

# Legislative Analysis



## CERTIFICATION AND SITING OF LARGE-SCALE WIND, SOLAR, AND ENERGY STORAGE FACILITIES

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5120 as enacted**  
**Public Act 233 of 2023**  
**Sponsor: Rep. Abraham Aiyash**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 5121 as enacted**  
**Public Act 234 of 2023**  
**Sponsor: Rep. Ranjeev Puri**

**House Committee: Energy, Communications, and Technology**  
**Senate Committee: Energy and Environment**  
**Complete to 2-5-24**

### SUMMARY:

House Bill 5120 amends the Clean and Renewable Energy and Energy Waste Reduction Act to create a certification process, through the Michigan Public Service Commission (MPSC), for wind, solar, and energy storage facilities with specified capacities. Generally speaking, the MPSC certification process preempts local regulation of those facilities, although a local government with an ordinance whose requirements do not exceed the bill's certification standards can act as a permitting authority in some circumstances. House Bill 5121 amends the Michigan Zoning Enabling Act to make zoning ordinances subject to House Bill 5120. The bills are part of a package of energy-related bills that also includes Senate Bills 271, 273, 277, 502, and 519. House Bill 5120 takes effect November 28, 2024.

**House Bill 5120** adds Part 8 (Wind, Solar, and Storage Certification) to the Clean and Renewable Energy and Energy Waste Reduction Act. The new part applies to *wind energy facilities* with a *nameplate capacity* of 100 megawatts or more; *solar energy facilities* with a nameplate capacity of 50 megawatts or more; and *energy storage facilities* with a nameplate capacity of 50 megawatts or more and an energy discharge capability of 200 megawatt hours or more. The bill refers to these facilities collectively as *energy facilities*. Under the bill, energy facilities can be located on more than one parcel of property, including noncontiguous parcels, as long as they share a single point of interconnection to "the grid."

*Wind energy facility* means a system that captures and converts wind into electricity for sale or for use in another location and includes at least all of the following:

- Wind towers.
- Wind turbines.
- Monitoring and recording equipment and facilities.
- Erosion control facilities.
- Ancillary buildings.
- Wind monitoring stations.
- Elements included in both wind and solar energy facilities, as described below.

**Solar energy facility** means a system that captures and converts solar energy into electricity for sale or for use in another location and includes at least all of the following:

- Photovoltaic solar panels.
- Solar inverters.
- Solar monitoring stations.
- Elements included in both wind and solar energy facilities, as described below.

In addition, both **wind energy facilities** and **solar energy facilities** include at least all of the following:

- **Energy storage facilities.**
- Access roads.
- Distribution, collection, and feeder lines.
- Wires and cables.
- Conduit.
- Footings.
- Foundations.
- Towers.
- Poles.
- Crossarms.
- Guy lines and anchors.
- Substations.
- Interconnection or switching facilities.
- Circuit breakers and transformers.
- Overhead and underground control.
- Communications and radio relay systems and telecommunications equipment.
- Utility lines and installations.
- Generation tie lines.
- Accessory equipment and structures.

**Nameplate capacity** means the designed full-load sustained generating output of an energy facility, determined by reference to the sustained output of an energy facility even if its components are located on different parcels.

**Energy storage facility** means a system that absorbs, stores, and discharges electricity, but does not include fossil fuel storage or power-to-gas storage that directly uses fossil fuel inputs.

#### MPSC certificates

Under the bill, an **electric provider** or **independent power producer** may choose to obtain a certificate from the MPSC, as described below, before beginning **construction** of an energy facility. In addition, a **local unit of government** exercising zoning jurisdiction may request the MPSC to require an electric provider or independent power producer to obtain a certificate for an energy facility proposed to be built in the local unit.

**Local unit of government** (or **local unit**) means a county, township, city, or village.

**Electric provider** means any of the following:

- A **person** or entity that is regulated by the MPSC for the purpose of selling electricity to retail customers in Michigan.
- A municipally owned electric utility in Michigan.
- A cooperative electric utility in Michigan.
- An alternative electric supplier licensed under section 10a of 1939 PA 3.<sup>1</sup>

**Independent power producer** means a person that is not an electric provider as defined above but that owns or operates facilities to generate electric power for sale to electric providers, to the state, or to local units of government.

**Person** means any of the following:

- An individual.
- A governmental entity authorized by the state.
- A political subdivision of the state.
- A business.
- A proprietorship.
- A firm.
- A partnership.
- A limited partnership.
- A limited liability partnership.
- A co-partnership.
- A joint venture.
- A syndicate.
- A business trust.
- A labor organization.
- A company.
- A corporation.
- An association.
- A subchapter S corporation.
- A limited liability company.
- A committee.
- A receiver.
- An estate.
- A trust.
- Any other legal entity or combination or group of persons acting jointly as a unit.

