



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 5120 (Substitute H-3 as passed by the House)
House Bill 5121 (as passed by the House)
Sponsor: Representative Abraham Aiyash (H.B. 5120)
Representative Ranjeev Puri (H.B. 5121)
House Committee: Energy, Communications, and Technology
Senate Committee: Energy and Environment

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INTRODUCTION

The bills would allow an electric provider or an independent power producer (IPP) to apply to the Michigan Public Service Commission (MPSC) for a certificate to construct a wind, solar, or energy storage facility that had at least 100 megawatts of generational capacity; they would also allow an affected local governmental unit to request that the MPSC require a provider or IPP to undergo the certification process. A granted certificate would preempt a zoning ordinance and other local regulations or rules that prohibited or more restrictively regulated an energy facility. The bills also would prohibit a zoning ordinance imposed after an application was filed with the MPSC from being construed as a limit or impairment on a facility.

An application for a certificate would have to include a comprehensive site plan, a demonstration that affected local governments and specified State departments had been consulted in its preparation, and financial assurances, among other things. An application would have to undergo an MPSC contested case proceeding, and the MPSC would have to issue a certificate or deny an application within a year of the application filing. The MPSC would have to approve a certificate based on an energy facility meeting environmental, safety, labor, and setback requirements. Additionally, the bills would require a provider or IPP to file for approval of a facility with an affected local governmental unit, instead of the MPSC, if that unit had a renewable energy ordinance compatible with the bill's requirements.

FISCAL IMPACT

House Bill 5120 (H-3) and House Bill 5121 could have indirect indeterminate positive fiscal impact on local units of government. Under House Bill 5120 (H-3), the MPSC would have to review any submitted applications and conduct proceedings as contested cases as prescribed by the Administrative Procedures Act. The extent of the costs associated with these undertakings would depend on the number of applications submitted and the extent of the proceedings. While some costs would be covered under existing appropriations, it is possible that additional appropriations would be required to fulfill the MPSC's new obligations. The bill would allow the MPSC to set application fees at a level sufficient to cover costs associated with the application process. In addition, the MPSC could charge applicants for the cost of engaging consultants to sufficiently review the submitted application materials; however, the MPSC could elect not to charge full costs for either of these undertakings. It is possible that an additional full-time-equivalent (FTE) could be engaged in this work, depending on the volume of activity. The average cost of an FTE is approximately \$137,500.

MCL 160.1013 et al. (H.B. 5120)
MCL 125.3205 (H.B. 5121)

Legislative Analyst: Tyler P. VanHuyse
Fiscal Analyst: Bobby Canell; Elizabeth Raczkowski

CONTENT

House Bill 5120 (H-3) would add Part 8 (Wind, Solar, and Storage Certification) to the Clean and Renewable Energy and Waste Reduction Act to do the following:

- Allow a wind energy, solar energy, or energy storage facility that met certain nameplate capacity requirements to obtain a certificate from the MPSC to construct an energy facility.
- Require an electric provider or IPP to file for approval for a wind, solar, or energy storage facility with the affected local governmental unit if that unit had a renewable energy ordinance compatible with Part 8.
- Preempt a local policy, practice, regulation, rule, or other ordinance that prohibited or more restrictively regulated than Part 8 the construction, operation, use, dimensions, replacement, or maintenance of an energy facility upon the issuance of a certificate.
- Prescribe the process to apply for a certificate, including that the application for a certificate undergo a contested case proceeding.
- Prescribe the process that a local governmental unit exercising authority under a compatible renewable energy ordinance would have to follow in approving or denying an application to construct a wind, solar, or energy storage facility.
- Require an applicant for a certificate to make a one-time grant to each affected local unit for certain amounts for the purpose of covering costs associated with participation in a contested case proceeding.
- Require an applicant to conduct a public meeting concerning site plans in affected local units of government, unless the local governmental unit exercises authority under a compatible renewable energy ordinance.
- Prescribe the requirements an applicant's site plan would have to meet, including setback requirements.
- Require the certificate's application material to contain certain information, such as environmental impacts and mitigation measures, public health and safety considerations, community locations, and compliance with environmental laws.
- Require the MPSC to notify an affected local unit of government and other interested parties of a complete application.
- Require the MPSC to issue a certificate or deny an application within one year of the application being filed and specify the requirements for granting a certificate.
- Require an applicant for a certificate to enter into a host community agreement and pay \$2,000 per megawatt of nameplate capacity upon operation of a facility and require that money to be spent on local police, fire, or public safety.
- Require an applicant to enter into a community benefits agreement if it could not reach a host community agreement.
- Specify that information obtained by the MPSC would be public record.

House Bill 5121 would amend the Michigan Zoning Enabling Act to subject a zoning ordinance to Part 8 of the Clean and Renewable Energy and Waste Reduction Act as proposed by **House Bill 5120 (H-3)**. The bill also would require a renewable energy project that received present or former special land use approval to meet specific requirements.

The bills are tie-barred, and House Bill 5120 would take effect one year after its enactment.

House Bill 5120 (H-3)

Scope

The bill specifies that Part 8 would apply to all the following:

- Except for a wind energy or solar energy facility proposed to be in a local unit of government with a compatible renewable energy ordinance, any solar energy facility with a nameplate capacity of 50 megawatts or more.
- Any wind energy facility with a nameplate capacity of 100 megawatts or more.
- Except for an energy storage facility proposed to be in a local unit of government with a compatible renewable energy ordinance, any energy storage facility with a nameplate capacity of 100 megawatts or more and an energy discharge capability of 200 megawatt hours or more.

"Solar energy facility" would mean 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. The term would include the following equipment and facilities to be constructed by an electric provider or IPP: 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; substations; solar monitoring stations; and accessory equipment and structures.

"Wind energy facility" would mean 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. The term would include the following equipment and facilities to be constructed by an electric provider or IPP: 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; substations; ancillary buildings; wind monitoring stations; and accessory equipment and structures.

"Compatible renewable energy ordinance" would mean an ordinance that provides for the development of energy facilities within the local unit of government using requirements that are no more restrictive than the provisions included in the setback standards under Application Approval. A local unit of government would be deemed not to have a compatible renewable energy ordinance if it had adopted a moratorium on the development of energy facilities within its jurisdiction.

"Energy storage facility" would mean a system that absorbs, stores, and discharges electricity. Energy storage facility would not include either fossil fuel storage or power-to-gas storage that directly used fossil fuel inputs.

"Nameplate capacity" would mean the designed full-load sustained generating output of an energy facility. Nameplate capacity would 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. "Energy facility" would mean an energy storage facility,

solar energy facility, or wind energy facility. An energy facility could be located on more than one parcel of property, including noncontiguous parcels.

MPSC Certification

Before beginning construction of an energy facility, an electric provider or IPP could obtain a certificate for that energy facility from the MPSC. A local unit of government exercising zoning jurisdiction could request the MPSC to require an electric provider or IPP that proposed to construct an energy facility in that local unit to obtain a certificate for that energy facility from the MPSC. To obtain a certificate for an energy facility, an electric provider or IPP would have to comply with certain requirements described below, and then apply to the MPSC.

If a city or village had a wind, solar, or energy storage facility that would normally be subject to the requirements above and that was for an energy facility that was located entirely within the city or village, the city or village would be exempt from this part as it relates to the energy facility.

"Construction" would mean any substantial action taken constituting the placement, erection, expansion, or repowering of an energy facility. "Repowering", with respect to an energy facility, would mean replacement of all or substantially all the energy facility for the purpose of extending its life. The term would not include repairs related to the ongoing operations that did not increase the capacity or energy output of the energy facility.

"Independent power producer", or IPP, would mean a person that is not an electric utility but owns or operates facilities to generate electric power for sale to electric providers, the State, or local units of government. "Local unit of government" would mean a county, township, city, or village. "Person" would mean an individual, governmental entity authorized by the State, political subdivision of the 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.

Local Ordinance Requirements

Under Part 8, a local ordinance could not prohibit or regulate testing activities undertaken by an electric provider or IPP for purposes of determining the suitability of a site for the placement of an energy facility.

If a certificate were issued for an energy facility, a zoning ordinance or limitation imposed after the electric provider or IPP submitted the application for the certificate to the MPSC could not be construed to limit or impair construction, operation, or maintenance of the facility.

