

Legislative Analysis



CERTIFICATION AND SITING OF ENERGY FACILITIES WITH CAPACITY OF 100 MEGAWATTS OR MORE

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

House Bill 5120 as introduced
Sponsor: Rep. Abraham Aiyash

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

House Bill 5121 as introduced
Sponsor: Rep. Ranjeev Puri

Committee: Energy, Communications, and Technology
Complete to 10-11-23

SUMMARY:

House Bill 5120 would amend the Clean and Renewable Energy and Energy Waste Reduction Act to create a certification process, through the Michigan Public Service Commission (MPSC), of wind or solar energy facilities and energy storage facilities with a capacity of 100 megawatts or more.¹ The process would preempt local zoning of such facilities. House Bill 5121 would amend the Michigan Zoning Enabling Act to provide that zoning ordinances are subject to the proposed Part 8.

House Bill 5120 would add Part 8 (Wind, Solar, and Storage Certification) to the Clean and Renewable Energy and Energy Waste Reduction Act. The proposed new part would apply to *wind energy facilities* or *solar energy facilities* with a *nameplate capacity* of 100 megawatts or more and to *energy storage facilities* with a nameplate capacity of 100 megawatts or more and an energy discharge capability of 200 megawatt hours or more. These would be referred to collectively as energy facilities in the bill. Energy facilities could be located on more than one parcel of property, including noncontiguous parcels.

Wind energy facility would mean a system that captures and converts wind into electricity for sale or for use in any location other than the facility property, and at a minimum would include all of the following:

- Wind towers.
- Wind turbines.
- Monitoring and recording equipment and facilities.
- Erosion control facilities.
- Ancillary buildings.
- Wind monitoring stations.

Solar energy facility would mean a system that captures and converts solar energy into electricity for sale or for use in any location other than the facility property, and at a minimum would include all of the following:

- Photovoltaic solar panels.

¹ House Bills 5120 and 5122 have identical provisions, except that HB 5120 would apply to the facilities with the capacities described above and HB 5122 would apply to solar energy facilities and energy storage facilities with a capacity of at least 50 megawatts but less than 100 megawatts.

- Solar inverters.
- Solar monitoring stations.

In addition to the above descriptions of equipment and structures particular to each, *wind energy facility* and *solar energy facility* would both also include, at a minimum, 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.
- Substations.
- Accessory equipment and structures.

Nameplate capacity would mean the designed full-load sustained generating output of an energy facility and would have to be determined by reference to the sustained output of an energy facility even if facility components are located on different parcels.

Energy storage facility would mean a system that absorbs, stores, and discharges electricity.

Certificates

The bill would allow an *electric provider* or *independent power producer* to obtain a certificate from the MPSC, as described below, before beginning *construction* of an energy facility.

Electric provider means any of the following:

- Any 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 3.²

² <http://legislature.mi.gov/doc.aspx?mcl-460-10a>

Independent power producer would mean a **person** that is not an electric utility but that owns or operates facilities to generate electric power for sale to electric providers, the state, or local units of government.

Person would mean 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, limited partnership, limited liability partnership, or 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 would mean any substantial action taken constituting the placement, erection, expansion, or **repowering** of an energy facility.

Repowering would mean replacement of all or substantially all of an energy facility for the purpose of extending its life. It would not include repairs related to the ongoing operations that do not increase the capacity or energy output of the energy facility.

Public meeting

An electric provider or independent power producer proposing to obtain a certificate would have to hold a public meeting in each **affected local unit** (defined as a county, township, city, or village where all or part of a proposed energy facility will be located). However, a public meeting held in a township would be considered to be held in each village located in that township.

At least 60 days before the meeting, the electric provider or independent power producer would have to offer in writing to meet with the chief elected official of each affected local unit, or their designee, to discuss the site plan for the facility. (Site plans are described below.)

At least 30 days before the meeting, the electric provider or independent power producer would have to 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 provide either a copy of the site plan or an internet address where the site plan is available.

At least 14 days before the meeting, the electric provider or independent power producer would have to publish notice of the meeting in a newspaper of general circulation in the affected local unit or in a digital alternative that is comparable to such a newspaper. The notice would have to include either a copy of the site plan or an internet address where the site plan is available.