**Construction** means any substantial action taken that constitutes the placement, erection, expansion, or **repowering** of an energy facility.

**Repowering** means replacement of all or substantially all of an energy facility for the purpose of extending its life, but does not include repairs related to ongoing operations that do not increase the capacity or energy output of the facility.

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<sup>1</sup> 1939 PA 3 is the MPSC enabling act. <http://legislature.mi.gov/doc.aspx?mcl-460-10a>

### Exemption

A city or village is exempt from the new Part 8 (i.e., the bill) as it relates to an energy facility located entirely within that city or village if any of the following apply:

- The city or village is a developer of the facility.
- The city or village owns an electric utility that will take service from the facility.
- The city or village owns ***participating property***.

***Participating property*** means real property that either is owned by an applicant for a certificate<sup>2</sup> or is the subject of an agreement under which an applicant for a certificate compensates a landowner related to an energy facility, regardless of whether any part of the facility is constructed on the property.

### Public meeting

Except as described below under “Compatible renewable energy ordinance,” an electric provider or independent power producer that intends to obtain a certificate (either at its option or as required by the MPSC) must hold a public meeting in each ***affected local unit***. A public meeting held in a township is considered held in every village located in that township.

***Affected local unit*** means a “unit of local government” where all or part of a proposed energy facility will be located.<sup>3</sup>

At least 60 days before the public meeting, the electric provider or independent power producer must offer in writing to meet with the chief elected official of each affected local unit, or the official’s designee, to discuss the site plan for the facility.

At least 30 days before the public meeting, the electric provider or independent power producer must notify the clerk of the affected local unit where the meeting will be held of the time, date, location, and purpose of the meeting and must provide either a copy of the site plan or an internet address where the site plan is available.

At least 14 days before the public meeting, the electric provider or independent power producer must publish notice of the meeting in a newspaper of general circulation in the affected local unit or a digital alternative that is comparable to such a newspaper. The notice must include either a copy of the site plan or an internet address where the site plan is available. The bill also requires the MPSC to further prescribe the format and content of the notice.

### Compatible renewable energy ordinances

If each affected local unit has a ***compatible renewable energy ordinance*** and if the chief elected official of each affected local unit notifies the electric provider or independent power

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<sup>2</sup> The bill specifically defines the term “applicant” to mean an applicant for a *certificate issued by the MPSC*. As generally used, then, the term “applicant” does not include applicants for a *permit issued by an affected local unit* as described under “Compatible renewable energy ordinances.” However, this summary assumes that “applicant” does include applicants for a local permit when used in provisions that clearly and directly relate to those applicants.

<sup>3</sup> It is unclear whether this definition uses the term “unit of local government” as a synonym for the defined terms *local unit of government* and *local unit*, or in order to draw a distinction from those terms. As a result, the scope of the term *affected local unit* (e.g., whether that term includes counties as well as cities, villages, and townships) seems potentially unclear. The bill uses *local unit of government* in several provisions pertaining to *affected local units*, which suggests that the same scope is intended (and, e.g., that *affected local unit* therefore also includes counties).

producer of that fact within 30 days after their meeting to discuss the facility site plan as described above, the electric provider or independent power producer must file for approval with each affected local unit.<sup>4</sup>

***Compatible renewable energy ordinance*** means an ordinance providing for the development of energy facilities in the local unit of government whose requirements are not more restrictive than the provisions described below under the heading “Health and safety standards.” A local unit of government that has a moratorium in effect on the development of energy facilities in its jurisdiction is considered *not* to have a compatible renewable energy ordinance.

An application submitted under these provisions must comply with the requirements described below under the heading “Application for an MPSC certificate,” except for those requiring a summary of community outreach and education efforts and those allowing the MPSC to reasonably require additional information.<sup>5</sup> The bill allows an affected local unit to require other information necessary to determine compliance with the compatible renewable energy ordinance.

A local unit of government must approve or deny an application within 120 days after receiving it. This deadline may be extended for up to 120 days by joint agreement of the applicant and the local unit.

If a local unit approves an application, construction of the proposed facility must begin within five years after the date the permit is granted and any challenges to it are concluded. At the request of the electric provider or independent power producer, the local unit may (but does not have to) extend this deadline without requiring a new application. A local unit cannot revoke an issued permit, unless an electric provider or independent power producer is in material noncompliance with the permit.

