

**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;** and to provide
15 for civil sanctions, remedies, and penalties.

16 Sec. 13. As used in this act:

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

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

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



1 ~~period reflects net excess generation for which the customer is~~
 2 ~~entitled to receive credit under section 177(4). This subdivision~~
 3 ~~is subject to section 177(5).~~

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

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

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

20 PART 8.

21 WIND, SOLAR, AND STORAGE CERTIFICATION

22 Sec. 221. As used in this part:

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

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

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



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

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

8 (f) "Construction" means any substantial action taken
9 constituting the placement, erection, expansion, or repowering of
10 an energy facility.

11 (g) "Energy facility" means an energy storage facility, solar
12 energy facility, or wind energy facility. An energy facility may be
13 located on more than 1 parcel of property, including noncontiguous
14 parcels.

15 (h) "Energy storage facility" means a system that absorbs,
16 stores, and discharges electricity. Energy storage facility does
17 not include either of the following:

18 (i) Fossil fuel storage.

19 (ii) Power-to-gas storage that directly uses fossil fuel
20 inputs.

21 (i) "Independent power producer", or "IPP", means a person
22 that is not an electric provider but owns or operates facilities to
23 generate electric power for sale to electric providers, this state,
24 or local units of government.

25 (j) "Light intensity dimming solution technology" means
26 obstruction lighting that provides a means of tailoring the
27 intensity level of lights according to surrounding visibility.

28 (k) "Light-mitigating technology system" means an aircraft
29 detection lighting system, a light intensity dimming solution



1 technology, or a comparable solution that reduces the impact of
2 nighttime lighting while maintaining night conspicuity sufficient
3 to assist aircraft in identifying and avoiding collision with the
4 wind energy facilities.

5 (l) "Local unit of government" means a county, township, city,
6 or village.

7 (m) "Maximum blade tip height" means the nominal hub height
8 plus the nominal blade length of a wind turbine, as listed in the
9 wind turbine specifications provided by the wind turbine
10 manufacturer. If not listed in the wind turbine specifications,
11 maximum blade tip height means the actual hub height plus the
12 actual blade length.

13 (n) "Nameplate capacity" means the designed full-load
14 sustained generating output of an energy facility. Nameplate
15 capacity shall be determined by reference to the sustained output
16 of an energy facility even if components of the energy facility are
17 located on different parcels, whether contiguous or noncontiguous.

18 (o) "Nonparticipating property" means a property that is
19 adjacent to a solar energy facility or wind energy facility and
20 that is not a participating property.

21 (p) "Occupied community building" means a school, place of
22 worship, day-care facility, public library, community center, or
23 other similar building that the applicant knows or reasonably
24 should know is used on a regular basis as a gathering place for
25 community members.

26 (q) "Participating property" means real property that either
27 is owned by an applicant or that is the subject of an agreement
28 that provides for the payment by an applicant to a landowner of
29 monetary compensation related to an energy facility regardless of



1 whether any part of that energy facility is constructed on the
2 property.

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

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

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



1 generation tie lines; substations; solar monitoring stations; and
2 accessory equipment and structures.

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

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

20 (a) Any wind energy or solar energy facility with a nameplate
21 capacity of 100 megawatts or more.

22 (b) Any energy storage facility with a nameplate capacity of
23 100 megawatts or more and an energy discharge capability of 200
24 megawatt hours or more.

25 (2) Before beginning construction of an energy facility, an
26 electric provider or independent power producer may, pursuant to
27 this part, obtain a certificate for that energy facility from the
28 commission. A local unit of government exercising zoning
29 jurisdiction may request the commission to require an electric



1 provider or independent power producer that proposes to construct
2 an energy facility in that local unit to obtain a certificate for
3 that energy facility from the commission. To obtain a certificate
4 for an energy facility, an electric provider or IPP must comply
5 with the requirements of sections 223 and 224, and then submit to
6 the commission an application as described in section 225.

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

11 Sec. 223. (1) An electric provider or independent power
12 producer that, at its option or as required by the commission,
13 proposes to obtain a certificate for and construct an energy
14 facility shall hold a public meeting in each affected local unit.
15 At least 30 days before a meeting, the electric provider or IPP
16 shall notify the clerk of the affected local unit in which a public
17 meeting will be held of the time, date, location, and purpose of
18 the meeting and provide a copy of the site plan as described in
19 section 224 or the address of an internet site where a site plan
20 for the energy facility is available for review. At least 14 days
21 before the meeting, the electric provider or IPP shall publish
22 notice of the meeting in a newspaper of general circulation in the
23 affected local unit or in a comparable digital alternative. The
24 notice shall include a copy of the site plan or the address of an
25 internet site where the site plan is available for review. The
26 commission shall further prescribe the format and content of the
27 notice. For the purposes of this subsection, a public meeting held
28 in a township is considered to be held in each village located
29 within the township.



