

**SUBSTITUTE FOR
HOUSE BILL NO. 5120**

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

An act to require certain providers of electric service to
establish and recover costs for renewable energy programs; to
require certain providers of electric or natural gas service to
establish energy waste reduction programs; to authorize the use of
certain energy systems to meet the requirements of those programs;
to provide for the approval of energy waste reduction service
companies; to reduce energy waste by state agencies and the public;

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

17 Sec. 13. As used in this act:

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

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

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

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

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

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

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

21 PART 8.

22 WIND, SOLAR, AND STORAGE CERTIFICATION

23 Sec. 221. As used in this part:

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

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

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

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

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

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

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

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

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

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

29 (i) Fossil fuel storage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 located in a local unit of government with a compatible renewable
2 energy ordinance, any energy storage facility with a nameplate
3 capacity of 100 megawatts or more and an energy discharge
4 capability of 200 megawatt hours or more.

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

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

20 (4) If a city or village has a wind, solar, or energy storage
21 facility that would normally be subject to subsection (2) and that
22 is for an energy facility that is located entirely within the city
23 or village, the city or village is exempt from this part as it
24 relates to the energy facility.

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

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

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

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

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

1 ordinance.

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

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

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

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

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

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

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

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

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

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

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

29 (c) Additional information required by commission rule or

1 order that directly relates to the site plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 brownfield land.

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

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

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

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

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

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

3 (e) All of the following apply:

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

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

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

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

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

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

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

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

28 Setback Description Setback Distance

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

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

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

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

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

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

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

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

1 center of the base of the wind tower:

2	<u>Setback Description</u>	<u>Setback Distance</u>
3 4 5 6	Occupied community buildings and residences on nonparticipating properties	2.1 times the maximum blade tip height to the nearest point on the outside wall of the structure
7 8 9 10	Residences and other structures on participating properties	1.1 times the maximum blade tip height to the nearest point on the outside wall of the structure
11 12	Nonparticipating property lines	1.1 times the maximum blade tip height
13 14 15	Public road right-of-way	1.1 times the maximum blade tip height to the center line of the public road right-of-way
16 17 18 19 20	Overhead communication and electric transmission, not including utility service lines to individual houses or outbuildings	1.1 times the maximum blade tip height to the center line of the easement containing the overhead line

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

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

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

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

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

14 (A) The purpose of the exemption.

15 (B) The proposed length of the exemption.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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