Additionally, if a certificate were issued, the certificate and Part 8 would preempt a local policy, practice, regulation, rule, or other ordinance that prohibited, regulated, or imposed additional or more restrictive requirements than those specified in the MPSC's certificate.

Unless otherwise provided, Part 8 would not exempt an electric provider or IPP to whom a certificate was issued from obtaining any other permit, license, or permission to engage in the construction or operation of an energy facility that was required by Federal law or any other law of the State, including the Natural Resources and Environmental Protection Act (NREPA), any rule promulgated under a law of the State, or a local ordinance.

Site Plan

A site plan would have to meet application filing requirements established by MPSC rule or order to maintain consistency between applications.

A site plan would have to include the following:

- The location and a description of the energy facility.
- A description of the anticipated effects of the energy facility on the environment, natural resources, and solid waste disposal capacity, which could include records of consultation with relevant State, tribal, and Federal agencies.
- Additional information required by MPSC rule or order that directly related to the site plan.

An electric provider or IPP would have to submit a copy for informational purposes to the clerk of each affected local unit when the provider or producer submitted a site plan to the MPSC.

"Affected local unit" would mean a unit of local government in which all or part of a proposed energy facility will be located.

If the MPSC issued a certificate for an energy facility, the electric provider or IPP could make minor changes, as defined by the MPSC, to the site plan if the changes were within the footprint of the previously approved site plan.

Public Meeting Requirements

An electric provider or IPP that, at its option or as required by the MPSC, proposed to obtain a certificate for and construct an energy facility would have to hold a public meeting in each affected local unit. At least 30 days before a meeting, the electric provider or IPP would have to notify the clerk of the affected local unit in which a public meeting would be held of the time, date, location, and purpose of the meeting and provide a copy of the site plan or the address of an internet site where a site plan for the energy facility was available for review.

At least 14 days before the meeting, the electric provider or IPP would have to publish notice of the meeting in a newspaper of general circulation in the affected local unit or in a comparable digital alternative. The notice would have to include a copy of the site plan or the address of an internet site where the site plan was available for review. The MPSC would also have to prescribe the format and content of the notice. A public meeting held in a township would be considered to be held in each village located within the township.

At least 60 days before a public meeting, the electric provider or IPP planning to construct an energy facility would have to 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.

Compatible Renewable Energy Ordinance Process

If, within 30 days following a meeting described above, the chief elected official of each affected local unit communicated that it had a compatible renewable energy ordinance to the electric provider or IPP planning to construct the energy facility, then the electric provider or IPP would have to file for approval with the respective local unit, subject to the following provisions:

- This would not apply to a proposed energy facility that was located in more than one local unit of government unless each affected local unit had a compatible renewable energy ordinance.

- A submitted application would have to comply with certain requirements under Certification Application Requirements, and the local unit of government could require other information necessary to determine compliance with the compatible renewable energy ordinance.
- A local unit of government exercising siting jurisdiction under a compatible renewable energy ordinance would have to either approve or deny the application within four months of receiving an application; the applicant and local unit of government could jointly agree to extend this deadline by up to four months.
- If a local unit of government amended its zoning ordinance in a manner that placed additional requirements on the development of energy facilities within its jurisdiction that were more restrictive than the proposed setback requirements, it would be deemed to no longer have a compatible renewable energy ordinance.
- If a local unit of government failed to approve or deny the application within four months, denied an application that complied with the proposed setback requirements, or amended its zoning ordinance as described above, the applicant could submit an application for a certificate to the MPSC; if the proposed energy facility were in more than one local unit of government and any local unit of government took an action that would trigger this requirement, the applicant could submit an application for a certificate to the MPSC.
- An applicant applying to the MPSC under this requirement would not need to comply with the public meeting requirements, the proposed grant filing requirements described below, or the requirement to submit a summary of community outreach and education efforts under Certification Application Requirements.

If a local unit of government approved an application pursuant to the requirements listed above, construction of the proposed energy facility would have to begin within five years from the date the permit was granted and any challenges to the grant of the permit would be concluded. The local unit of government could extend this timeline at the request of the applicant without requiring a new application. An issued permit could not be revoked by the local unit except upon material noncompliance with the permit by the applicant.

If the MPSC approved an applicant for a certificate submitted under the requirements listed above, the local unit of government would be considered to no longer have a compatible renewable energy ordinance, unless the MPSC found that the local unit of government's denial of the application was reasonably related to the applicant's failure to provide information related to the involvement of multiple local governmental units as described above.

Nothing listed above could be construed to limit remedies available to an applicant to appeal a denial by a local unit of government under any other law of the State.

Certification Application Requirements

An application for a certificate would have to contain all the following:

- The complete name, address, and telephone number of the applicant.
- The planned date for the start of construction and the expected duration of construction.
- A description of the energy facility, including a site plan.
- A description of the expected use of the energy facility.
- Expected public benefits of the proposed energy facility.
- The expected direct impacts of the proposed energy facility on the environment and natural resources and how the applicant intended to address and mitigate those impacts.
- Information on the effects of the proposed energy facility on public health and safety.
- A description of the portion of the community where the energy facility would be located.

- A statement and reasonable evidence that the proposed energy facility would not commence commercial operation until it met State and Federal environmental laws, including NREPA.
- A summary of the community outreach and education efforts undertaken by the electric provider or IPP, including a description of the public meetings and meetings with elected officials.
- Evidence of consultation, prior to the 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 the Department of Natural Resources and the Department of Agriculture and Rural Development.
- The soil and economic survey report under NREPA for the county where the proposed energy facility would be located.
- Interconnection queue information for the applicable regional transmission organization (RTO).
- If the proposed site of the energy facility were undeveloped land, a description of feasible alternative developed locations, including vacant industrial property and brownfields, and an explanation of why that land was not chosen.
- If the energy facility were 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.
- If the energy facility were reasonably expected to have an impact on drainage systems within or surrounding the energy facility, a plan to minimize, mitigate, and repair that impact at the expense of the electric provider or IPP.
- A fire response plan and an emergency response plan.
- A decommissioning plan that included financial assurance in the form of a bond, a parent company guarantee, or an irrevocable letter of credit, but excluding cash.
- Other information reasonably required by the MPSC.

Information in the plan concerning military defense radar would be exempt from disclosure under the Freedom of Information Act (FOIA) and could not be disclosed by the MPSC or the electric provider or IPP except pursuant to court order.

Part 8 specifies that the amount of financial assurance could 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. The financial assurance component of the decommissioning plan could be posted in increments as follows:

- At least 25% by the start of full commercial operation.
- At least 50% by the start of the fifth year of commercial operation.
- 100% by the start of the tenth year of commercial operation.

Application Approval

Within 60 days after receipt of an application, the MPSC would have to determine whether the application was complete. If the MPSC determined that the application were incomplete, the MPSC would have to advise the applicant in writing of the information necessary to make the application complete. If the MPSC failed to timely notify the applicant that an application was incomplete, the application would be considered complete.

Upon filing an application with the MPSC, the applicant would have to make a one-time grant to each affected local unit for an amount determined by the MPSC but not more than \$75,000 per affected local unit and not more than \$150,000 in total. Each affected local unit would have to 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.

The notice would have to be published in a newspaper of general circulation in each affected local unit or a comparable digital alternative. The notice would have to be written in plain, nontechnical, and easily understood terms and would have to contain a title that included 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 Act would allow the MPSC to further prescribe the format and contents of the notice.

The MPSC would have to conduct a proceeding on the application for a certificate as a contested case under the Administrative Procedures Act. An affected local unit, participating property owner, or nonparticipating property owner could intervene by right.

"Participating property" would mean 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. "Nonparticipating property" would mean a property that is adjacent to a solar energy facility or wind energy facility and that is not a participating property.

The MPSC could assess reasonable application fees to the applicant to cover the administrative costs in processing the application, including costs to consultants to assist the commission in evaluating issues raised by the application. The MPSC could retain consultants to assist in evaluating issues raised and require the applicant to pay the cost of the services.

Under Part 8, the MPSC would have to grant the application and issue a certificate or deny the application within one year after a complete application was filed.

