

**SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 5120**

A bill to amend 2008 PA 295, entitled  
"Clean and renewable energy and energy waste reduction act,"  
by amending the title and section 13 (MCL 460.1013), as amended by  
2016 PA 342, and by adding part 8.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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TITLE

An act to require certain providers of electric service to  
establish and recover costs for renewable energy 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 considered 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" or "local unit" means a county,  
17 township, city, 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 an energy facility and that is not a participating  
2 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 contractors and subcontractors on the  
28 construction project through the inclusion of appropriate  
29 specifications in all relevant solicitation provisions and contract



1 documents.

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

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

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

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

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

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

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



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

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

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

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

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

28 (c) Any energy storage facility with a nameplate capacity of  
29 50 megawatts or more and an energy discharge capability of 200





1 megawatt hours or more.

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

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

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

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



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

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

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

25 (a) An application submitted under this subsection shall  
 26 comply with the requirements of section 225(1), except for section  
 27 225(1)(j) and (r). An affected local unit may require other  
 28 information necessary to determine compliance with the compatible  
 29 renewable energy ordinance.



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

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

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

10 (ii) An affected local unit denies an application that complies  
 11 with the requirements of section 226(8).

12 (iii) There is more than 1 affected local unit, any of the  
 13 affected local units amends its zoning ordinance after the chief  
 14 elected official notifies the electric provider or IPP that it has  
 15 a compatible renewable energy ordinance, and the amendment imposes  
 16 additional requirements on the development of energy facilities  
 17 that are more restrictive than those in section 226(8).

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

23 (4) If a local unit of government approves an application  
 24 pursuant to subsection (3), construction of the proposed energy  
 25 facility must begin within 5 years after the date the permit is  
 26 granted and any challenges to the grant of the permit are  
 27 concluded. The local unit of government may extend this timeline at  
 28 the request of the electric provider or IPP without requiring a new  
 29 application. The local unit shall not revoke a permit issued under



1 subsection (3) except for material noncompliance with the permit by  
2 the electric provider or IPP.

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

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

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

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

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

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

24 (2) When it submits a site plan required under section 223 or  
25 225 to the commission, an electric provider or independent power  
26 producer shall, for informational purposes, submit a copy to the  
27 clerk of each affected local unit.

28 Sec. 225. (1) An application for a certificate submitted to  
29 the commission under section 222(2) shall contain all of the



1 following:

2 (a) The complete name, address, and telephone number of the  
3 applicant.

4 (b) The planned date for the start of construction and the  
5 expected duration of construction.

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

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

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

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

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

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

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

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

27 (k) Evidence of consultation, before submission of the  
28 application, with the department of environment, Great Lakes, and  
29 energy and other relevant state and federal agencies before



1 submitting the application, including, but not limited to, the  
2 department of natural resources and the department of agriculture  
3 and rural development.

4 (l) The soil and economic survey report under section 60303 of  
5 the natural resources and environmental protection act, 1994 PA  
6 451, MCL 324.60303, for the county where the proposed energy  
7 facility will be located.

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

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

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

23 (p) If the energy facility is reasonably expected to have an  
24 impact on drainage systems within or surrounding the energy  
25 facility, a plan to minimize, mitigate, and repair that impact at  
26 the expense of the electric provider or IPP. The applicant shall  
27 make reasonable efforts to consult with the county drain  
28 commissioner before submitting the application and shall include  
29 evidence of those efforts in its application.



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

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

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

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

13 (iii) 100% by the start of the tenth year of commercial  
14 operation.

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

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

23 Sec. 226. (1) Upon filing an application with the commission,  
24 the applicant shall make a 1-time grant to each affected local unit  
25 for an amount determined by the commission but not more than  
26 \$75,000.00 per affected local unit and not more than \$150,000.00 in  
27 total. Each affected local unit shall deposit the grant in a local  
28 intervenor compensation fund to be used to cover costs associated  
29 with participation in the contested case proceeding on the



1 application for a certificate.

