

HOUSE BILL NO. 5120

October 10, 2023, Introduced by Reps. Aiyash, Puri, Brenda Carter, Pohutsky, Rheingans, Hope, O'Neal, Byrnes, Stone, MacDonell, Tsernoglou, Morse, Breen, Martus, Andrews, Steckloff and Wilson and referred to the Committee on Energy, Communications, and Technology.

A bill to amend 2008 PA 295, entitled
"Clean and renewable energy and energy waste reduction act,"
(MCL 460.1001 to 460.1211) by amending the title and by adding part
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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

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

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) "Applicant" means an applicant for a certificate.

26 (c) "Certificate" means a certificate issued for an energy
27 facility under section 226(4).

28 (d) "Community-based organization" means a workforce
29 development and training organization, labor union, local

1 governmental entity, Michigan federally recognized tribe,
2 environmental advocacy organization, or an organization that
3 represents the interests of underserved communities.

4 (e) "Construction" means any substantial action taken
5 constituting the placement, erection, expansion, or repowering of
6 an energy facility.

7 (f) "Energy facility" means an energy storage facility, solar
8 energy facility, or wind energy facility. An energy facility may be
9 located on more than 1 parcel of property, including noncontiguous
10 parcels.

11 (g) "Energy storage facility" means a system that absorbs,
12 stores, and discharges electricity.

13 (h) "Independent power producer", or IPP, means a person that
14 is not an electric utility but owns or operates facilities to
15 generate electric power for sale to electric providers, this state,
16 or local units of government.

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

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

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

1 (l) "Nonparticipating property" means a property that is
2 adjacent to a solar energy facility or wind energy facility and
3 that is not a participating property.

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

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

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

24 (p) "Repowering", with respect to an energy facility, means
25 replacement of all or substantially all of the energy facility for
26 the purpose of extending its life. Repowering does not include
27 repairs related to the ongoing operations that do not increase the
28 capacity or energy output of the energy facility.

29 (q) "Solar energy facility" means a system that captures and

1 converts solar energy into electricity, for the purpose of sale or
2 for use in locations other than solely the solar energy facility
3 property. Solar energy facility includes, but is not limited to,
4 the following equipment and facilities to be constructed by an
5 electric provider or independent power producer: photovoltaic solar
6 panels; solar inverters; access roads; distribution, collection,
7 and feeder lines; wires and cables; conduit; footings; foundations;
8 towers; poles; crossarms; guy lines and anchors; substations;
9 interconnection or switching facilities; circuit breakers and
10 transformers; energy storage facilities; overhead and underground
11 control; communications and radio relay systems and
12 telecommunications equipment; utility lines and installations;
13 generation tie lines; substations; solar monitoring stations; and
14 accessory equipment and structures.

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

1 equipment and structures.

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

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

5 (b) Any energy storage facility with a nameplate capacity of
6 100 megawatts or more and an energy discharge capability of 200
7 megawatt hours or more.

8 (2) Before beginning construction of an energy facility, an
9 electric provider or independent power producer may, pursuant to
10 this part, obtain a certificate for that energy facility from the
11 commission. To obtain a certificate for an energy facility, an
12 electric provider or IPP must comply with the requirements of
13 sections 223 and 224, and then submit to the commission an
14 application as described in section 225.

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

19 Sec. 223. (1) An electric provider or independent power
20 producer that proposes to obtain a certificate for and construct an
21 energy facility shall hold a public meeting in each affected local
22 unit. At least 30 days before a meeting, the electric provider or
23 IPP shall notify the clerk of the affected local unit in which a
24 public meeting will be held of the time, date, location, and
25 purpose of the meeting and provide a copy of the site plan as
26 described in section 224 or the address of an internet site where a
27 site plan for the energy facility is available for review. At least
28 14 days before the meeting, the electric provider or IPP shall
29 publish notice of the meeting in a newspaper of general circulation

1 in the affected local unit or in a comparable digital alternative.
2 The notice shall include a copy of the site plan or the address of
3 an internet site where the site plan is available for review. The
4 commission shall further prescribe the format and content of the
5 notice. For the purposes of this subsection, a public meeting held
6 in a township is considered to be held in each village located
7 within the township.

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

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 is
19 in compliance with applicable state and federal environmental laws.

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

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

1 (l) Interconnection queue information for the applicable
2 regional transmission organization.

3 (m) If the proposed site of the energy facility is undeveloped
4 land, a description of feasible alternative developed locations,
5 including, but not limited to, vacant industrial property and
6 brownfields, and an explanation of why they were not chosen.

7 (n) If the energy facility is reasonably expected to have an
8 impact on television signals, microwave signals, agricultural
9 global position systems, military defense radar, radio reception,
10 or weather and doppler radio, a plan to minimize and mitigate that
11 impact. Information in the plan concerning military defense radar
12 is exempt from disclosure under the freedom of information act,
13 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed by
14 the commission or the electric provider or independent power
15 producer except pursuant to court order.

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

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

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

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

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

4 (iii) 100% by the start of the tenth year of commercial
5 operation.

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

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

14 Sec. 226. (1) Not more than 30 days after the commission
15 determines under section 225 that an application is complete, the
16 applicant shall send to the clerk of each affected local unit and
17 publish notice of an opportunity to comment on the application. The
18 notice shall be published in a newspaper of general circulation in
19 each affected local unit or a comparable digital alternative. The
20 notice shall be written in plain, nontechnical, and easily
21 understood terms and shall contain a title that includes the name
22 of the applicant and the words "NOTICE OF INTENT TO CONSTRUCT
23 _____ FACILITY", with the words "WIND ENERGY", "SOLAR
24 ENERGY", or "ENERGY STORAGE", as applicable, entered in the blank
25 space. The commission shall further prescribe the format and
26 contents of the notice.