In evaluating the application, the MPSC would have to consider the feasible developed alternatives related to interconnection queue information for the applicable RTO, 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 MPSC could condition its grant of the application on the applicant taking additional reasonable action related to the impacts of the proposed energy facility, including the following:

- Establishing and maintaining for the life of the facility vegetative ground cover; this requirement would not apply to an application for an energy facility that was proposed to be located entirely on brownfield land.¹
- 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 (MSU) Department of Entomology that were in effect on bill's enactment date or any applicable successor standards approved by the MPSC as reasonable and consistent with the purposes of this provision. This subdivision would not apply to an application for an energy facility that was proposed to be located entirely on brownfield land.
- Providing for community improvements in the local affected unit.

¹ Generally, brownfield land is unused land that has been blighted or contaminated by its previous use. Brownfield redevelopment plans offer opportunities to finance the clean-up or decontamination of brownfield lands and the subsequent redevelopment.

Seed mix used to establish pollinator plantings could not include invasive species as identified by the Midwest Invasive Species Information Network, led by researchers at the MSU of Entomology and supporting regional partners.

The MPSC would have to grant the application and issue a certificate if it determined all the following:

- The public benefits of the proposed energy facility justified its construction, including 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 the State; in determining any contributions to meeting identified energy, capacity, reliability, or resource adequacy needs of the State, the MPSC could consider approved integrated resource plans under Section 6t of Public Act (PA) 3 of 1939,² renewable energy plans, annual electric provider capacity demonstrations under Section 6w of PA 3 of 1939,³ or other proceedings before the MPSC, at the applicable RTO, or before the Federal Energy Regulatory Commission, as determined relevant by the MPSC.
- The energy facility complied with the standard in Section 1705(2) of NREPA.⁴
- The applicant had considered and addressed impacts to the environment and natural resources, including sensitive habitats and waterways, wetlands and floodplains, wildlife corridors, parks, historic and cultural sites, and threatened or endangered species.
- The applicant met the conditions established under Agreements, described further below.
- The applicant certified that the workers employed for the construction of the energy facility would be paid at least the prevailing wage in the local unit of government in which the proposed energy facility was located.
- The installation, construction, or construction maintenance of the energy facility would use apprenticeship programs registered and in good standing with the United States Department of Labor.
- To the extent permitted by law, the entities performing the construction or construction maintenance work would enter into a project labor agreement or operate under a collective bargaining agreement for the work to be performed.
- The proposed energy facility would not unreasonably diminish prime or other farmland.
- The proposed energy facility did not present an unreasonable threat to public health or safety.

"Project labor agreement" would mean a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and does all the following:

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

² Generally, MCL 460.6t prescribes the requirements for integrated resource plans, which electric utilities submit to the MPSC every five years and are used to project anticipated customer electricity needs over the next five, 10, and 15 years, as well as the appropriate mix of resources to serve those needs (ie. power plants, renewable energy, demand response).

³ MCL 460.6w prescribes the requirements for annual electric provider capacity demonstrations. Annual electric provider capacity demonstrations require all electric providers to demonstrate to the MPSC that they have enough resources to serve the anticipated needs of their customers.

⁴ Section 1705(2) requires feasible and prudent alternatives to pollution or destruction of natural resources like air and water to be approved over other conduct in administrative, licensing, or other proceedings.

- Contains guarantees against strikes, lockouts, and similar job disruptions.
- Sets for the effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement.
- Provides other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health.
- Complies with all State and Federal laws, rules, and regulations.

The bill specifies that an energy facility would meet the requirements that a facility not represent an unreasonable threat to public health or safety if it complied with the setback and safety requirements described below. For a solar energy facility, all the following:

- The solar energy facility was completely enclosed with fencing in compliance with the latest version of the National Electric Code as of the bill's enactment date or any applicable successor standard approved by the MPSC as reasonable and consistent with the purposes of the Part 8.
- Solar panel components did not exceed a maximum height of 25 feet above ground when the arrays were at full tilt.
- The solar energy facility did not generate a maximum sound greater than 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property.
- The solar energy facility would implement dark sky friendly lighting solutions.
- The MPSC could adopt more stringent requirements if determined necessary for compliance with State or Federal environmental regulations.

"Dark sky friendly lighting technology" would mean a light fixture that was designed to minimize the amount of light that escaped upward into the sky.

Decibel modeling would have to use the A-weighted scale as designed by the American National Standards Institute.

Additionally, the solar energy facility would have to meet the following minimum setback requirements, with setback distances measured from the nearest edge of any component in the facility:

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

"Occupied community building" would mean 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.

For a wind energy facility, all the following:

- Each wind tower was sited such that any occupied community building or nonparticipating residence would not experience more than 30 hours per year of shadow flicker under planned operating conditions as indicated by industry standard computer modeling.
- Each wind tower blade tip did not exceed the height allowed under a Determination of No Hazard to Air Navigation by the Federal Aviation Administration under Federal Regulations.

- The wind energy facility did not generate a maximum sound greater than 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property.
- The wind energy facility met any standards concerning radar interference, lighting, or other relevant issues as determined by the MPSC.

In addition, the wind energy facility would have to be equipped with a functioning light-mitigating technology. To allow proper conspicuity of a wind turbine at night during construction, a turbine could be lighted with temporary lighting until the permanent lighting configuration, including the light-mitigating technology, was implemented. The MPSC could grant a temporary exemption from these requirements if installation of appropriate light-mitigating technology were not feasible. A request for a temporary exemption would have to be in writing and state all the following:

- The purpose of the exemption.
- The proposed length of the exemption.
- A description of the light-mitigating technologies submitted to the Federal Aviation Administration.
- The technical or economic reason a light-mitigating technology was not feasible.
- Any other relevant information requested by the MPSC.

The MPSC could adopt more stringent requirements if determined necessary for compliance with State or Federal environmental regulations.

"Aircraft detection lighting system" would mean a sensor-based system designed to detect aircraft as they approached a wind energy facility and that automatically activates obstruction lights until they are no longer needed. "Maximum blade tip height" would mean 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 would mean the actual hub height plus the actual blade length.

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

Additionally, the wind energy facility would have to meet the following setback distances.

Setback Description	Setback Distance
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

For an energy storage facility, all the following:

- The energy storage facility complied with the version of NFPA 855 "Standard for the Installation of Stationary Energy Storage Systems" in effect on the bill's enactment date or any applicable successor standard adopted by the MPSC as reasonable and consistent with the purposes of Part 8.
- The energy storage facility did not generate a maximum sound greater than 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property.
- The energy storage facility would implement dark sky-friendly lighting solutions.
- The energy storage facility would comply with any more stringent requirements; the MPSC could adopt more stringent requirements for energy storage facilities if it considered the requirements necessary for compliance with State or Federal environmental regulations.

The certificate would have to identify the location of the energy facility and its nameplate capacity.

If construction of an energy facility were not commenced within five years of the date that a certificate was issued, the certificate would be invalid. The electric provider or IPP could seek a new certificate for the proposed energy facility. If the certificate were appealed in proceedings before the MPSC or to a court of competent jurisdiction, the running of the five-year period would be tolled from the date of filing the appeal until 60 days after issuance of a final non-appealable decision. The MPSC could extend the five-year period for not more than one year at the request of the applicant and upon a showing of good cause without requiring a new contested case proceeding.

Before commencing commercial operations, an applicant would have to file a completion report certifying compliance with the requirements of the Act and any conditions contained in the MPSC's certificate.

Agreements

The applicant for a certificate would have to enter into a host community agreement with each affected local unit. The host community agreement would have to require that, upon commencement of any operation, the energy facility owner would have to pay the affected local unit \$2,000 per megawatt of nameplate capacity located within the affected local unit. The payment would have to 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.

If an affected local unit and the applicant were unable to reach a host community agreement, the applicant could enter into a community benefits agreement with one or more community-based organization within, or that served residents of, the affected local unit. The amount paid by the applicant would have to be equal to, or greater than, what the applicant would pay to the affected local unit under a host community agreement. Community benefits agreements would have to prioritize benefits to the community in which the energy facility was to be located.

The topics and specific terms of the agreements could vary and include any of the following:

- Workforce development, job quality, and job access provisions that included certain information described below.
- Funding for or providing specific environmental benefits.

- 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.
- Annual contributions to a nonprofit or community-based organization that awarded grants.

"Community-based organization" would mean 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.

The Workforce development, job quality, and job access provisions would have to include the following:

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

A host community agreement or community benefits agreement would be legally binding and inure to the benefit of the parties and their successors and assigns. The MPSC would have to enforce this requirement, but not the actual agreements, which would be enforceable in a court of competent jurisdiction.