An electric provider or independent power producer that has submitted an application to an affected local unit may submit its application to the MPSC if any of the following apply:

- An affected local unit fails to timely approve or deny an application.
- An affected local unit denies an application that complies with the requirements described below under “Health and safety standards.”
- An affected local unit amends its zoning ordinance after its chief elected official notifies the electric provider or independent power producer that it has a compatible renewable energy ordinance, and the amendment imposes additional requirements on the development of energy facilities that are more restrictive than the provisions described below under “Health and safety standards.”

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<sup>4</sup> These provisions appear to apply only when *all* affected local units have a compatible renewable energy ordinance. As noted elsewhere, it is unclear whether counties where a facility is located are *affected local units* as defined by the bill. If they are, then every facility will always have at least two affected local units, both of which apparently must have a compatible renewable energy ordinance for the provisions described here to apply.

<sup>5</sup> An applicant submitting an application to an affected local unit under these provisions does not appear to be subject to the provisions described under “Evaluating an MPSC application” below, such as the additional actions that can condition the approval of an application (e.g., ground cover, pollinator standards, community improvements) or the determinations regarding a facility or applicant that are sufficient for approval when an application is made to the MPSC (e.g., labor and wage requirements, environmental impacts, unreasonable diminishment of farmland).

An electric provider or independent power producer that submits an application to the MPSC under the above provisions does not have to comply with the public meeting requirements described above under “Public meeting,” the one-time grant described below under “Local intervenor compensation funds,” or the requirement to submit a summary of community outreach and education efforts described below under “Application for an MPSC certificate.”<sup>6</sup>

If the MPSC approves an application submitted under the above provisions, the local unit is no longer considered to have a compatible renewable energy ordinance, unless the MPSC finds that the local unit’s denial of the application was reasonably related to the applicant’s failure to provide required information.

The bill says that the above provisions must not be construed to limit remedies available to an applicant to appeal a denial by a local unit of government under any other Michigan law.

#### Site plans

In addition to meeting application filing requirements established by the MPSC by rule or order, a site plan must include all of the following:

- The location of the energy facility.
- A description of the energy facility.
- A description of the anticipated effects of the energy facility on the environment, natural resources, and solid waste disposal capacity. This description may include records of consultation with relevant state, tribal, and federal agencies.
- Additional information that directly relates to the site plan as required by the MPSC by rule or order.

Whenever an electric provider or independent power producer submits a site plan to the MPSC as required by the bill, it also must submit a copy of the site plan, for informational purposes, to the clerk of each affected local unit.

#### Application for an MPSC certificate

Except as described above under “Compatible renewable energy ordinance,” an application to the MPSC for a certificate must contain all of the following:

- The applicant’s name, address, and phone number.
- The planned construction start date.
- The construction’s expected duration.
- A description of the energy facility, including a site plan.
- A description of the facility’s expected use.
- A description of the facility’s expected public benefits.
- A description of the facility’s expected direct impacts on the environment and natural resources.
- A description of how the applicant intends to address and mitigate the above impacts.
- Information on the facility’s effects on public health and safety.
- A description of the portion of the community where the energy facility will be located.

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<sup>6</sup> It seems unclear whether an application submitted to the MPSC under these provisions is subject to the provisions that allow the MPSC to require additional information. The bill explicitly states that *any* application submitted under subsection (3) is not subject to those provisions, but it also might imply (without actually saying so) that a provider or producer is subject to them when subsequently applying to the MPSC under subsection (3).

- A statement (and evidence) that the facility will not start commercial operation until it complies with applicable state and federal environmental laws.
- A summary of the community outreach and education efforts undertaken by the electric provider or independent power producer. (This includes a description of public meetings and meetings with elected officials held as described above.)
- Evidence of consultation (before submission of the application) with the Department of Environment, Great Lakes, and Energy (EGLE) and other relevant state and federal agencies, including the Department of Natural Resources (DNR) and the Department of Agriculture and Rural Development (MDARD).
- The soil and economic survey report<sup>7</sup> for the county where the facility will be located.
- Information about the interconnection queue for the applicable regional transmission organization.
- If the proposed site is undeveloped, a description of feasible alternative developed locations, including vacant industrial property and brownfields, and an explanation of why they were not chosen.
- If the facility is reasonably expected to have an impact on any of the following, a plan to minimize and mitigate that impact:
  - Television signals.
  - Microwave signals.
  - Agricultural global position systems.
  - Military defense radar. (Information concerning military defense radar is exempt from disclosure under the Freedom of Information Act and cannot be disclosed by the MPSC or the electric provider or independent power producer except under court order.)
  - Radio reception.
  - Weather and Doppler radio.
- A stormwater assessment and a plan to minimize, mitigate, and repair any drainage impacts at the expense of the provider or producer. (The applicant must make reasonable efforts to consult with the county drain commissioner before submitting its application and include in the application evidence of those efforts.)
- A fire response plan.
- An emergency response plan.
- A decommissioning plan that is consistent with agreements reached between the applicant and other landowners of participating properties and that ensures the return of all participating properties to a useful condition similar to the condition that existed before construction, including removal of any above-surface infrastructure and facilities that have no ongoing purpose. The decommissioning plan must include at least financial assurance in the form of a bond, a parent company guarantee, or an irrevocable letter of credit, in an amount at least equal to the estimated cost of decommissioning the facility, after deducting salvage value, as calculated by a third party with expertise in decommissioning hired by the applicant. The financial assurance may be posted in increments as follows:
  - At least 25% by the start of full commercial operation.
  - At least 50% by the start of the fifth year of commercial operation.
  - 100% by the start of the tenth year of commercial operation.
- Other information reasonably required by the MPSC.