27 (2) The commission shall conduct a proceeding on the
28 application for a certificate as a contested case under the
29 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to

1 24.328. An affected local unit, participating property owner, or
2 nonparticipating property owner may intervene by right.

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

10 (4) The commission shall grant the application and issue a
11 certificate or deny the application not later than 1 year after a
12 complete application is filed.

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

20 (a) Establishing and maintaining for the life of the facility
21 vegetative ground cover.

22 (b) Meeting or exceeding pollinator standards throughout the
23 lifetime of the facility, as established by the "Michigan
24 Pollinator Habitat Planning Scorecard for Solar Sites" developed by
25 the Michigan State University Department of Entomology in effect on
26 the enactment date of the amendatory act that added this section or
27 any applicable successor standards approved by the commission as
28 reasonable and consistent with the purposes of this subdivision.
29 Seed mix used to establish pollinator plantings shall not include

1 invasive species as identified by the Midwest Invasive Species
2 Information Network, led by researchers at the Michigan State
3 University Department of Entomology and supporting regional
4 partners.

5 (c) Providing for community improvements in the affected local
6 unit.

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

9 (a) The public benefits of the proposed energy facility
10 justify its construction.

11 (b) The applicant has considered and addressed impacts to the
12 environment and natural resources, including, but not limited to,
13 sensitive habitats and waterways, wetlands and floodplains,
14 wildlife corridors, parks, historic and cultural sites, and
15 threatened or endangered species.

16 (c) The applicant has met the conditions established in
17 section 227.

18 (d) The applicant has certified that the workers employed for
19 the construction of the energy facility will be paid at least the
20 prevailing wage in the local unit of government in which the
21 proposed energy facility is located.

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

25 (f) The proposed energy facility does not present an
26 unreasonable threat to public health or safety.

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

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

2 (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

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

18 (iii) Solar panel components do not exceed a maximum height of
19 25 feet above ground when the arrays are at full tilt.

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

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

27 (i) The following setback distances, measured from the center
28 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 facility meets any standards concerning
4 radar interference, lighting, or other relevant issues as
5 determined by the commission.

6 (c) For an energy storage facility, both of the following:

7 (i) The energy storage facility complies with the version of
8 NFPA 855 "Standard for the Installation of Stationary Energy
9 Storage Systems" in effect on the enactment date of the amendatory
10 act that added this section or any applicable successor standard
11 adopted by the commission as reasonable and consistent with the
12 purposes of this subdivision.

13 (ii) The energy storage 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 (8) The certificate shall identify the location of the energy
20 facility and its nameplate capacity.

21 (9) If construction of an energy facility is not commenced
22 within 5 years of the date that a certificate is issued, the
23 certificate is invalid, but the electric provider or IPP may seek a
24 new certificate for the proposed energy facility. The commission
25 may extend this timeline at the request of the applicant without
26 requiring a new contested case proceeding.

27 Sec. 227. The applicant for a certificate must enter into 1 or
28 more agreements with, or that benefit, 1 or more community-based
29 organizations. The agreements are legally binding and enforceable

1 if construction of the energy facility commences. The commission
2 shall enforce this requirement but not the actual agreements, which
3 are enforceable in a court of competent jurisdiction. The
4 agreements shall prioritize benefits to the community in which the
5 energy facility is to be located. The topics and specific terms of
6 the agreements may vary and may include, but are not limited to,
7 any of the following:

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

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

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

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

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

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

25 Sec. 228. (1) Except as otherwise provided in this part,
26 information obtained by the commission under this part is a public
27 record under the freedom of information act, 1976 PA 442, MCL
28 15.231 to 15.246.

29 (2) An applicant may designate information received from a

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

19 (3) If any person uses information described in subsection (1)
20 to forecast electrical demand, the person shall structure the
21 forecast so the person to whom the information pertains is not
22 identified unless that person waives confidentiality.

23 (4) The commission shall issue orders necessary to protect the
24 information in an application for a certificate, or in other
25 documents required by the commission for the purposes of
26 certification, if the commission reasonably finds the information
27 to be confidential. Information that is confidential under a
28 protective order is exempted from disclosure under the freedom of
29 information act, 1976 PA 442, MCL 15.231 to 15.246.

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

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

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

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

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

19 (2) If a certificate is issued for an energy facility under
20 this part, a zoning ordinance or limitation imposed after the
21 electric provider or IPP submitted the application for the
22 certificate to the commission shall not be construed to limit or
23 impair the construction, operation, or maintenance of the energy
24 facility.

25 (3) If a certificate is issued, the certificate and this part
26 preempt a local policy, practice, regulation, rule, or other
27 ordinance that prohibits, regulates, or imposes additional or more
28 restrictive dimensional and use limitations or requirements on the
29 construction, operation, use, dimensions, replacement, or

1 maintenance of an energy facility.

2 (4) Except as provided in this section, this part does not
3 exempt an electric provider or IPP to whom a certificate is issued
4 from obtaining any other permit, license, or permission to engage
5 in the construction or operation of an energy facility that is
6 required by any other law of this state, any rule promulgated under
7 a law of this state, or a local ordinance.

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

10 Enacting section 2. This amendatory act does not take effect
11 unless Senate Bill No. _____ or House Bill No. 5121 (request no.
12 04021'23 a) of the 102nd Legislature is enacted into law.