected local unit or a comparable digital alternative. The
26 notice shall be written in plain, nontechnical, and easily
27 understood terms and shall contain a title that includes the name
28 of the applicant and the words "NOTICE OF INTENT TO CONSTRUCT
29 _____ FACILITY", with the words "SOLAR ENERGY" or "ENERGY

1 STORAGE", as applicable, entered in the blank space. The commission
2 shall further prescribe the format and contents of the notice.

3 (2) The commission shall conduct a proceeding on the
4 application for a certificate as a contested case under the
5 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
6 24.328. An affected local unit, participating property owner, or
7 nonparticipating property owner may intervene by right.

8 (3) The commission may assess reasonable application fees to
9 the applicant to cover the commission's administrative costs in
10 processing the application, including costs to consultants to
11 assist the commission in evaluating issues raised by the
12 application. The commission may retain consultants to assist the
13 commission in evaluating issues raised by the application and may
14 require the applicant to pay the cost of the services.

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

18 (5) In evaluating the application, the commission shall
19 consider the impact of the proposed facility on local land use,
20 including the percentage of land within the local unit of
21 government dedicated to energy generation. The commission may
22 condition its grant of the application on the applicant taking
23 additional reasonable action related to the impacts of the proposed
24 energy facility, including, but not limited to, the following:

25 (a) Establishing and maintaining for the life of the facility
26 vegetative ground cover.

27 (b) Meeting or exceeding pollinator standards throughout the
28 lifetime of the facility, as established by the "Michigan
29 Pollinator Habitat Planning Scorecard for Solar Sites" developed by

1 the Michigan State University Department of Entomology in effect on
2 the enactment date of the amendatory act that added this section or
3 any applicable successor standards approved by the commission as
4 reasonable and consistent with the purposes of this subdivision.
5 Seed mix used to establish pollinator plantings shall not include
6 invasive species as identified by the Midwest Invasive Species
7 Information Network, led by researchers at the Michigan State
8 University Department of Entomology and supporting regional
9 partners.

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

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

14 (a) The public benefits of the proposed energy facility
15 justify its construction.

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

21 (c) The applicant has met the conditions established in
22 section 227.

23 (d) The applicant has certified that the workers employed for
24 the construction of the energy facility will be paid at least the
25 prevailing wage in the local unit of government in which the
26 proposed energy facility is located.

27 (e) The applicant has certified that the applicant will enter
28 into and adhere to an agreement with 1 or more labor organizations
29 in regard to the construction of the energy facility.

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

3 (7) An energy facility meets the requirements of subsection
 4 (6)(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 setback requirements:

<u>Setback Description</u>	<u>Setback Distance</u>
8 Occupied community buildings 9 and dwellings on 10 nonparticipating properties	150 feet from the nearest point on the outer wall
11 Public road right-of-way	50 feet measured from the 12 nearest edge of a public road 13 right-of-way
14 Nonparticipating parties	50 feet measured from the 15 nearest shared property line 16

17 (ii) The solar energy facility is completely enclosed with
 18 fencing in compliance with the latest version of the National
 19 Electric Code as of the enactment date of the amendatory act that
 20 added this section or any applicable successor standard approved by
 21 the commission as reasonable and consistent with the purposes of
 22 this subdivision.

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

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

1 Institute.

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

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

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

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

17 (9) If construction of an energy facility is not commenced
18 within 5 years of the date that a certificate is issued, the
19 certificate is invalid, but the electric provider or IPP may seek a
20 new certificate for the proposed energy facility. The commission
21 may extend this timeline at the request of the applicant without
22 requiring a new contested case proceeding.

23 Sec. 227. The applicant for a certificate must enter into 1 or
24 more agreements with, or that benefit, 1 or more community-based
25 organizations. The agreements are legally binding and enforceable
26 if construction of the energy facility commences. The commission
27 shall enforce this requirement but not the actual agreements, which
28 are enforceable in a court of competent jurisdiction. The
29 agreements shall prioritize benefits to the community in which the

1 energy facility is to be located. The topics and specific terms of
2 the agreements may vary and may include, but are not limited to,
3 any of the following:

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

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

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

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

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

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

21 Sec. 228. (1) Except as otherwise provided in this part,
22 information obtained by the commission under this part is a public
23 record under the freedom of information act, 1976 PA 442, MCL
24 15.231 to 15.246.

25 (2) An applicant may designate information received from a
26 third party that the applicant submits to the commission in an
27 application for a certificate, or in other documents required by
28 the commission for the purposes of certification, as only for the
29 confidential use of the commission. The commission shall notify the

1 electric provider or IPP of a request for public records under
2 section 5 of the freedom of information act, 1976 PA 442, MCL
3 15.235, if the scope of the request includes information designated
4 as confidential. If the electric provider or IPP, within 10 days
5 after the receipt of the notice, demonstrates to the satisfaction
6 of the commission that the information designated as confidential
7 is a trade secret or secret process or is production, commercial,
8 or financial information the disclosure of which would jeopardize
9 the competitive position of the electric provider or IPP or the
10 person from whom the information was obtained, the commission shall
11 not grant the request for the information. If the commission
12 decides to grant a request, the commission shall not release the
13 information requested until 3 days have elapsed after notice of the
14 decision is provided to the electric provider or IPP.

15 (3) If any person uses information described in subsection (1)
16 to forecast electrical demand, the person shall structure the
17 forecast so the person to whom the information pertains is not
18 identified unless that person waives confidentiality.

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

26 Sec. 229. A commission order relating to a certificate or
27 other matter provided for under this part is subject to review in
28 the same manner as provided in section 6 of 1909 PA 300, MCL
29 462.26.

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

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

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

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

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

21 (3) If a certificate is issued, the certificate and this part
22 preempt a local policy, practice, regulation, rule, or other
23 ordinance that prohibits, regulates, or imposes additional or more
24 restrictive dimensional and use limitations or requirements on the
25 construction, operation, use, dimensions, replacement, or
26 maintenance of an energy facility.

27 (4) Except as provided in this section, this part does not
28 exempt an electric provider or IPP to whom a certificate is issued
29 from obtaining any other permit, license, or permission to engage

1 in the construction or operation of an energy facility that is
2 required by any other law of this state, any rule promulgated under
3 a law of this state, or a local ordinance.

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

6 Enacting section 2. This amendatory act does not take effect
7 unless Senate Bill No. _____ or House Bill No. 5123 (request no.
8 04600'23 a) of the 102nd Legislature is enacted into law.