SENATE BILL NO. 440

June 24, 2025, Introduced by Senators BELLINO, ALBERT, WEBBER, DAMOOSE, HAUCK, THEIS and OUTMAN and referred to Committee on Government Operations.

A bill to amend 2008 PA 295, entitled

"Clean and renewable energy and energy waste reduction act,"

by amending section 226 (MCL 460.1226), as added by 2023 PA 233.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 226. (1) Upon filing an application with the commission, the applicant shall make a 1-time grant to each affected local unit for an amount determined by the commission but not more than $75,000.00 per affected local unit and not more than $150,000.00 in total. Each affected local unit shall deposit the grant in a local

intervenor compensation fund to be used to cover costs associated with participation in the contested case proceeding on the application for a certificate.

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

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

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

(5) The commission shall grant the application and issue a certificate or deny the application not later than 1 year after a

complete application is filed.

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

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

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

(c) Providing for community improvements in the affected local

unit.

(d) Making a good-faith effort to maintain and provide proper care of the property where the energy facility is proposed to be located during construction and operation of the facility.

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

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

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

(c) The applicant has considered and addressed impacts to the environment and natural resources, including, but not limited to, sensitive habitats and waterways, wetlands and floodplains, wildlife corridors, parks, historic and cultural sites, and

threatened or endangered species.

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

(e) All of the following apply:

(*i*) The installation, construction, or construction maintenance of the energy facility will use apprenticeship programs registered and in good standing with the United States Department of Labor under the national apprenticeship act, 29 USC 50 to 50c.

(*ii*) 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 in which the work is to be performed as determined under ~~2023 PA 10, MCL 408.1101 to 408.1126, or~~ 40 USC 3141 to 3148. ~~, whichever provides the higher wage and fringe benefit rates.~~

(*iii*) To the extent permitted 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.

(f) The proposed energy facility will not unreasonably diminish farmland, including, but not limited to, prime farmland and, to the extent that evidence of such farmland is available in the evidentiary record, farmland dedicated to the cultivation of specialty crops.

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

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

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

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

Setback Description	Setback Distance
Occupied community buildings and dwellings on nonparticipating properties	300 feet from the nearest point on the outer wall
Public road right-of-way	50 feet measured from the nearest edge of a public road right-of-way
Nonparticipating parties	50 feet measured from the nearest shared property line

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

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

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

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

(*vi*) The solar energy facility will comply with any more stringent requirements adopted by the commission. Before adopting

such requirements, the commission must determine that the requirements are necessary for compliance with state or federal environmental regulations.

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

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

Setback Description	Setback Distance
Occupied community buildings and residences on nonparticipating properties	2.1 times the maximum blade tip height to the nearest point on the outside wall of the structure
Residences and other structures on participating properties	1.1 times the maximum blade tip height to the nearest point on the outside wall of the structure
Nonparticipating property lines	1.1 times the maximum blade tip height
Public road right-of-way	1.1 times the maximum blade tip height to the center line of the public road right-of-way
Overhead communication and electric transmission, not including utility service lines to individual houses or outbuildings	1.1 times the maximum blade tip height to the center line of the easement containing the overhead line

(*ii*) Each wind tower is sited such that any occupied community building or nonparticipating residence will not experience more than 30 hours per year of shadow flicker under planned operating

conditions as indicated by industry standard computer modeling.

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

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

(*v*) The wind energy facility is equipped with a functioning light-mitigating technology. To allow proper conspicuity of a wind turbine at night during construction, a turbine may be lighted with temporary lighting until the permanent lighting configuration, including the light-mitigating technology, is implemented. The commission may grant a temporary exemption from the requirements of this subparagraph 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:

(A) The purpose of the exemption.

(B) The proposed length of the exemption.

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

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

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

(*vi*) The wind energy facility meets any standards concerning radar interference, lighting, subject to subparagraph (*v*), or other

relevant issues as determined by the commission.

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

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

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

Setback Description	Setback Distance
Occupied community buildings and dwellings on nonparticipating properties	300 feet from the nearest point on the outer wall
Public road right-of-way	50 feet measured from the nearest edge of a public road right-of-way
Nonparticipating parties	50 feet measured from the nearest shared property line

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

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

weighted scale as designed by the American National Standards Institute.

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

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

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

(10) If construction of an energy facility is not commenced within 5 years after the date that a certificate is issued, the certificate is invalid, but the electric provider or IPP may seek a new certificate for the proposed energy facility. If the certificate is appealed in proceedings before the commission or to a court of competent jurisdiction, the running of the 5-year period is tolled from the date of filing the appeal until 60 days after issuance of a final nonappealable decision. The commission may extend the 5-year period at the request of the applicant and upon a showing of good cause without requiring a new contested case proceeding.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 438 of the 103rd Legislature is enacted into law.