The MPSC would have to further prescribe the format and content of the notice described above.

Site plan

A site plan would have to meet application filing requirements established by rule or order by the MPSC. A site plan would have to 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, on natural resources, and on solid waste disposal capacity. This description could include records of consultation with relevant state, tribal, and federal agencies.
- Additional information that directly relates to the site plan as required by rule or order of the MPSC.

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

Application for a certificate

An application for a certificate would have to contain all of the following:

- The complete name, address, and telephone number of the applicant.
- The planned date for the start of construction of the energy facility.
- The expected duration of the construction.
- A description of the energy facility. This would have to include a site plan.
- A description of the expected use of the energy facility.
- A description of the expected public benefits of the proposed energy facility.
- A description of the expected direct impacts of the proposed energy facility on the environment and natural resources.
- A description of how the applicant intends to address and mitigate the impacts described above.
- Information on the effects of the proposed energy facility on public health and safety.
- A description of the portion of the community where the energy facility will be located.
- A statement (and reasonable evidence) that the proposed energy facility will not commence commercial operation until it is in compliance 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 would include a description of the public meetings and meetings with elected officials described above.

- Evidence of consultation (before submission of the application) with the Department of Environment, Great Lakes, and Energy and other relevant state and federal agencies (also before submitting the application), including the Department of Natural Resources and the Department of Agriculture and Rural Development.
- Interconnection queue information for the applicable regional transmission organization.
- If the proposed site of the energy facility is undeveloped land, a description of feasible alternative developed locations, including at least vacant industrial property and brownfields, and an explanation of why they were not chosen.
- If the energy 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 in the plan concerning military defense radar would be exempt from disclosure under the Freedom of Information Act (FOIA) and could not be disclosed by the MPSC or the electric provider or independent power producer except under court order.
 - Radio reception.
 - Weather and Doppler radio.
- If the energy facility is reasonably expected to have an impact on drainage systems within or surrounding the energy facility, a plan to minimize, mitigate, and repair that impact at the expense of the electric provider or independent power producer.
- If the energy facility is or includes an energy storage facility, an emergency response plan.
- A decommissioning plan that includes at least financial assurance in the form of a bond, a parent company guarantee, or an irrevocable letter of credit (but not cash). The amount of the financial assurance would have to at least equal the estimated cost of decommissioning the energy facility, after deducting salvage value, as calculated by a third party with expertise in decommissioning, hired by the applicant. However, the financial assurance could 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.

The MPSC would have to determine whether an application is complete within 60 days after receiving it. If the MPSC determines that the application is incomplete, it would have to advise the applicant in writing of the information necessary to make the application complete. If the MPSC fails to timely notify the applicant that an application is incomplete, the application would be considered to be complete.

Not more than 30 days after the MPSC determines that an application is complete, the applicant would have to send to the clerk of each affected local unit and publish notice of an opportunity to comment on the application.

The notice would have to be published in a newspaper of general circulation in each affected local unit or a comparable digital alternative. The notice would have to be written in plain,

nontechnical, and easily understood terms and shall contain a title with the name of the applicant and the words "NOTICE OF INTENT TO CONSTRUCT [WIND ENERGY/SOLAR ENERGY/ENERGY STORAGE] FACILITY."

The MPSC would have to further prescribe the format and contents of the notice.

The MPSC would have to conduct a proceeding on the application for a certificate as a contested case under the Administrative Procedures Act. An affected local unit, participating property owner, or nonparticipating property owner could intervene by right.

The MPSC could assess reasonable application fees to the applicant to cover its administrative costs in processing the application, including costs to consultants to assist the MPSC in evaluating issues raised by the application. The MPSC could retain consultants to assist it in evaluating issues raised by the application and require the applicant to pay the cost of the services.

The MPSC would have to either grant the application and issue a certificate or deny the application not later than one year after a complete application is filed.