Confidentiality

Except as otherwise provided, information obtained by the MPSC under Part 8 would be public record under FOIA.

The MPSC would have to issue orders necessary to protect the information in an application for a certificate, or in other certification documents if the MPSC reasonably found the information to be confidential. Information that was confidential under a protective order would be exempt from disclosure under FOIA.

An MPSC order relating to a certificate or other matter provided for under Part 8 would be subject to review in the same manner as provided in Section 6 of the Railroad Code. (Generally, Section 6 describes the procedures for appealing MPSC orders.)

Administration

In administering Part 8, the MPSC would only have those powers and duties granted under Part 8.

The MPSC could consolidate proceedings under Part 8 with contract approval or other certificate of need cases relating to the same energy facility.

Part 8 would control in any conflict between the Act and any other law of the State. However, the Electric Transmission Line Certification Act would control in any conflict with Part 8.

The MPSC's approval of a certificate would not confer the power of eminent domain and would not be a determination of public convenience and necessity for the purposes of the power of eminent domain.

If a portion of Part 8 were, for any reason, held to be invalid or unconstitutional, the remaining sections, subsections, or parts of those sections would not be affected and would remain in full force and effect.

Miscellaneous Definitions

Under the Act, "utility system resource cost test" means a standard that is met for an investment in energy waste reduction if, on a life cycle basis, the total avoided supply-side costs to the provider, including representative values for 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 the bill, total avoided supply-side costs to the provider would have to be calculated using a real societal discount rate based on actual long-term United States Treasury bond yields.

"Light intensity dimming solution technology" would mean obstruction lighting that provided a means of tailoring the intensity level of lights according to surrounding visibility.

House Bill 5121

The bill would amend Article 2 of the Michigan Zoning Enabling Act to require a renewable energy project that received special land use approval under section 502 on or after January 1, 2021 to be treated as a prior nonconforming use, and a previously granted special land use approval could not be revoked or modified if substantial construction had occurred or if an expenditure equal to 10% of the project construction costs or \$10,000, whichever was greater, had been made.⁵

BACKGROUND

To sell electricity to consumers in the State, an electric provider's rates and conditions of service must be regulated by the MPSC. The establishment and any change of rates and conditions of service occur through MPSC contested case proceedings. These proceedings generally afford affected parties, such as a provider's customers, trade associations, or IPPs in a provider's footprint, the opportunity to provide evidence for the MPSC's consideration of a provider's proposed changes. The MPSC issues final orders after consideration of all evidence presented, and the rates ultimately must allow an electric provider to recuperate reasonable costs of service.

Qualified facilities (QFs) unregulated by the MPSC, such as IPPs, are guaranteed the opportunity to sell generated electricity to MPSC-regulated electric providers under the Public Utility Regulatory Policies Act (PURPA). Generally, QFs are independent producers of power that fall into two categories: a) a small power production facility, whose primary energy source is hydro, wind, solar, biomass, waste, or geothermal resources; or b) a cogeneration facility that sequentially produces electricity and another form or thermal energy in a way that is more efficient than producing the energy separately. Under PURPA, local "host" utilities are obligated to purchase power from qualified facilities. The MPSC sets the rates at which the host utility will buy power from the QF.⁶

⁵ MCL 125.3502 allows a local legislative body to provide in a zoning ordinance for special land uses in a zoning district. A special land use must be subject to the review and approval of the zoning commission, the planning commission, an official charged with administering the zoning ordinance, or the legislative body as required by the zoning ordinance.

⁶ "Public Utility Regulatory Policies Act", Michigan Public Service Commission. Retrieved on 10-25-2023. [SAS\S2324\s5120sa](#)

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

Legislative Analysis



CERTIFICATION AND SITING OF ENERGY FACILITIES WITH CAPACITY OF 100 MEGAWATTS OR MORE

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5120 (H-1) as reported from committee
Sponsor: Rep. Abraham Aiyash

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5121 as reported from committee
Sponsor: Rep. Ranjeev Puri

Committee: Energy, Communications, and Technology
Complete to 10-30-23

SUMMARY:

House Bill 5120 would add a Part 8 to the Clean and Renewable Energy and Energy Waste Reduction Act to create a certification process, through the Michigan Public Service Commission (MPSC), of wind or solar energy facilities and energy storage facilities with a capacity of 100 megawatts or more.¹ The process would preempt local zoning or regulation of such facilities. House Bill 5123 would amend the Michigan Zoning Enabling Act to provide that zoning ordinances are subject to Part 8 of the Clean and Renewable Energy and Energy Waste Reduction Act.

House Bill 5120 would add Part 8 (Wind, Solar, and Storage Certification) to the Clean and Renewable Energy and Energy Waste Reduction Act. The proposed new part would apply to *wind energy facilities* or *solar energy facilities* with a *nameplate capacity* of 100 megawatts or more and to *energy storage facilities* with a nameplate capacity of 100 megawatts or more and an energy discharge capability of 200 megawatt hours or more. These would be referred to collectively as energy facilities in the bill. Energy facilities could be located on more than one parcel of property, including noncontiguous parcels.

Wind energy facility would mean a system that captures and converts wind into electricity for sale or for use in any location other than the facility property and would include at least all of the following:

- Wind towers.
- Wind turbines.
- Monitoring and recording equipment and facilities.
- Erosion control facilities.
- Ancillary buildings.
- Wind monitoring stations.

Solar energy facility would mean a system that captures and converts solar energy into electricity for sale or for use in any location other than the facility property and would include at least all of the following:

- Photovoltaic solar panels.

¹ House Bills 5120 and 5122 have similar provisions, and both bills would add a Part 8 to the act, but HB 5120 would apply to the facilities with the capacities described above and HB 5122 would apply to solar energy facilities and energy storage facilities with a capacity of at least 50 megawatts but less than 100 megawatts.

- Solar inverters.
- Solar monitoring stations.

In addition to the above descriptions, *wind energy facility* and *solar energy facility* would also both include, at a minimum, all of the following:

- ***Energy storage facilities.***
- 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.
- Overhead and underground control.
- Communications and radio relay systems and telecommunications equipment.
- Utility lines and installations.
- Generation tie lines.
- Substations.
- Accessory equipment and structures.

Nameplate capacity would mean the designed full-load sustained generating output of an energy facility, determined by reference to the sustained output of an energy facility even if its components are located on different parcels.

Energy storage facility would mean a system that absorbs, stores, and discharges electricity.

Certificates

The bill would allow an *electric provider* or *independent power producer* to obtain a certificate from the MPSC, as described below, before beginning *construction* of an energy facility.

Electric provider means any of the following:

- Any person or entity that is regulated by the MPSC for the purpose of selling electricity to retail customers in Michigan.
- A municipally owned electric utility in Michigan.
- A cooperative electric utility in Michigan.
- An alternative electric supplier licensed under section 10a of 1939 PA 3.²

² <http://legislature.mi.gov/doc.aspx?mcl-460-10a>

Independent power producer would mean a **person** that is not an electric utility but that owns or operates facilities to generate electric power for sale to electric providers, the state, or local units of government.

Person would mean any of the following:

- An individual.
- A governmental entity authorized by the state.
- A political subdivision of the state.
- A business.
- A proprietorship.
- A firm.
- A partnership.
- A limited partnership.
- A limited liability partnership.
- A co-partnership.
- A joint venture.
- A syndicate.
- A business trust.
- A labor organization.
- A company.
- A corporation.
- An association.
- A subchapter S corporation.
- A limited liability company.
- A committee.
- A receiver.
- An estate.
- A trust.
- Any other legal entity or combination or group of persons acting jointly as a unit.

Construction would mean any substantial action taken that constitutes the placement, erection, expansion, or **repowering** of an energy facility.

Repowering would mean replacement of all or substantially all of an energy facility for the purpose of extending its life. It would not include repairs related to ongoing operations that do not increase the capacity or energy output of the facility.

Public meeting

An electric provider or independent power producer proposing to obtain a certificate would have to hold a public meeting in each **affected local unit** (a county, township, city, or village where all or part of a proposed energy facility will be located). However, a public meeting held in a township would be considered to be held in each village located in that township.

At least 60 days before the meeting, the electric provider or independent power producer would have to offer in writing to meet with the chief elected official of each affected local unit, or their designee, to discuss the site plan for the facility. (Site plans are described below.)