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<sup>7</sup> See <http://legislature.mi.gov/doc.aspx?mcl-451-1994-III-3-1-603>

### MPSC determination of completeness

The MPSC must determine the completeness of an application submitted to it within 60 days after receiving the application. For an incomplete application, the MPSC must advise the applicant in writing of the information needed to make it complete. An application is also considered complete if the MPSC fails to timely notify the applicant that it is incomplete.

### Local intervenor compensation funds

Except as described above under “Compatible renewable energy ordinance,” upon filing an application with the MPSC, an applicant for a certificate must make a one-time grant to each affected local unit for an amount determined by the MPSC but not more than \$75,000 per affected local unit and not more than \$150,000 in total.<sup>8</sup> Each affected local unit must deposit the grant in a local intervenor compensation fund to be used to cover costs associated with participating in the contested case proceeding on the application.

### MPSC application proceedings

Upon filing an application with the MPSC, an applicant for a certificate must provide notice of the opportunity to comment on the application in a form and manner prescribed by the MPSC. The notice must be published in a newspaper of general circulation in each affected local unit or in a comparable digital alternative. The notice must be written in plain, nontechnical, and easily understood terms, with a style of title specified in the bill. The bill also requires the MPSC to further prescribe the format and content of the notice.

The MPSC must conduct a proceeding on the application as a contested case under the Administrative Procedures Act.<sup>9</sup> An affected local unit, owner of participating property, or owner of *nonparticipating property* may intervene by right.

*Nonparticipating property* means property adjacent to a solar energy facility or wind energy facility that is not a *participating property* (defined as described above).

The MPSC may assess reasonable application fees to cover its administrative costs in processing an application, including costs for consultants to assist the MPSC in evaluating issues raised by the application. The bill allows the MPSC to retain consultants to assist it in evaluating issues raised by an application and to require the applicant to pay those costs.

### Evaluating an MPSC application

In evaluating an application, the MPSC must consider the impact of the proposed facility on local land use, including the percentage of land in the local unit dedicated to energy generation. If applicable, the MPSC must also consider the feasible alternative developed locations described in the application. The MPSC may condition its approval on additional reasonable action to be taken by the applicant for the certificate related to the impacts of the proposed facility, such as the following:

- Establishing vegetative ground cover and maintaining it for the life of the facility. (This may not be made a condition for a facility to be located entirely on brownfield land.)
- Meeting or exceeding specified pollinator standards for the life of the facility. (This may not be a condition for a facility to be located entirely on brownfield land.)

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<sup>8</sup> Note that, if counties are *affected local units* (see above), there will always be at least two affected local units due these payments: the city, village, or township where the facility is located, and the applicable county.

<sup>9</sup> See <http://legislature.mi.gov/doc.aspx?mcl-306-1969-4>

- Providing for community improvements in the affected local unit.
- Making a good-faith effort to maintain and provide proper care of the property where the energy facility is to be located during the facility's construction and operation.

The MPSC must grant an application and issue a certificate, or deny the application, no later than one year after a complete application is filed.

The MPSC must grant the application and issue a certificate if it determines all of the following:<sup>10</sup>