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

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

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

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

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

17 (2) When it submits a site plan required under section 223 or
18 225 to the commission, an electric provider or independent power
19 producer shall, for informational purposes, submit a copy to the
20 clerk of each affected local unit.

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

24 (a) The complete name, address, and telephone number of the
25 applicant.

26 (b) The planned date for the start of construction and the
27 expected duration of construction.

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



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

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

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

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

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

10 (i) A statement and reasonable evidence that the proposed
11 energy facility will not commence commercial operation until it is
12 in compliance with applicable state and federal environmental laws,
13 including, but not limited to, the natural resources and
14 environmental protection act, 1994 PA 451, MCL 324.101 to
15 324.90106.

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

20 (k) Evidence of consultation, before submission of the
21 application, with the department of environment, Great Lakes, and
22 energy and other relevant state and federal agencies before
23 submitting the application, including, but not limited to, the
24 department of natural resources and the department of agriculture
25 and rural development.

26 (l) Interconnection queue information for the applicable
27 regional transmission organization.

28 (m) If the proposed site of the energy facility is undeveloped
29 land, a description of feasible alternative developed locations,



1 including, but not limited to, vacant industrial property and
2 brownfields, and an explanation of why they were not chosen.

3 (n) If the energy facility is reasonably expected to have an
4 impact on television signals, microwave signals, agricultural
5 global position systems, military defense radar, radio reception,
6 or weather and doppler radio, a plan to minimize and mitigate that
7 impact. Information in the plan concerning military defense radar
8 is exempt from disclosure under the freedom of information act,
9 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed by
10 the commission or the electric provider or independent power
11 producer except pursuant to court order.

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

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

18 (q) A decommissioning plan that includes, but is not limited
19 to, financial assurance in the form of a bond, a parent company
20 guarantee, or an irrevocable letter of credit, but excluding cash.
21 The amount of the financial assurance shall not be less than the
22 estimated cost of decommissioning the energy facility, after
23 deducting salvage value, as calculated by a third party with
24 expertise in decommissioning, hired by the applicant. However, the
25 financial assurance may be posted in increments as follows:

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

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

29 (iii) 100% by the start of the tenth year of commercial



1 operation.

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

3 (2) Within 60 days after receipt of an application, the
4 commission shall determine whether the application is complete. If
5 the commission determines that the application is incomplete, the
6 commission shall advise the applicant in writing of the information
7 necessary to make the application complete. If the commission fails
8 to timely notify the applicant that an application is incomplete,
9 the application is considered to be complete.

10 Sec. 226. (1) When the commission determines under section 225
11 that an application is complete, the applicant shall make a 1-time
12 grant to each affected local unit for an amount determined by the
13 commission but not more than \$75,000.00 per affected local unit and
14 not more than \$150,000.00 in total. Each affected local unit shall
15 deposit the grant in a local intervenor compensation fund to be
16 used to cover costs associated with participation in the contested
17 case proceeding on the application for a certificate.

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



1 contents of the notice.

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

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

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

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

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

26 (b) Meeting or exceeding pollinator standards throughout the
27 lifetime of the facility, as established by the "Michigan
28 Pollinator Habitat Planning Scorecard for Solar Sites" developed by
29 the Michigan State University Department of Entomology in effect on



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

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

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

13 (a) The public benefits of the proposed energy facility
14 justify its construction. For the purposes of this subdivision,
15 public benefits include, but are not limited to, expected tax
16 revenue paid by the energy facility to local taxing districts,
17 payments to owners of participating property, community benefits
18 agreements, local job creation, and any contributions to meeting
19 identified energy, capacity, reliability, or resource adequacy
20 needs of this state. In determining any contributions to meeting
21 identified energy, capacity, reliability, or resource adequacy
22 needs of this state, the commission may consider approved
23 integrated resource plans under section 6t of 1939 PA 3, MCL
24 460.6t, renewable energy plans, annual electric provider capacity
25 demonstrations under section 6w of 1939 PA 3, MCL 460.6w, or other
26 proceedings before the commission, at the applicable regional
27 transmission organization, or before the Federal Energy Regulatory
28 Commission, as determined relevant by the commission.

29 (b) The energy facility complies with the standard in section



1 1705(2) of the natural resources and environmental protection act,
2 1994 PA 451, MCL 324.1705.

3 (c) The applicant has considered and addressed impacts to the
4 environment and natural resources, including, but not limited to,
5 sensitive habitats and waterways, wetlands and floodplains,
6 wildlife corridors, parks, historic and cultural sites, and
7 threatened or endangered species.

8 (d) The applicant has met the conditions established in
9 section 227.

10 (e) The applicant has certified that the workers employed for
11 the construction of the energy facility will be paid at least the
12 wage and fringe benefit rates prevailing in the local unit of
13 government in which the proposed energy facility is located, in
14 accordance with 2023 PA 10, MCL 408.1101 to 408.1126, or as
15 determined by the United States Secretary of Labor pursuant to 40
16 USC 3141 to 3148 that are higher or that contain minimum wage
17 schedules that are the same as prevailing wages in the locality as
18 determined by collective bargaining agreements or understandings
19 between bona fide organizations and the relevant employers.