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

14 (3) The commission shall conduct a proceeding on the  
15 application for a certificate as a contested case under the  
16 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
17 24.328. An affected local unit, participating property owner, or  
18 nonparticipating property owner may intervene by right.

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

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

29 (6) In evaluating the application, the commission shall





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

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

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

27 (c) Providing for community improvements in the affected local  
28 unit.

29 (7) The commission shall grant the application and issue a



1 certificate if it determines all of the following:

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

18 (b) The energy facility complies with the standard in section  
19 1705(2) of the natural resources and environmental protection act,  
20 1994 PA 451, MCL 324.1705.

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

26 (d) The applicant has met the conditions established in  
27 section 227.

28 (e) All of the following apply:

29 (i) The installation, construction, or construction maintenance



1 of the energy facility will use apprenticeship programs registered  
2 and in good standing with the United States Department of Labor  
3 under the national apprenticeship act, 29 USC 50 to 50c.

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

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

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

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

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

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

22 (i) The following minimum setback requirements, with setback  
23 distances measured from the nearest edge of the perimeter fencing  
24 of the facility:

<u>Setback Description</u>	<u>Setback Distance</u>
Occupied community buildings and dwellings on nonparticipating properties	300 feet from the nearest point on the outer wall



1 Public road right-of-way 50 feet measured from the  
2 nearest edge of a public road  
3 right-of-way

4 Nonparticipating parties 50 feet measured from the  
5 nearest shared property line

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

11 (iii) Solar panel components do not exceed a maximum height of  
12 25 feet above ground when the arrays are at full tilt.

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

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

21 (vi) The solar energy facility will comply with any more  
22 stringent requirements adopted by the commission. Before adopting  
23 such requirements, the commission must determine that the  
24 requirements are necessary for compliance with state or federal  
25 environmental regulations.

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

27 (i) The following minimum setback distances, measured from the  
28 center of the base of the wind tower:



<u>Setback Description</u>	<u>Setback Distance</u>
Occupied community buildings and residences on nonparticipating properties	2.1 times the maximum blade tip height to the nearest point on the outside wall of the structure
Residences and other structures on participating properties	1.1 times the maximum blade tip height to the nearest point on the outside wall of the structure
Nonparticipating property lines	1.1 times the maximum blade tip height
Public road right-of-way	1.1 times the maximum blade tip height to the center line of the public road right-of-way
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

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

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

(iv) The wind 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



1 nonparticipating property. Decibel modeling shall use the A-  
2 weighted scale as designed by the American National Standards  
3 Institute.

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

13 (A) The purpose of the exemption.

14 (B) The proposed length of the exemption.

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

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

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

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

24 (vii) The wind energy facility will comply with any more  
25 stringent requirements adopted by the commission. Before adopting  
26 such requirements, the commission must determine that the  
27 requirements are necessary for compliance with state or federal  
28 environmental regulations.

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



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

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

13 (iii) The energy storage facility will implement dark sky-  
14 friendly lighting solutions.

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

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

22 (10) If construction of an energy facility is not commenced  
23 within 5 years after the date that a certificate is issued, the  
24 certificate is invalid, but the electric provider or IPP may seek a  
25 new certificate for the proposed energy facility. If the  
26 certificate is appealed in proceedings before the commission or to  
27 a court of competent jurisdiction, the running of the 5-year period  
28 is tolled from the date of filing the appeal until 60 days after  
29 issuance of a final nonappealable decision. The commission may



1 extend the 5-year period at the request of the applicant and upon a  
 2 showing of good cause without requiring a new contested case  
 3 proceeding.

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

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

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

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





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

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

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

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

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

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

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

25 (2) The commission shall issue orders necessary to protect the  
 26 information in an application for a certificate, or in other  
 27 documents required by the commission for the purposes of  
 28 certification, if the commission reasonably finds the information  
 29 to be confidential. Information that is confidential under a



1 protective order is exempted from disclosure under the freedom of  
2 information act, 1976 PA 442, MCL 15.231 to 15.246.

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

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

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

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

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

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

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



1 impair the construction, operation, or maintenance of the energy  
2 facility.

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

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

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

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

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