- The public benefits of the proposed energy facility justify its construction. (Public benefits include at least expected tax revenue paid by the facility to local taxing districts, payments to owners of participating property, community benefits agreements, and local job creation. They also include any contributions to meeting identified energy, capacity, reliability, or resource adequacy needs of the state. To determine this, the MPSC may consider approved integrated resource plans under section 6t of 1939 PA 3,<sup>11</sup> renewal energy plans, annual electric provider capacity demonstrations under section 6w of 1939 PA 3,<sup>12</sup> or other proceedings before the MPSC, at the applicable regional transmission organization, or before the Federal Energy Regulatory Commission, as determined relevant by the MPSC.)
- The facility complies with the standard in section 1705(2) of the Natural Resources and Environmental Protection Act.<sup>13</sup>
- The applicant for the certificate has considered and addressed impacts to the environment and natural resources, including sensitive habitats and waterways, wildlife corridors, wetlands and floodplains, parks, historic and cultural sites, and threatened or endangered species.
- The applicant for the certificate has met the conditions described below regarding host community agreements and community benefits agreements.
- The installation, construction, or construction maintenance of the energy facility will use apprenticeship programs registered and in good standing with the U.S. Department of Labor under the federal National Apprenticeship Act.<sup>14</sup>
- The workers employed for the construction or construction maintenance of the energy facility will be paid a minimum wage standard not less than the wage and fringe benefit rates prevailing in the locality where the work is to be performed as determined under 2023 PA 10<sup>15</sup> or 40 USC 3141 to 3148 (known as the Davis-Bacon Act),<sup>16</sup> whichever provides the higher wage and fringe benefit rates.
- To the extent allowed by law, the entities performing the construction or construction maintenance work will enter into a *project labor agreement* or operate under a collective bargaining agreement for the work to be performed.

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<sup>10</sup> Note that the bill does not require a facility or an applicant for a certificate to meet these conditions; rather, it requires the MPSC to issue a certificate if they are met. That is, as written, these conditions are sufficient for approval, but they are not necessary for approval. Nothing in the bill prevents the MPSC from issuing a certificate when a facility or an applicant for a certificate does not meet all of these conditions.

<sup>11</sup> <http://legislature.mi.gov/doc.aspx?mcl-460-6t>

<sup>12</sup> <http://legislature.mi.gov/doc.aspx?mcl-460-6w>

<sup>13</sup> <http://legislature.mi.gov/doc.aspx?mcl-324-1705>

<sup>14</sup> <https://www.law.cornell.edu/uscode/text/29/chapter-4C>

<sup>15</sup> <http://legislature.mi.gov/doc.aspx?mcl-Act-10-of-2023>

<sup>16</sup> <https://www.law.cornell.edu/uscode/text/40/subtitle-II/part-A/chapter-31/subchapter-IV>

- The proposed energy facility will not unreasonably diminish farmland, including prime farmland and, to the extent that evidence of such farmland is available, farmland dedicated to the cultivation of specialty crops.
- The facility does not present an unreasonable threat to public health or safety (see below for applicable standards that satisfy this condition).

***Project labor agreement*** means a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and does all of the following:

- Binds all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents.
- Allows all contractors and subcontractors on the construction project to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements.
- Contains guarantees against strikes, lockouts, and similar job disruptions.
- Sets forth the effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement.
- Provides other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health.
- Complies with all state and federal laws, rules, and regulations.

#### Health and safety standards

An energy facility that meets the following minimum standards, as applicable, is considered to *not* present an unreasonable threat to public health or safety (for purposes of the last condition listed above):

- For a solar energy facility, all of the following:
  - The following minimum setback requirements are met, with setback distances measured from the nearest edge of the perimeter fencing of the facility:
    - With regard to ***occupied community buildings*** and dwellings on nonparticipating properties, 300 feet from the nearest point on the outside wall of the structure.
    - With regard to a public road right-of-way, 50 feet measured from the nearest edge of the right-of-way.
    - With regard to nonparticipating properties, 50 feet measured from the nearest shared property line.
  - Fencing for the solar energy facility complies with the National Electric Code in effect on the effective date of the bill or any applicable successor standard approved by the MPSC. (The code requires perimeter fencing to limit access by unauthorized persons, and metal fences within a certain distance from exposed electrical conductors or equipment must be grounded and bonded.)
  - Solar panel components do not exceed a maximum height of 25 feet above ground when the arrays are at full tilt.
  - 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

must use the A-weighted scale as designed by the American National Standards Institute.<sup>17</sup>