At least 30 days before the meeting, the electric provider or independent power producer would have to notify the clerk of the affected local unit where the meeting will be held of the time, date, location, and purpose of the meeting and provide either a copy of the site plan or an internet address where the site plan is available.

At least 14 days before the meeting, the electric provider or independent power producer would have to publish notice of the meeting in a newspaper of general circulation in the affected local unit or in a digital alternative that is comparable to such a newspaper. The notice would have to include either a copy of the site plan or an internet address where the site plan is available.

The MPSC would have to further prescribe the format and content of the notice.

Site plan

In addition to meeting application filing requirements established by the MPSC by rule or order, a site plan would have to include all of the following:

- The location of the energy facility.
- A description of the energy facility.
- A description of the anticipated effects of the energy facility on the environment, natural resources, and solid waste disposal capacity. This description could include records of consultation with relevant state, tribal, and federal agencies.
- Additional information that directly relates to the site plan as required by the MPSC by rule or order.

Whenever an electric provider or independent power producer submits a site plan to the MPSC as required by the bill, it also would have to submit a copy of the site plan to the clerk of each affected local unit, for informational purposes.

Application for a certificate

An application for a certificate would have to contain all of the following:

- The applicant's name, address, and phone number.
- The planned construction start date.
- The construction's expected duration.
- A description of the energy facility, including a site plan.
- A description of the facility's expected use.
- A description of the facility's expected public benefits.
- A description of the facility's expected direct impacts on the environment and natural resources.
- A description of how the applicant intends to address and mitigate the above impacts.
- Information on the facility's effects on public health and safety.
- A description of the portion of the community where the energy facility will be located.
- A statement (and evidence) that the facility will not start commercial operation until it is in compliance with applicable environmental laws.
- A summary of the community outreach and education efforts undertaken by the electric provider or independent power producer. This would include a description of the public meetings and meetings with elected officials described above.
- Evidence of consultation (before submission of the application) with the Department of Environment, Great Lakes, and Energy and other relevant state and federal agencies,

including the Department of Natural Resources and the Department of Agriculture and Rural Development.

- Information about the interconnection queue for the applicable regional transmission organization.
- If the proposed site is undeveloped, a description of feasible alternative developed locations, including vacant industrial property and brownfields, and an explanation of why they were not chosen.
- If the facility is reasonably expected to have an impact on any of the following, a plan to minimize and mitigate that impact:
 - Television signals.
 - Microwave signals.
 - Agricultural global position systems.
 - Military defense radar. Information in the plan concerning military defense radar would be exempt from disclosure under the Freedom of Information Act (FOIA) and could not be disclosed by the MPSC or the electric provider or independent power producer except under court order.
 - Radio reception.
 - Weather and Doppler radio.
- If the facility is expected to have an impact on drainage systems, a plan to minimize, mitigate, and repair that impact at the expense of the provider or producer.
- If the facility is or includes an energy storage facility, an emergency response plan.
- A decommissioning plan that includes financial assurance in the form of a bond, a parent company guarantee, or an irrevocable letter of credit, in an amount at least equal to the estimated cost of decommissioning the facility, after deducting salvage value, as calculated by a third party with expertise in decommissioning hired by the applicant. The financial assurance could be posted in increments as follows:
 - At least 25% by the start of full commercial operation.
 - At least 50% by the start of the fifth year of commercial operation.
 - 100% by the start of the tenth year of commercial operation.
- Other information reasonably required by the MPSC.

The MPSC would have to determine an application's completeness within 60 days after receiving it. For an incomplete application, the MPSC would have to advise the applicant in writing of the information needed to make it complete. An application would be considered to be complete if the MPSC fails to timely notify the applicant that it is incomplete.

When the MPSC determines that an application is complete, the applicant would have to make a one-time grant to each affected local unit for an amount determined by the MPSC but not more than \$75,000 per affected local unit and not more than \$150,000 in total. Each affected local unit would have to deposit the grant in a Local Intervenor Compensation Fund to be used to cover costs associated with participating in the contested case proceeding on the application.

By 30 days after the MPSC determines that an application is complete, the applicant would have to publish, and send to the clerk of each affected local unit, notice of an opportunity to comment on the application. Publication would have to be in a newspaper of general circulation in each affected local unit or a comparable digital alternative. The notice would have to be written in plain, nontechnical, and easily understood terms, with a specified style of title.

The MPSC would have to further prescribe the format and contents of the notice.

The MPSC would have to conduct a proceeding on the application as a contested case under the Administrative Procedures Act. An affected local unit, participating property owner, or nonparticipating property owner could intervene by right.

The MPSC could assess reasonable fees to cover its administrative costs in processing an application, including costs of consultants to assist the MPSC in evaluating issues raised by the application.

The MPSC would have to grant the application and issue a certificate or deny the application not later than one year after a complete application is filed.

Evaluating an application

In evaluating an application, the MPSC would have to consider the impact of the proposed facility on local land use, including the percentage of land in the local unit dedicated to energy generation. The MPSC could condition approval on additional reasonable action related to the facility impacts, including the following:

- Establishing vegetative ground cover and maintaining it for the life of the facility.
- Meeting or exceeding specified pollinator standards for the life of the facility.
- Providing for community improvements in the affected local unit.

The MPSC would have to grant the application and issue a certificate if it determines all of the following:

- The public benefits of the proposed energy facility justify its construction. (Public benefits would include at least expected tax revenue paid by the energy facility to local taxing districts, payments to owners of participating property, community benefits agreements, and local job creation. They also would include any contributions to meeting identified energy, capacity, reliability, or resource adequacy needs of the state, to determine which the MPSC could consider approved integrated resource plans under section 6t of 1939 PA 3,³ renewal energy plans, annual electric provider capacity demonstrations under section 6w of 1939 PA 9,⁴ or other proceedings before the MPSC, at the applicable regional transmission organization, or before the Federal Energy Regulatory Commission, as determined relevant by the MPSC.)
- The applicant has considered and addressed impacts to the environment and natural resources, including sensitive habitats and waterways, wildlife corridors, wetlands and floodplains, parks, historic and cultural sites, and threatened or endangered species.
- The applicant has met the community-based organization conditions described below.
- The applicant has certified that workers employed for construction of the facility will be paid at least the prevailing wage in the affected local unit.
- The applicant has certified that it will enter into and adhere to an agreement with one or more labor organizations in regard to the construction of the energy facility.
- The proposed energy facility does not present an unreasonable threat to public health or safety.

³ <http://legislature.mi.gov/doc.aspx?mcl-460-6t>

⁴ <http://legislature.mi.gov/doc.aspx?mcl-460-6w>

An energy facility would be considered to meet the health and safety requirement described above if it will meet the following applicable standards:

- For a solar energy facility, all of the following:
 - The following setback requirements:
 - With regard to *occupied community buildings* and dwellings on *nonparticipating properties*, 150 feet from the nearest point on the outside wall of the structure.
 - With regard to a public road right-of-way, 50 feet measured from the nearest edge of the right-of-way.
 - With regard to nonparticipating properties, 50 feet measured from the nearest shared property line.
 - The solar energy facility is completely enclosed with fencing in compliance with the National Electric Code as in effect when the bill is enacted or any applicable successor standard approved by the MPSC.
 - Solar panel components do not exceed a maximum height of 25 feet above ground when the arrays are at full tilt.
 - 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 would have to use the A-weighted scale as designed by the American National Standards Institute.
- For a wind energy facility, all of the following:
 - The following setback distances, measured from the center of the base of the wind tower:
 - With regard to occupied community buildings and nonparticipating residences, 2.1 times the *maximum blade tip height* to the nearest point on the outside wall.
 - With regard to participating residences, 1.1 times the maximum blade tip height to the nearest point on the outside wall.
 - With regard to nonparticipating property lines, 1.1 times the maximum blade tip height.
 - With regard to a public road right-of-way, 1.1 times the maximum blade tip height to the center line of the right-of-way.
 - With regard to overhead communication and electric transmission lines, except utility lines to houses or outbuildings, 1.1 times the maximum blade tip height to the center line of the easement.
 - No occupied community building or nonparticipating residence will experience more than 30 hours a year of shadow flicker under planned operating conditions as indicated by industry standard computer modeling.
 - No wind tower blade tip exceeds the height allowed under a Determination of No Hazard to Air Navigation by the Federal Aviation Administration under 14 CFR part 77.
 - The 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 on an adjacent nonparticipating property. Decibel modeling would have to use the A-weighted scale designed by the American National Standards Institute.
 - The facility meets any standards concerning radar interference, lighting, or other relevant issues determined by the MPSC.