20 (f) The applicant has certified that the applicant will enter
21 into and adhere to an agreement with 1 or more labor organizations
22 in regard to the construction of the energy facility.

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

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

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

29 (i) The following setback requirements:



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

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

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

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

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

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

<u>Setback Description</u>	<u>Setback Distance</u>
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1	Occupied community buildings	2.1 times the maximum blade tip
2	and residences on	height to the nearest point on
3	nonparticipating properties	the outside wall of the
4		structure
5	Residences and other structures	1.1 times the maximum blade tip
6	on participating properties	height to the nearest point on
7		the outside wall of the
8		structure
9	Nonparticipating property lines	1.1 times the maximum blade tip
10		height
11	Public road right-of-way	1.1 times the maximum blade tip
12		height to the center line of
13		the public road right-of-way
14	Overhead communication and	1.1 times the maximum blade tip
15	electric transmission, not	height to the center line of
16	including utility service lines	the easement containing the
17	to individual houses or	overhead line
18	outbuildings	

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

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

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



1 weighted scale as designed by the American National Standards
2 Institute.

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

25 (i) The energy storage facility complies with the version of
26 NFPA 855 "Standard for the Installation of Stationary Energy
27 Storage Systems" in effect on the enactment date of the amendatory
28 act that added this section or any applicable successor standard
29 adopted by the commission as reasonable and consistent with the



1 purposes of this subdivision.

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

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

10 (10) If construction of an energy facility is not commenced
11 within 5 years of the date that a certificate is issued, the
12 certificate is invalid, but the electric provider or IPP may seek a
13 new certificate for the proposed energy facility. The commission
14 may extend this timeline at the request of the applicant without
15 requiring a new contested case proceeding.

16 Sec. 227. (1) The applicant for a certificate shall enter into
17 a host community agreement with each affected local unit. The host
18 community agreement shall require that, upon commencement of any
19 operation, the energy facility owner must pay the affected local
20 unit \$2,000.00 per megawatt of nameplate capacity located within
21 the affected local unit. The payment shall be used as determined by
22 the affected local unit for police, fire, public safety, or other
23 infrastructure, or for other projects as agreed to by the local
24 unit and the applicant.

25 (2) If an affected local unit and the applicant are unable to
26 reach a host community agreement, the applicant may enter into a
27 community benefits agreement with 1 or more community-based
28 organizations within, or that serve residents of, the affected
29 local unit. The amount paid by the applicant under this subsection



1 must be equal to, or greater than, what the applicant would pay to
2 the affected local unit under subsection (1). Community benefits
3 agreements shall prioritize benefits to the community in which the
4 energy facility is to be located. The topics and specific terms of
5 the agreements may vary and may include, but are not limited to,
6 any of the following:

7 (a) Workforce development, job quality, and job access
8 provisions that include, but are not limited to, any of the
9 following:

10 (i) Terms of employment, such as wages and benefits, employment
11 status, workplace health and safety, scheduling, and career
12 advancement opportunities.

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

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

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

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

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

29 Sec. 228. (1) Except as otherwise provided in this part,



1 information obtained by the commission under this part is a public
2 record under the freedom of information act, 1976 PA 442, MCL
3 15.231 to 15.246.

4 (2) An applicant may designate information received from a
5 third party that the applicant submits to the commission in an
6 application for a certificate, or in other documents required by
7 the commission for the purposes of certification, as only for the
8 confidential use of the commission. The commission shall notify the
9 electric provider or IPP of a request for public records under
10 section 5 of the freedom of information act, 1976 PA 442, MCL
11 15.235, if the scope of the request includes information designated
12 as confidential. If the electric provider or IPP, within 10 days
13 after the receipt of the notice, demonstrates to the satisfaction
14 of the commission that the information designated as confidential
15 is a trade secret or secret process or is production, commercial,
16 or financial information the disclosure of which would jeopardize
17 the competitive position of the electric provider or IPP or the
18 person from whom the information was obtained, the commission shall
19 not grant the request for the information. If the commission
20 decides to grant a request, the commission shall not release the
21 information requested until 3 days have elapsed after notice of the
22 decision is provided to the electric provider or IPP.

23 (3) If any person uses information described in subsection (1)
24 to forecast electrical demand, the person shall structure the
25 forecast so the person to whom the information pertains is not
26 identified unless that person waives confidentiality.

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



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

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

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

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

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

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

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

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



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

4 (3) If a certificate is issued, the certificate and this part
5 preempt a local policy, practice, regulation, rule, or other
6 ordinance that prohibits, regulates, or imposes additional or more
7 restrictive dimensional and use limitations or requirements on the
8 construction, operation, use, dimensions, replacement, or
9 maintenance of an energy facility.

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

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.