- The solar energy facility will implement dark sky–friendly lighting *solutions*.<sup>18</sup>
- The solar energy facility will comply with any more stringent requirements the MPSC adopts after determining they are necessary for compliance with state or federal environmental regulations.
- For a wind energy facility, all of the following:
  - The following minimum setback distances are met, as measured from the center of the base of the wind tower:
    - With regard to occupied community buildings and nonparticipating residences, 2.1 times the *maximum blade tip height* to the nearest point on the outside wall.
    - With regard to participating residences, 1.1 times the maximum blade tip height to the nearest point on the outside wall.
    - With regard to nonparticipating property lines, 1.1 times the maximum blade tip height.
    - With regard to a public road right-of-way, 1.1 times the maximum blade tip height to the *center line* of the right-of-way. [Note that the setback measurements for solar and energy storage facilities are made from the *nearest edge* of a public road right-of-way.]
    - With regard to overhead communication and electric transmission lines, except utility lines to houses or outbuildings, 1.1 times the maximum blade tip height to the center line of the easement.
  - No occupied community building or nonparticipating residence will experience more than 30 hours a year of shadow flicker under planned operating conditions as indicated by industry standard computer modeling.<sup>19</sup>
  - No wind tower blade tip exceeds the height allowed under a Determination of No Hazard to Air Navigation by the Federal Aviation Administration (FAA) under 14 CFR Part 77.<sup>20</sup>
  - The wind energy facility does not generate a maximum sound in excess of 55 average hourly decibels as modeled (using the A-weighted scale) at the nearest outer wall of the nearest dwelling on an adjacent nonparticipating property.
  - The wind energy facility is equipped with a functioning *light-mitigating technology*. During construction, a wind turbine may be lighted with temporary lighting until the permanent lighting configuration is implemented. The MPSC may grant a temporary exemption if installation of appropriate light-mitigating technology is not feasible. A request for a temporary exemption must be in writing and state all of the following:
    - The purpose of the exemption.
    - The proposed length of the exemption.

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<sup>17</sup> A-weighting adjusts measurement of a sound level to more closely approximate how humans perceive its relative loudness. It skews somewhat toward higher frequencies. As a point of reference, normal conversation is about 60 dBA (adjusted decibels), and electric toothbrushes, washing machines, dishwashers, air conditioners, and coffee percolators measure near 55 dBA. <https://noiseawareness.org/info-center/common-noise-levels/>

<sup>18</sup> The bill defines “dark sky–friendly lighting *technology*” as a light fixture designed to minimize the amount of light that escapes upward into the sky.

<sup>19</sup> See <https://windexchange.energy.gov/projects/shadow-flicker> and <https://www.energy.gov/eere/wind/articles/living-wind-energys-shadow>

<sup>20</sup> <https://www.ecfr.gov/current/title-14/chapter-I/subchapter-E/part-77>

- A description of the light-mitigating technologies submitted to the FAA.
    - The reason a light-mitigating technology is not feasible.
    - Any other relevant information requested by the MPSC.
  - The wind energy facility meets any standards concerning radar interference, lighting, or other relevant issues as determined by the MPSC.
  - The wind energy facility will comply with any more stringent requirements the MPSC adopts after determining they are necessary for compliance with state or federal environmental regulations.
- For an energy storage facility, all of the following:
  - The following minimum setback requirements are met, with setback distances measured from the nearest edge of the perimeter fencing of the facility:
    - With regard to occupied community buildings and dwellings on nonparticipating properties, 300 feet from the nearest point on the outside wall of the structure.
    - With regard to a public road right-of-way, 50 feet measured from the nearest edge of the right-of-way.
    - With regard to nonparticipating properties, 50 feet measured from the nearest shared property line.
  - The energy storage facility complies with NFPA 855, “Standard for the Installation of Stationary Energy Storage Systems,” as in effect on the effective date of the bill, or any applicable successor standard adopted by the MPSC.
  - The facility does not generate a maximum sound in excess of 55 average hourly decibels as modeled (using the A-weighted scale) at the nearest outer wall of the nearest dwelling on an adjacent nonparticipating property.
  - The facility will implement dark sky–friendly lighting solutions.
  - The energy storage facility will comply with any more stringent requirements the MPSC adopts after determining they are necessary for compliance with state or federal environmental regulations.

***Occupied community building*** means any of the following:

- A school.
- A place of worship.
- A day care facility.
- A public library.
- A community center.
- A similar building the applicant knows is regularly used as a community gathering place.

***Maximum blade tip height*** means the nominal hub height plus the nominal blade length of a wind turbine, as listed in the specifications provided by the manufacturer or, if not listed there, the actual hub height plus the actual blade length. (The hub height is the distance from the ground to the middle of the rotor. The average hub height of newly installed wind turbines in the United States in 2022 was just over 320 feet.<sup>21</sup> The

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<sup>21</sup> <https://www.energy.gov/sites/default/files/2023-08/land-based-wind-market-report-2023-edition.pdf>

average blade length was 210 feet.<sup>22</sup> The maximum blade tip height for a wind turbine of those average dimensions is 530 feet. With reference to the required setbacks described above, 2.1 times that average maximum blade tip height is 1,113 feet, and 1.1 times is 583 feet.)