- For an energy storage facility, both of the following:
 - The facility complies NFA 855 “Standard for the Installation of Stationary Energy Storage Systems” as in effect when the bill is enacted or any applicable successor standard adopted by the MPSC.
 - The 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 on an adjacent nonparticipating property. Decibel modeling would have to use the A-weighted scale designed by the American National Standards Institute.

Occupied community building would mean any of the following:

- A school.
- A place of worship.
- A day care facility.
- A public library.
- A community center.
- A similar building the applicant knows is regularly used as a community gathering place.

Nonparticipating property would mean property adjacent to a solar energy facility or wind energy facility that is not a ***participating property***.

Participating property would mean real property that is either owned by an applicant or the subject of an agreement under which an applicant compensates a landowner related to an energy facility, regardless of whether any part of the facility is constructed on the property.

Maximum blade tip height would mean the nominal hub height plus the nominal blade length of a wind turbine, as listed in the specifications provided by the manufacturer. If not listed there, maximum blade tip height would mean the actual hub height plus the actual blade length.

The certificate would have to identify the location of the energy facility and its nameplate capacity.

If construction of an energy facility is not started within five years after a certificate is issued, the certificate would be invalid, but the electric provider or independent power producer could seek a new certificate for the facility. The MPSC could extend this timeline at the request of the applicant without requiring a new contested case proceeding.

If the MPSC has issued a certificate for an energy facility, the electric provider or independent power producer could make minor changes (as defined by the MPSC) to the site plan if the changes are within the footprint of the previously approved site plan.

Community-based organization agreements

An applicant for a certificate would have to enter into at least one agreement with—or benefitting—at least one ***community-based organization***. Such an agreement would be legally binding and enforceable if construction of the energy facility commences. The MPSC would

have to enforce this requirement, but the actual agreements would be enforceable in a court of competent jurisdiction.

Community-based organization would mean any of the following:

- A workforce development and training organization.
- A labor union.
- A local governmental entity.
- A Michigan federally recognized tribe.
- An environmental advocacy organization.
- An organization that represents the interests of underserved communities.

An agreement would have to prioritize benefits to the community where the facility will be located. The topics and specific terms of an agreement could include any of the following:

- Workforce development, job quality, and job access provisions such as the following:
 - Terms of employment, such as wages, benefits, employment status, workplace health and safety, scheduling, and career opportunities.
 - Recruitment, screening, and hiring strategies and practices; targeted hiring; investment in training and education; and worker input and representation in decisions affecting employment and training.
- Funding or providing specific environmental benefits.
- Funding or providing community amenities such as park and playground equipment, urban greening, enhanced safety crossings, road paving, and bike paths.
- Annual contributions to a grant-giving nonprofit or community-based organization.

Confidentiality

Except as otherwise described below, information obtained by the MPSC under the bill would be a public record under FOIA.

An applicant could designate information received from a third party and submitted to the MPSC for certification as only for the confidential use of the MPSC. If the scope of a request for public records under FOIA included information designated as confidential, the MPSC would have to notify the electric provider or independent power producer. If, within 10 days after the receipt of the notice, the electric provider or independent power producer demonstrates to MPSC that the information a trade secret or secret process or that disclosure of the information would jeopardize the competitive position of the electric provider, independent power producer, or person the information was obtained from, the MPSC would have to deny the information request. If the MPSC grants the request, it could not release the information until three days after notice is provided to the electric provider or independent power producer.

A person that uses information obtained by the MPSC under the proposed Part 8 to forecast electrical demand would have to structure the forecast so the person the information pertains to is not identified (unless that person waives confidentiality).

The MPSC would have to issue orders to protect any information in an application or other documents required for certification that it reasonably finds to be confidential. Information under a protective order would be exempt from disclosure under FOIA.

Local preemption

A local ordinance could not prohibit or regulate testing activities by an electric provider or independent power producer to determine the suitability of a site for an energy facility.

If a certificate for an energy facility is issued under the bill, a zoning ordinance or limitation imposed after the electric provider or independent power producer submitted the certificate application to the MPSC could not be construed to limit or impair the construction, operation, or maintenance of the energy facility. The certificate and the proposed Part 8 would preempt any local policy, practice, regulation, rule, or other ordinance that prohibits, regulates, or imposes additional or more restrictive dimensional and use limitations or requirements on the construction, operation, use, dimensions, replacement, or maintenance of an energy facility.

The bill states that, except as provided above, it would not exempt an electric provider or independent power producer to which a certificate is issued from obtaining any other permit, license, or permission to construct or operate an energy facility that is required by state law, a rule promulgated under state law, or a local ordinance.

Other provisions

In administering the proposed Part 8, the MPSC would have only those powers and duties granted under that part.

An MPSC order relating to a certificate or anything else provided for in the proposed Part 8 would be subject to review in the same manner as provided in section 6 of 1909 PA 300.⁵

The MPSC could consolidate proceedings under the proposed Part 8 with contract approval or other certificate-of-need cases relating to the same energy facility.

The proposed Part 8 would control in any conflict between it and any other law of Michigan, except for the Electric Transmission Line Certification Act, which would control in any conflict between it and Part 8.

Approval of a certificate by the MPSC would not confer the power of eminent domain or be a determination of public convenience and necessity for the purposes of the power of eminent domain.

The bill would take effect one year after the date it is enacted.

Proposed MCL 460.1221 et seq.

House Bill 5121 would amend the Michigan Zoning Enabling Act to provide that zoning ordinances are subject to Part 8 of the Clean and Renewable Energy and Energy Waste Reduction Act (proposed by House Bill 5120).

MCL 125.3205

Neither bill could take effect unless both bills were enacted.

⁵ <http://legislature.mi.gov/doc.aspx?mcl-462-26>

FISCAL IMPACT:

The bills would likely have a neutral net fiscal impact on the Michigan Public Service Commission. The bills would result in increased costs for the MPSC for its responsibilities related to siting. The MPSC projects that it would require additional staff to comply with the provisions of the bills, though exact staffing needs are currently indeterminate. The bills would allow the MPSC to assess application fees to cover its costs.

The bills may also result in local governments receiving public benefits, though the magnitude of these benefits is not well defined and is currently indeterminate.

POSITIONS:

Representatives of the following entities testified in support of the bills (10-11-23):

- Michigan Public Service Commission
- Conservative Energy Forum
- Michigan Energy Innovation Business Council (EIBC)
- Michigan Laborers District Council
- Ventower Industries

The following entities indicated support for the bills:

- Advanced Energy United (10-11-23)
- American Clean Power Association (10-11-23)
- Clean Grid Alliance (10-11-23)
- Michigan Environmental Council (10-18-23)
- Michigan League of Conservation Voters (10-11-23)
- Michigan Manufacturers Association (10-18-23)
- Michigan Regional Council of Carpenters and Millwrights (10-18-23)
- National Resources Defense Council (10-11-23)
- NextAmp (10-18-23)
- Savion LLC (10-11-23)
- Sierra Club (10-11-23)
- Solar Energy Industries Association (10-11-23)
- Utility Worker Union of America (10-11-23)

Representatives of the following entities testified in opposition to the bills:

- ABC of Michigan (10-18-23)
- Clinton County Citizens United (10-18-23)
- Cohoctah Township (10-18-23)
- Ingham County Citizens United (10-18-23)
- Michigan Association of Counties (10-18-23)
- Michigan Municipal League (10-18-23)
- Michigan Townships Association (10-11-23)
- Montcalm County (10-18-23)
- Our Home, Our Voice (10-18-23)
- White River Township (10-18-23)

The following entities indicated opposition to the bills:

- Bath Charter Township Planning Commission (10-11-23)
- Citizens Protect Irish Hills (10-12-23)
- Clinton County Planning Commission (10-11-23)
- Irish Hills Preservation Council (10-12-23)
- Lenawee County Board of Commissioners (10-11-23)
- Mackinac Center (10-11-23)
- Michigan Agri-Business Association (10-11-23)
- Michigan Farm Bureau (10-11-23)
- New Haven Township (10-18-23)
- NFIB (10-11-23)
- Potato Growers of Michigan (10-11-23)
- Southeast Michigan Council of Governments (10-11-23)
- Yankee Springs Township (10-12-23)

