



Proposed Bills to Affect Energy Facilities

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On November 8, 2023, the Michigan Senate passed House Bills 5120 and 5121, which would amend the Clean and Renewable Energy and Waste Reduction Act and the Michigan Zoning Enabling Act, respectively.

Unless proposed to be in a local unit of government with a compatible renewable energy ordinance, the bills would apply to:

1. Solar energy facilities with a nameplate capacity of 50 megawatts or more,
2. Any wind energy facility with a nameplate capacity of 100 megawatts or more, and
3. Any energy storage facility with a nameplate capacity of 50 megawatts or more and an energy discharge capability of 200 megawatt hours or more.

A “compatible renewable energy ordinance” (“Ordinance”) is an ordinance no more restrictive than the provisions proposed by HB 5120 that provides for the development of energy facilities within the local unit of government. Local units of government that adopt a moratorium on the development of energy facilities are not considered to have a compatible renewable energy ordinance.

If adopted, the bills have the potential to preempt local zoning authority over the building and development of large-scale solar and wind energy facilities and energy storage facilities. Specifically, if enacted, the bills would have, among others, the following impact:

1. Electrical providers and independent power producers seeking approval for a wind, solar, or energy storage facility would be required to apply to each affected local unit of government if all the affected local units have an Ordinance in place. If not, jurisdiction would remain with the Michigan Public Service Commission (“MPSC”).
2. Even with an Ordinance in place, the bills prescribe the process local units of government must follow to approve or deny an application to construct wind, solar, or energy storage facilities.

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3. Local units of government would not be able to prohibit or regulate testing activities undertaken by an applicant for purposes of determining a suitable site for the placement of an energy facility or energy storage facility.
4. Local units of government would not be able to prohibit, regulate, or impose restrictions on the construction, operation, use, dimensions, replacement, or maintenance of an energy facility or energy storage facility after a certificate has been approved.

This legislation would not exempt applicants from obtaining any other necessary permits, licenses, or permissions required by law or local ordinance.

If enacted, these bills would heavily restrict local zoning and siting authority over energy facilities, shifting control to the MPSC. Although applicants would be required to 1) meet with local officials, 2) host public meetings, 3) participate in contested case hearings, and 4) enter into agreements with community organizations, local zoning ordinances and oversight would be partially, if not completely, preempted by the bills, which could have long term implications for local communities.

Governor Whitmer has not signed the bills, yet, but is expected to. House Bills 5120 and 5121 would not go into effect until one year after enactment.

We will continue to monitor this proposed legislation. Please contact a member of our municipal practice group if you have further questions.