



Update: Whitmer Signs Energy Bills, Restricting Facilities

Courtney G. Agrusa

Foster Swift Municipal Law News E-blast

November 30, 2023

On November 28, 2023, Governor Gretchen Whitmer signed House Bill 5120 and House Bill 5121 as part of Michigan’s clean energy initiative to combat climate change. The passage of these bills allows the Michigan Public Service Commission (“MPSC”) to expedite the permitting process for wind energy, solar energy, and energy storage facilities with utility-scale electric generating capacity seeking to construct an energy facility.

While local units of government and municipalities will maintain some control, the bills heavily restrict local zoning and siting authority over energy facilities. Specifically, as previously discussed, applicants wishing to construct energy facilities will have to:

1. Meet with local officials,
2. Host public meetings,
3. Participate in contested case hearings, and
4. Enter into agreements with community organizations.

However, the bills are clear that local policies, practices, regulations, rules, and other ordinances prohibiting or restricting the construction, operation, use, dimensions, replacements, or maintenance of energy facilities will be preempted by the MPSC’s authority.

After the law is effective, local units of government may adopt compatible renewable energy ordinances that are no more restrictive than the provisions outlined in MCL 460.1226(8). Any existing moratoriums on the development of energy facilities within a local unit of government’s jurisdiction will no longer be recognized. The law will go into effect on November 29, 2024.

Please contact a member of our municipal practice group if you have further questions or would like assistance with or guidance on the drafting of a compatible renewable energy ordinance.

AUTHORS/ CONTRIBUTORS

Courtney Gabbara Agrusa

PRACTICE AREAS

Municipal & Public Entity Law

Municipal Litigation

Renewable Energy

Zoning & Land Use