Legislative Analyst: Rick Yuille
Fiscal Analyst: Marcus Coffin

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

**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 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;

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

17 Sec. 13. As used in this act:

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

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

25 ~~(c) "True net metering" means a utility billing method that~~
26 ~~applies the full retail rate to the net of the bidirectional flow~~
27 ~~of kilowatt hours across the customer interconnection with the~~
28 ~~utility distribution system, during a billing period or time-of-use~~
29 ~~pricing period. A negative net metered quantity during the billing~~

1 ~~period or during each time of use pricing period within the billing~~
2 ~~period reflects net excess generation for which the customer is~~
3 ~~entitled to receive credit under section 177(4). This subdivision~~
4 ~~is subject to section 177(5).~~

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

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

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

21 PART 8.

22 WIND, SOLAR, AND STORAGE CERTIFICATION

23 Sec. 221. As used in this part:

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

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

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

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

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

9 (f) "Compatible renewable energy ordinance" means an ordinance
10 that provides for the development of energy facilities within the
11 local unit of government using requirements that are no more
12 restrictive than the provisions included in section 226(8). A local
13 unit of government is deemed not to have a compatible renewable
14 energy ordinance if it has adopted, or adopts, a moratorium on the
15 development of energy facilities within its jurisdiction.

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

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

22 (i) "Energy facility" means an energy storage facility, solar
23 energy facility, or wind energy facility. An energy facility may be
24 located on more than 1 parcel of property, including noncontiguous
25 parcels.

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

29 (i) Fossil fuel storage.

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

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

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

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

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

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

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

29 (q) "Nonparticipating property" means a property that is

1 adjacent to a solar energy facility or wind energy facility and
2 that is not a participating property.

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

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

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

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

27 (i) Binds all contactors and subcontractors on the construction
28 project through the inclusion of appropriate specifications in all
29 relevant solicitation provisions and contact documents.

1 (ii) Allows all contactors and subcontractors on the
2 construction project to compete for contacts and subcontracts
3 without regard to whether they are otherwise parties to collective
4 bargaining agreements.

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

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

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

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

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

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

1 transformers; energy storage facilities; overhead and underground
2 control; communications and radio relay systems and
3 telecommunications equipment; utility lines and installations;
4 generation tie lines; substations; solar monitoring stations; and
5 accessory equipment and structures.

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

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

23 (a) Except for a wind energy or solar energy facility proposed
24 to be located in a local unit of government with a compatible
25 renewable energy ordinance, any solar energy facility with a
26 nameplate capacity of 50 megawatts or more.

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

29 (c) Except for an energy storage facility proposed to be

1 located in a local unit of government with a compatible renewable
2 energy ordinance, any energy storage facility with a nameplate
3 capacity of 100 megawatts or more and an energy discharge
4 capability of 200 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 a city or village has a wind, solar, or energy storage
21 facility that would normally be subject to subsection (2) and that
22 is for an energy facility that is located entirely within the city
23 or village, the city or village is exempt from this part as it
24 relates to the energy facility.

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

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

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

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

27 (a) This section is not applicable to a proposed energy
28 facility that is located in more than one local unit of government,
29 unless each affected local unit has a compatible renewable energy

1 ordinance.

2 (b) An application submitted under this section shall comply
3 with the requirements of section 225(1), except for section
4 225(1)(j) and (r). The local unit of government may require other
5 information necessary to determine compliance with the compatible
6 renewable energy ordinance.

7 (c) A local unit of government exercising siting jurisdiction
8 pursuant to a compatible renewable energy ordinance must either
9 approve or deny the application within 4 months of receiving an
10 application. The applicant and local unit of government may jointly
11 agree to extend this deadline by up to 4 months.

12 (d) If a local unit of government amends its zoning ordinance
13 in a manner that places additional requirements on the development
14 of energy facilities within its jurisdiction that are more
15 restrictive than those in section 226(8), it will be deemed to no
16 longer have a compatible renewable energy ordinance.

17 (e) If a local unit of government fails to approve or deny the
18 application within 4 months, denies an application that complies
19 with the requirements of section 226(8), or amends its zoning
20 ordinance as described in subdivision (c), the applicant may submit
21 an application for a certificate to the commission. If the proposed
22 energy facility is located in more than one local unit of
23 government and any local unit of government takes an action that
24 would trigger this subdivision, the applicant may submit an
25 application for a certificate to the commission.

26 (f) An applicant submitting an application to the commission
27 pursuant to this subsection does not need to comply with subsection
28 (1) or 226(1), or the requirement to submit a summary of community
29 outreach and education efforts under section 225(1)(j).

1 (4) If a local unit of government approves an application
2 pursuant to this section, construction of the proposed energy
3 facility must begin within 5 years from the date the permit is
4 granted and any challenges to the grant of the permit are
5 concluded. The local unit of government may extend this timeline at
6 the request of the applicant without requiring a new application. A
7 permit issued under this section may not be revoked by the local
8 unit except upon material noncompliance with the permit by the
9 applicant.

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

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

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

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

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

29 (c) Additional information required by commission rule or

1 order that directly relates to the site plan.

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

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

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

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

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

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

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

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

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

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

24 (i) A statement and reasonable evidence that the proposed
25 energy facility will not commence commercial operation until it is
26 in compliance with applicable state and federal environmental laws,
27 including, but not limited to, the natural resources and
28 environmental protection act, 1994 PA 451, MCL 324.101 to
29 324.90106.

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

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

11 (l) The soil and economic survey report under section 60303 of
12 the natural resources and environmental protection act, 1994 PA
13 461, MCL 324.60303, for the county where the proposed energy
14 facility will be located.

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

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

21 (o) If the energy facility is reasonably expected to have an
22 impact on television signals, microwave signals, agricultural
23 global position systems, military defense radar, radio reception,
24 or weather and doppler radio, a plan to minimize and mitigate that
25 impact. Information in the plan concerning military defense radar
26 is exempt from disclosure under the freedom of information act,
27 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed by
28 the commission or the electric provider or independent power
29 producer except pursuant to court order.

1 (p) If the energy facility is reasonably expected to have an
2 impact on drainage systems within or surrounding the energy
3 facility, a plan to minimize, mitigate, and repair that impact at
4 the expense of the electric provider or IPP.

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

6 (r) A decommissioning plan that includes, but is not limited
7 to, financial assurance in the form of a bond, a parent company
8 guarantee, or an irrevocable letter of credit, but excluding cash.
9 The amount of the financial assurance shall not be less than the
10 estimated cost of decommissioning the energy facility, after
11 deducting salvage value, as calculated by a third party with
12 expertise in decommissioning, hired by the applicant. However, the
13 financial assurance may be posted in increments as follows:

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

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

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

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

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

27 Sec. 226. (1) Upon filing an application with the commission,
28 the applicant shall make a 1-time grant to each affected local unit
29 for an amount determined by the commission but not more than

1 \$75,000.00 per affected local unit and not more than \$150,000.00 in
2 total. Each affected local unit shall deposit the grant in a local
3 intervenor compensation fund to be used to cover costs associated
4 with participation in the contested case proceeding on the
5 application for a certificate.

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

18 (3) The commission shall conduct a proceeding on the
19 application for a certificate as a contested case under the
20 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
21 24.328. An affected local unit, participating property owner, or
22 nonparticipating property owner may intervene by right.

23 (4) The commission may assess reasonable application fees to
24 the applicant to cover the commission's administrative costs in
25 processing the application, including costs to consultants to
26 assist the commission in evaluating issues raised by the
27 application. The commission may retain consultants to assist the
28 commission in evaluating issues raised by the application and may
29 require the applicant to pay the cost of the services.

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

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

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

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

1 brownfield land.

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

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

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

22 (b) The energy facility complies with the standard in section
23 1705(2) of the natural resources and environmental protection act,
24 1994 PA 451, MCL 324.1705.

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

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

3 (e) All of the following apply:

4 (i) The installation, construction, or construction maintenance
5 of the energy facility will use apprenticeship programs registered
6 and in good standing with the United States Department of Labor.

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

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

17 (f) The proposed energy facility will not unreasonably
18 diminish prime or other farmland.

