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

BILL ANALYSIS

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

Date Completed: 11-7-23

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) Legislative Analyst: Tyler P. VanHuyse
MCL 125.3205 (H.B. 5121) 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 contact 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.

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[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 fir 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]

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[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.

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.