***Light-mitigating technology system*** means an ***aircraft detection lighting system***, a ***light intensity dimming solution technology***, or a comparable solution that reduces the impact of nighttime lighting while maintaining night visibility sufficient to assist aircraft in identifying and avoiding collision with the wind energy facilities.

***Aircraft detection lighting system*** means a sensor-based system designed to detect aircraft as they approach a wind energy facility and automatically activate obstruction lights (lights that warn aircraft pilots of an obstruction such as a tower or building) until they are no longer needed.

***Light intensity dimming solution technology*** means obstruction lights with an intensity level that can be tailored to the surrounding visibility.

#### Host community agreements and community benefits agreements

An applicant for a certificate must enter into a host community agreement with each affected local unit.<sup>23</sup> The host community agreement must require that, upon commencement of any operation, the energy facility owner must pay the affected local unit \$2,000 per megawatt of nameplate capacity located in the affected local unit.<sup>24</sup> The payment must be used as determined by the affected local unit for police, fire, public safety, or other infrastructure. The payment also may be used for other projects as agreed to by the local unit and the applicant.

If an affected local unit refuses to enter into a host community agreement after good-faith negotiations with the applicant, the applicant may (but is not required to) enter into a community benefits agreement with one or more ***community-based organizations*** that are located in the affected local unit or that serve its residents. If an applicant opts to enter into a community benefits agreement, it must pay an amount at least equal to what it would have paid to the affected local unit under the host community agreement as described above.

***Community-based organization*** means any of the following:

- A workforce development and training organization.
- A labor union.
- A local governmental entity.
- A Michigan federally recognized tribe.
- An environmental advocacy organization.
- An organization that represents the interests of underserved communities.

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<sup>22</sup> <https://www.energy.gov/eere/wind/articles/top-10-things-you-didnt-know-about-wind-power> and <https://www.energy.gov/eere/articles/wind-turbines-bigger-better>

<sup>23</sup> The provisions described here, related to host community agreements and community benefits agreements, apply only to applicants for a certificate from the MPSC and not to applicants for a permit from an affected local unit as described in “Compatible renewable energy ordinances” above.

<sup>24</sup> As noted above, the scope of the term *affected local unit* is not clear. If it includes counties, there will always be at least two affected local units per facility due these payments: a city, village, or township and an applicable county.

A community benefits agreement must prioritize benefits to the community where the facility will be located. The topics and terms of an agreement can include such things as:

- Workforce development, job quality, and job access provisions such as the following:
  - Terms of employment, such as wages, benefits, employment status, workplace health and safety, scheduling, and career opportunities.
  - Recruitment, screening, and hiring strategies and practices; targeted hiring; investment in training and education; and worker input and representation in decisions affecting employment and training.
- Funding or providing specific environmental benefits.
- Funding or providing community amenities such as park and playground equipment, urban greening, enhanced safety crossings, road paving, and bike paths.
- Annual contributions to a nonprofit or community-based organization that awards grants.

A host community agreement or a community benefits agreement is legally binding and inures to the benefit of the parties and their successors and assigns. The MPSC must enforce this requirement, but not the agreements themselves, which are enforceable in a court of competent jurisdiction.

#### MPSC-issued certificates

A certificate issued by the MPSC must identify the location of the energy facility and its nameplate capacity.

If construction of an energy facility is not started within five years after a certificate is issued by the MPSC, the certificate is invalid, but the electric provider or independent power producer may seek a new certificate for the facility. The MPSC may extend the five-year period without requiring a new contested case proceeding upon the request of the applicant and a showing of good cause. For a certificate that is appealed in proceedings before the MPSC or to a court of competent jurisdiction, the time from when the appeal is filed until 60 days after issuance of a final decision (not subject to appeal) does not count against the five-year clock.

If the MPSC has issued a certificate for an energy facility, the electric provider or independent power producer may make minor changes (as defined by the MPSC) to the site plan if the changes are within the footprint of the previously approved plan.

#### Completion report

Before commencing commercial operations, an applicant for a certificate must file with the MPSC a completion report certifying compliance with the requirements of the Clean and Renewable Energy and Energy Waste Reduction Act (including the requirements of the bill) and with any conditions contained in a certificate issued by the MPSC.<sup>25</sup>

#### Confidentiality

Except as otherwise specified, information obtained by the MPSC under the bill is a public record under the Freedom of Information Act. However, the MPSC must issue orders to protect any information that it reasonably finds to be confidential that is included in an application or other documents required by the MPSC for certification. Information made confidential under

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<sup>25</sup> These provisions apply only to applicants for a certificate from the MPSC and not to applicants who apply for a permit from an affected local unit as described in “Compatible renewable energy ordinances” above.

such an MPSC protective order is exempt from disclosure under the Freedom of Information Act.<sup>26</sup>

#### Local preemption

A local ordinance cannot prohibit or regulate testing activities undertaken by an electric provider or independent power producer to determine the suitability of a site for an energy facility.