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

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

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

25 (i) The following minimum setback requirements, with setback
26 distances measured from the nearest edge of any component of the
27 facility:

28 Setback Description Setback Distance

1	Occupied community buildings	300 feet from the nearest point
2	and dwellings on	on the outer wall
3	nonparticipating properties	
4	Public road right-of-way	50 feet measured from the
5		nearest edge of a public road
6		right-of-way
7	Nonparticipating parties	50 feet measured from the
8		nearest shared property line

9 (ii) The solar energy facility is completely enclosed with
10 fencing in compliance with the latest version of the National
11 Electric Code as of the enactment date of the amendatory act that
12 added this section or any applicable successor standard approved by
13 the commission as reasonable and consistent with the purposes of
14 this subdivision.

15 (iii) Solar panel components do not exceed a maximum height of
16 25 feet above ground when the arrays are at full tilt.

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

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

25 (vi) The commission may adopt more stringent requirements under
26 this subdivision if determined necessary for compliance with state
27 or federal environmental regulations.

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

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

1 center of the base of the wind tower:

2	<u>Setback Description</u>	<u>Setback Distance</u>
3 4 5 6	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
7 8 9 10	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
11 12	Nonparticipating property lines	1.1 times the maximum blade tip height
13 14 15	Public road right-of-way	1.1 times the maximum blade tip height to the center line of the public road right-of-way
16 17 18 19 20	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

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

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

28 (iv) The wind energy facility does not generate a maximum sound
 29 in excess of 55 average hourly decibels as modeled at the nearest

1 outer wall of the nearest dwelling located on an adjacent
2 nonparticipating property. Decibel modeling shall use the A-
3 weighted scale as designed by the American National Standards
4 Institute.

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

14 (A) The purpose of the exemption.

15 (B) The proposed length of the exemption.

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

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

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

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

25 (vii) The commission may adopt more stringent requirements
26 under this subdivision if determined necessary for compliance with
27 state or federal environmental regulations.

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

29 (i) The energy storage facility complies with the version of

1 NFPA 855 "Standard for the Installation of Stationary Energy
2 Storage Systems" in effect on the enactment date of the amendatory
3 act that added this section or any applicable successor standard
4 adopted by the commission as reasonable and consistent with the
5 purposes of this subdivision.

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

12 (iii) The commission may adopt more stringent requirements under
13 this subdivision if determined necessary for compliance with state
14 or federal environmental regulations.

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

17 (v) The energy storage facility will comply with any more
18 stringent requirements adopted under this subparagraph. The
19 commission may adopt more stringent requirements for energy storage
20 facilities if it considers the requirements necessary for
21 compliance with state or federal environmental regulations.

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

24 (10) If construction of an energy facility is not commenced
25 within 5 years of the date that a certificate is issued, the
26 certificate is invalid, but the electric provider or IPP may seek a
27 new certificate for the proposed energy facility. If the
28 certificate is appealed in proceedings before the commission or to
29 a court of competent jurisdiction, the running of the 5-year period

1 is tolled from the date of filing the appeal until 60 days after
2 issuance of a final nonappealable decision. The commission may
3 extend the 5-year period for not more than 1 year at the request of
4 the applicant and upon a showing of good cause without requiring a
5 new contested case proceeding.

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

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

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

29 (i) Terms of employment, such as wages and benefits, employment

1 status, workplace health and safety, scheduling, and career
2 advancement opportunities.

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

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

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

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

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

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

23 **Sec. 228. (1) Except as otherwise provided in this part,**
24 **information obtained by the commission under this part is a public**
25 **record under the freedom of information act, 1976 PA 442, MCL**
26 **15.231 to 15.246.**

27 **(2) The commission shall issue orders necessary to protect the**
28 **information in an application for a certificate, or in other**
29 **documents required by the commission for the purposes of**

1 certification, if the commission reasonably finds the information
2 to be confidential. Information that is confidential under a
3 protective order is exempted from disclosure under the freedom of
4 information act, 1976 PA 442, MCL 15.231 to 15.246.

5 Sec. 229. A commission order relating to a certificate or
6 other matter provided for under this part is subject to review in
7 the same manner as provided in section 6 of 1909 PA 300, MCL
8 462.26.

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

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

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

19 (4) Commission approval of a certificate does not confer the
20 power of eminent domain and is not a determination of public
21 convenience and necessity for the purposes of the power of eminent
22 domain.

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

27 (2) If a certificate is issued for an energy facility under
28 this part, a zoning ordinance or limitation imposed after the
29 electric provider or IPP submitted the application for the

1 certificate to the commission shall not be construed to limit or
2 impair the construction, operation, or maintenance of the energy
3 facility.

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

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

17 Sec. 232. If a portion of this amendatory act is, for any
18 reason, held to be invalid or unconstitutional, the remaining
19 sections, subsections, or parts of those sections are not affected
20 and remain in full force and effect.

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.

HOUSE BILL NO. 5121

October 10, 2023, Introduced by Reps. Puri, Aiyash, Brenda Carter, Hope, Pohutsky, Rheingans, 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 2006 PA 110, entitled
"Michigan zoning enabling act,"
by amending section 205 (MCL 125.3205), as amended by 2018 PA 366.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 205. (1) A zoning ordinance is subject to all of the
2 following:

3 (a) The electric transmission line certification act, 1995 PA
4 30, MCL 460.561 to 460.575.

5 (b) The regional transit authority act, 2012 PA 387, MCL

1 124.541 to 124.558.

2 (c) The small wireless communications facilities deployment
3 act, **2018 PA 365, MCL 460.1301 to 460.1339.**

4 (d) **Part 8 of the clean and renewable energy and energy waste**
5 **reduction act, 2008 PA 295, MCL 460.1221 to 460.1231.**

6 (2) A county or township shall not regulate or control the
7 drilling, completion, or operation of oil or gas wells or other
8 wells drilled for oil or gas exploration purposes and ~~shall~~**does**
9 not have jurisdiction with reference to the issuance of permits for
10 the location, drilling, completion, operation, or abandonment of
11 such wells.

12 (3) An ordinance shall not prevent the extraction, by mining,
13 of valuable natural resources from any property unless very serious
14 consequences would result from the extraction of those natural
15 resources. Natural resources shall be considered valuable for the
16 purposes of this section if a person, by extracting the natural
17 resources, can receive revenue and reasonably expect to operate at
18 a profit.

19 (4) A person challenging a zoning decision under subsection
20 (3) has the initial burden of showing that there are valuable
21 natural resources located on the relevant property, that there is a
22 need for the natural resources by the person or in the market
23 served by the person, and that no very serious consequences would
24 result from the extraction, by mining, of the natural resources.

25 (5) In determining under this section whether very serious
26 consequences would result from the extraction, by mining, of
27 natural resources, the standards set forth in *Silva v Ada Township*,
28 416 Mich 153 (1982), shall be applied and all of the following
29 factors may be considered, if applicable:

1 (a) The relationship of extraction and associated activities
2 with existing land uses.

3 (b) The impact on existing land uses in the vicinity of the
4 property.

5 (c) The impact on property values in the vicinity of the
6 property and along the proposed hauling route serving the property,
7 based on credible evidence.

8 (d) The impact on pedestrian and traffic safety in the
9 vicinity of the property and along the proposed hauling route
10 serving the property.

11 (e) The impact on other identifiable health, safety, and
12 welfare interests in the local unit of government.

13 (f) The overall public interest in the extraction of the
14 specific natural resources on the property.

15 (6) Subsections (3) to (5) do not limit a local unit of
16 government's reasonable regulation of hours of operation, blasting
17 hours, noise levels, dust control measures, and traffic, not
18 preempted by part 632 of the natural resources and environmental
19 protection act, 1994 PA 451, MCL 324.63201 to 324.63223. However,
20 such regulation shall be reasonable in accommodating customary
21 mining operations.

22 **(7) A renewable energy project that received special land use**
23 **approval under section 502 on or after January 1, 2021 must be**
24 **treated as a prior nonconforming use and a previously granted**
25 **special land use approval must not be revoked or modified if**
26 **substantial construction has occurred or if an expenditure equal to**
27 **10% of the project construction costs or \$10,000.00, whichever is**
28 **greater, has been made.**

29 **(8)** ~~(7)~~—This act does not limit state regulatory authority

1 under other statutes or rules.

2 Enacting section 1. This amendatory act does not take effect
3 unless Senate Bill No. _____ or House Bill No. 5120 (request no.
4 04021'23) of the 102nd Legislature is enacted into law.