Evaluating an application

In evaluating an application, the MPSC would have to consider 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 MPSC could condition its grant of the application on the applicant's taking additional reasonable action related to the impacts of the proposed energy facility, including at least the following:

- Establishing and maintaining for the life of the facility vegetative ground cover.
- Meeting or exceeding pollinator standards throughout the lifetime of the facility. (These standards would be as established by the "Michigan Pollinator Habitat Planning Scorecard for Solar Sites" developed by the Michigan State University Department of Entomology or any applicable successor standards approved by the MPSC. In addition, seed mix used to establish pollinator plantings could 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.)
- Providing for community improvements in the affected local unit.

The MPSC would have to grant the application and issue a certificate if it determines all of the following:

- The public benefits of the proposed energy facility justify its construction.
- The applicant has considered and addressed impacts to the environment and natural resources, including at least sensitive habitats and waterways, wetlands and floodplains, wildlife corridors, parks, historic and cultural sites, and threatened or endangered species.
- The applicant has met the community-based organization conditions described below.
- The applicant has certified that the workers employed for the construction of the energy facility will be paid at least the prevailing wage in the local unit of government where the proposed energy facility is located.

- The applicant has certified that the applicant will enter into and adhere to an agreement with one or more labor organizations in regard to the construction of the energy facility.
- The proposed energy facility does not present an unreasonable threat to public health or safety.

An energy facility would be considered to meet the health and safety requirements described above³ if it will comply with the following standards, as applicable:

- For a solar energy facility, all of the following:
 - The following setback requirements:
 - With regard to *occupied community buildings* and dwellings on *nonparticipating properties*, 150 feet from the nearest point on the outer wall.
 - With regard to a public road right-of-way, 50 feet measured from the nearest edge of the public road right-of-way.
 - With regard to nonparticipating parties, 50 feet measured from the nearest shared property line.
 - The solar energy facility is completely enclosed with fencing in compliance with the latest version of the National Electric Code as of the bill's date of enactment (not its effective date) or any applicable successor standard approved by the MPSC as reasonable and consistent with the purposes of this provision.
 - 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 would have to use the A-weighted scale as designed by the American National Standards Institute.
- For a wind energy facility, all of the following:
 - The following setback distances, measured from the center of the base of the wind tower:
 - With regard to 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.
 - With regard to 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.
 - 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 public road right-of-way.
 - With regard to 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.

³ The bill cites subsection (6)(g), which does not exist. The public health and safety requirement is in subsection (6)(f).

- 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.
- 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.
- 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 would have to use the A-weighted scale as designed by the American National Standards Institute.
- The wind energy facility meets any standards concerning radar interference, lighting, or other relevant issues as determined by the MPSC.
- For an energy storage facility, both of the following:
 - The energy storage facility complies with the version of NFPA 855 "Standard for the Installation of Stationary Energy Storage Systems" in effect on the date of enactment of the bill (not its effective date) or any applicable successor standard adopted by the MPSC as reasonable and consistent with the purposes of this provision.
 - 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 would have to use the A-weighted scale as designed by the American National Standards Institute.

Occupied community building would mean any of the following:

- A school.
- A place of worship.
- A day care facility.
- A public library.
- A community center.
- Another similar building that the applicant knows or reasonably should know is used on a regular basis as a gathering place for community members.

Nonparticipating property would mean a property that is adjacent to a solar energy facility or wind energy facility and that is not a ***participating property***.

Participating property would mean real property that either is owned by an applicant or that is the subject of an agreement that provides for the payment by an applicant to a landowner of monetary compensation related to an energy facility, regardless of whether any part of that energy facility is constructed on the property.

Maximum blade tip height would mean the nominal hub height plus the nominal blade length of a wind turbine, as listed in the wind turbine specifications provided by the wind turbine manufacturer. If not listed in the wind turbine specifications, maximum blade tip height would mean the actual hub height plus the actual blade length.

The certificate would have to identify the location of the energy facility and its nameplate capacity.

If construction of an energy facility is not commenced within five years after a certificate is issued, the certificate would be invalid, but the electric provider or independent power producer could seek a new certificate for the proposed energy facility. The MPSC could extend this timeline at the request of the applicant without requiring a new contested case proceeding.

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

Community-based organization agreements

The applicant for a certificate would have to enter into one or more agreements with—or that benefit—one or more *community-based organizations*. The agreements would be legally binding and enforceable if construction of the energy facility commences. The MPSC would have to enforce this requirement, but not the actual agreements, which would be enforceable in a court of competent jurisdiction.