The bill says that if the MPSC issues a certificate for an energy facility under the bill, a zoning ordinance or limitation imposed after the electric provider or independent power producer submitted the application for the certificate to the MPSC must not be construed to limit or impair the construction, operation, or maintenance of the energy facility.

If the MPSC issues a certificate under the bill, the certificate and the new Part 8 preempt any local policy, practice, regulation, rule, or other ordinance that prohibits, regulates, or imposes requirements that are in addition to, or more restrictive than, those specified in the MPSC's certificate.

If a certificate is not issued by the MPSC under the bill, all local policies, practices, regulations, rules, or ordinances relating to the siting of energy facilities, including the local zoning authority's power to grant variances, remain in full force and effect.

The bill states that, except as described above, it does not exempt an electric provider or independent power producer issued a certificate by the MPSC from obtaining any other permit, license, or permission to construct or operate an energy facility that is required by federal law, any other Michigan law, a rule promulgated under Michigan law, or a local ordinance.

#### Other provisions

Approval of a certificate by the MPSC does not confer the power of eminent domain and is not a determination of public convenience and necessity for the purposes of the power of eminent domain or a condemnation action filed under the Uniform Condemnation Procedures Act.<sup>27</sup>

An MPSC order relating to a certificate or anything else provided for in the new Part 8 (i.e., the bill) is subject to review in the same manner as provided in section 26 of 1909 PA 300.<sup>28</sup>

The MPSC may consolidate proceedings under the new Part 8 with contract approval or other certificate of need cases related to the same energy facility.

The new Part 8 controls if there is any conflict between it and any other law of Michigan, except for the Electric Transmission Line Certification Act,<sup>29</sup> which controls in any conflict between it and Part 8.

In administering the new Part 8, the MPSC has only those powers and duties granted to it under that part (i.e., as described above).

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<sup>26</sup> These provisions apply only to information obtained by the MPSC. The bill does not specifically address information contained in an application submitted to an affected local unit as described above.

<sup>27</sup> <http://legislature.mi.gov/doc.aspx?mcl-Act-87-of-1980>

<sup>28</sup> <http://legislature.mi.gov/doc.aspx?mcl-462-26>

<sup>29</sup> <http://legislature.mi.gov/doc.aspx?mcl-Act-30-of-1995>

Finally, the bill amends the title of the act to reflect content added by this bill and by Senate Bill 271, and it specifies that the act’s definition of “site” does not apply when that term is used in the new Part 8. (These changes were both overwritten and substantively effected by similar changes made by Senate Bill 271, which was enacted subsequently.)

The bill will take effect November 29, 2024 (one year after the date it was enacted).

MCL 460.1013 et seq.

**House Bill 5121** amends the Michigan Zoning Enabling Act to provide that zoning ordinances are subject to Part 8 of the Clean and Renewable Energy and Energy Waste Reduction Act (House Bill 5120).

In addition, the bill provides that a renewable energy project that receives special land use approval under section 502 of the act<sup>30</sup> on or after January 1, 2021, is considered to be a prior nonconforming use, and the special land use approval must not be revoked or modified if substantial construction has occurred or an expenditure equal to \$10,000 or 10% of the project construction costs (whichever is less) has been made.

The bill takes effect February 13, 2024.

MCL 125.3205

#### **FISCAL IMPACT:**

The bills would likely have a neutral net fiscal impact on the Michigan Public Service Commission. The bills would result in increased costs for the MPSC for its responsibilities related to siting. The MPSC projects that it would require additional staff to comply with the provisions of the bills, though exact staffing needs are currently indeterminate. The bills would allow the MPSC to assess application fees to cover its costs.

The bills would also result in local governments receiving funding under either host community agreements or community benefits agreements. The magnitude of these benefits is not well defined and is currently indeterminate, since the magnitude would depend on the number and nameplate capacity of projects. Under HB 5120, certificate applicants would be required to enter into host community agreements and to pay the affected local unit \$2,000 per megawatt of nameplate capacity, with the payment statutorily directed for police, fire, public safety, infrastructure, or other projects as agreed to by the local unit and the applicant. If the affected local unit refuses to enter into a host community agreement, the applicant would have the ability to enter into a community benefits agreement, with the payment amount required to be equal to or greater than the payment amount under any host community agreement.

Legislative Analyst: Rick Yuille  
Fiscal Analyst: Marcus Coffin

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

<sup>30</sup> <http://legislature.mi.gov/doc.aspx?mcl-125-3502>