

# PUBLIC ACT 233 OF 2023

## **A. Background**

- Act 233 was signed by Governor Whitmer on November 28, 2023 and takes effect November 29, 2024.
- Act 233 makes dramatic changes to the permitting process for large-scale renewable energy facilities, including solar facilities with a nameplate capacity of 50 megawatts or more.
- The Act affords developers the option to apply directly to the Michigan Public Service Commission (“MPSC”) to construct a solar facility if the local unit of government does not have a Compatible Renewable Energy Ordinance (“CREO”).
- Even in those communities that have a CREO, the developer must first only have the proposed project reviewed at the local level. If the project is denied by the local unit of government, the developer then has a second opportunity to obtain approval by submitting an application for approval to the MPSC.

## **B. Compatible Ordinance Requirements**

- Act 233 allows local units of government to develop and adopt a CREO but the Ordinance may not be more restrictive than the provisions of the Act.
- For solar energy facilities, the Act provides the following requirements that a local CREO may not make more restrictive:
  - 300’ from the nearest point of a dwelling on nonparticipating property in the perimeter fencing of the facility
  - 50’ from the nearest edge of the public right-of-way to the perimeter fencing of the facility
  - 50’ measured from the nearest shared property line of nonparticipating properties to the perimeter fencing.
  - Solar panel components may not exceed a height of 25’ above ground when the arrays are at full tilt

- The solar energy facility may not generate sound in excess of 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on the adjacent nonparticipating property.
- The MPSC has concluded that a CREO may only contain the setback, fencing, height, sound and other applicable requirements set forth in Act 233 and may *not* contain additional requirements more restrictive than those set forth in the Act.

**C. Local Review of Solar Energy Facility Application**

- If a local unit of government has a CREO, the developer must first submit the project to the local unit of government for approval pursuant to the terms of the CREO.
- The local unit of government must approve or deny the application within 120 days after receiving the application.
- If the local unit of government denies the developer's application for a solar facility but the solar facility complies with the requirements of Act 233, the developer may file an application with the MPSC for approval. At that point, the local unit of government no longer has the opportunity to regulate the facility.

**D. Moratorium**

- A local unit of government is considered not to have a CREO if it has a moratorium on the development of energy facilities in effect within its jurisdiction.
- A moratorium guarantees that the developer will automatically be permitted to file an application for approval with the MPSC.

**E. Impact of Pending Litigation**

- The lawsuit filed by Portside Solar against Fort Gratiot Township and the Township Planning Commission is pending in St. Clair County Circuit Court. The initial issue before the Court is whether the Planning Commission's denial of Portside's Application for special land use approval was based on competent, material and substantial evidence on the record.