Community-based organization would mean 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.

The agreements would have to prioritize benefits to the community where the energy facility is to be located. The topics and specific terms of the agreements could vary and could include any of the following:

- Workforce development, job quality, and job access provisions that include any of the following:
 - Terms of employment, such as wages and benefits, employment status, workplace health and safety, scheduling, and career advancement opportunities.
 - Worker recruitment, screening, and hiring strategies and practices, targeted hiring planning and execution, investment in workforce training and education, and worker input and representation in decision making affecting employment and training.
- Funding for or providing specific environmental benefits.
- Funding for or providing specific community improvements or amenities, such as park and playground equipment, urban greening, enhanced safety crossings, paving roads, and bike paths.
- Annual contributions to a nonprofit or community-based organization that awards grants.

Confidentiality

Except as otherwise provided in the bill, information obtained by the MPSC under the bill would be a public record under FOIA.

An applicant could designate information received from a third party that the applicant submits to the MPSC in an application for a certificate, or in other documents required by the MPSC for the purposes of certification, as only for the confidential use of the MPSC. The MPSC would have to shall notify the electric provider or independent power producer of a request for public records under FOIA if the scope of the request includes information designated as confidential. If the electric provider or independent power producer, within 10 days after the receipt of the notice, demonstrates to the satisfaction of the MPSC that the information designated as confidential is a trade secret or secret process or is production, commercial, or financial information the disclosure of which would jeopardize the competitive position of the electric provider or independent power producer or the person from whom the information was obtained, the MPSC could not grant the request for the information. If the MPSC decides to grant a request, it could not release the information requested until three days have elapsed after notice of the decision is provided to the electric provider or independent power producer.

If any person uses information obtained by the MPSC under the bill to forecast electrical demand, the person would have to structure the forecast so the person to whom the information pertains is not identified (unless that person waives confidentiality).

The MPSC would have to issue orders necessary to protect the information in an application for a certificate, or in other documents required by the MPSC for the purposes of certification, if the MPSC reasonably finds the information to be confidential. Information that is confidential under a protective order would be exempted from disclosure under FOIA.

Other provisions

An MPSC order relating to a certificate or other matter provided for under this part would be subject to review in the same manner as provided in section 6 of 1909 PA 300.⁴

In administering the proposed Part 8, the MPSC would have only those powers and duties granted under the part.

The commission could consolidate proceedings under the bill with contract approval or other certificate of need cases relating to the same energy facility.

The proposed Part 8 would control in any conflict between it and any other law of Michigan, except that the Electric Transmission Line Certification Act would control in any conflict with the proposed Part 8.

Local preemption

A local ordinance could not prohibit or regulate testing activities undertaken by an electric provider or independent power producer for purposes of determining the suitability of a site for the placement of an energy facility.

If a certificate is issued for an energy facility under the bill, a zoning ordinance or limitation imposed after the electric provider or independent power producer submitted the application

⁴ <http://legislature.mi.gov/doc.aspx?mcl-462-26>

for the certificate to the MPSC could not be construed to limit or impair the construction, operation, or maintenance of the energy facility.

If a certificate is issued, the certificate and the proposed Part 8 would preempt a local policy, practice, regulation, rule, or other ordinance that prohibits, regulates, or imposes additional or more restrictive dimensional and use limitations or requirements on the construction, operation, use, dimensions, replacement, or maintenance of an energy facility.

Except as provided in above, the bill states that it would not exempt an electric provider or independent power producer to which a certificate is issued from obtaining any other permit, license, or permission to engage in the construction or operation of an energy facility that is required by any other law of Michigan, any rule promulgated under a law of Michigan, or a local ordinance.

The bill would take effect one year after the date it is enacted into law.

Proposed MCL 460.1221 et seq.

House Bill 5121 would amend the House Bill 5121 would amend 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 as proposed by House Bill 5120.

MCL 125.3205

Neither bill could take effect unless both bills were enacted.

FISCAL IMPACT:

A fiscal analysis is in progress.

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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.