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Senate Bills 586 and 587 (as introduced 10-12-23)

Sponsor: Senator Sean McCann

Committee: Energy and Environment

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INTRODUCTION

The bills would allow an electric provider or an independent power producer (IPP) to apply to the Michigan Public Service Commission (MPSC) for a certificate to construct a solar or energy storage facility that had between 50 to 100 megawatts of generational capacity. A granted certificate would preempt local regulations or rules that prohibited or more restrictively regulated an energy facility. The bills also would prohibit a zoning ordinance imposed after an application was filed with the MPSC from being construed as a limit or impairment on a facility.

An application for a certificate would have to include a comprehensive site plan, a demonstration that affected local governments and specified State departments had been consulted in its preparation, and financial assurances, among other things. An application would have to undergo an MPSC contested case proceeding, and the MPSC would have to issue a certificate or deny an application within a year of the application filing. The MPSC would have to approve a certificate based on an energy facility meeting environmental, safety, labor, and setback requirements. (See **BACKGROUND** for additional context concerning contested case proceedings and the sale of electricity in the State.)

The bills are tie-barred. Senate Bill 586 would take effect one year after its enactment.

FISCAL IMPACT

Senate Bill 586 would have an indeterminate fiscal impact on State government. Senate Bill 587 would have no fiscal impact on State or local government.

Under Senate Bill 586, the MPSC would be required to review any submitted applications and conduct proceedings as contested cases as prescribed by the Administrative Procedures Act. The extent of the costs associated with these undertakings would depend on the number of applications submitted as well as the extent of the proceedings. While some costs would be covered under existing appropriations, it is likely that additional appropriations would be required to fulfill the MPSC's new obligations.

The bill would allow the MPSC to set application fees at a level sufficient to cover costs associated with the application process. In addition, the MPSC would be permitted to charge applicants for the cost of engaging consultants to sufficiently review the submitted application materials; however, the MPSC could elect not to charge full costs for either of these undertakings. It is possible that an additional full-time-equivalent (FTE) could be engaged to assist in this work, depending on the volume of activity created due to the bills. The average cost of an FTE is approximately \$137,500.

Proposed MCL 460.1221-1231 (S.B. 586)
MCL 125.3205

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CONTENT

Senate Bill 586 would add Part 8 (Solar and Storage Certification) to the Clean and Renewable Energy and Waste Reduction Act to do the following:

- Allow a solar energy or energy storage facility that met certain nameplate capacity requirements to obtain a certificate to construct an energy facility.
- Prohibit a zoning ordinance imposed after an application was submitted from being construed to limit or impair an energy facility's construction or operation.
- Preempt a local policy, practice, regulation, rule, or other ordinance that prohibited or more restrictively regulated than Part 8 the construction, operation, use, dimensions, replacement, or maintenance of an energy facility.
- Prescribe the process to apply for a certificate, including that the application for a certificate undergo a contested case proceeding.
- Require an applicant to conduct a public meeting concerning site plans in affected local units of government.
- Prescribe the requirements an applicant's site plan would have to meet, including setback requirements.
- Require the certificate's application material to contain certain information, such as environmental impacts and mitigation measures, public health and safety considerations, community locations, and compliance with environmental laws.
- Require the MPSC to notify an affected local unit of government and other interested parties of a complete application.
- Require the MPSC to issue certificate or deny an application within one year of the application being filed and specify the requirements for granting an application.
- Require the MPSC to consider the effects on land use of a proposed facility.
- Require applicants to enter into at least one agreement with a community-based organization.
- Specify that information obtained by the MPSC would be public record.

Senate Bill 587 would amend the Michigan Zoning Enabling Act to subject a zoning ordinance to Part 8 of the Clean and Renewable Energy and Waste Reduction Act as proposed by Senate Bill 586.

Senate Bill 586 is described in greater detail below.

Senate Bill 586

Scope

The bill specifies that Part 8 would apply to all the following:

- Any solar energy facility with a nameplate capacity of at least 50 megawatts but no more than 100 megawatts.
- Any energy storage facility with a nameplate capacity of at least 50 megawatts but no more than 100 megawatts and an energy discharge capability of at least 200 megawatt hours.

"Solar energy facility" would mean a system that captures and converts solar energy into electricity, for the purpose of sale or for use in locations other than solely the solar energy facility property. The term would include the following equipment and facilities to be

constructed by an electric provider or IPP: photovoltaic solar panels; solar inverters; 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; energy storage facilities; overhead and underground control; communications and radio relay systems and telecommunications equipment; utility lines and installations; generation tie lines; substations; solar monitoring stations; and accessory equipment and structures.

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

"Nameplate capacity" would mean the designed full-load sustained generating output of an energy facility. Nameplate capacity would be determined by reference to the sustained output of an energy facility even if components of the energy facility are located on different parcels, whether contiguous or noncontiguous. "Energy facility" would mean an energy storage facility or solar energy facility. An energy facility could be located on more than one parcel of property, including noncontiguous parcels.

MPSC Certification

Before beginning construction of an energy facility, an electric provider or IPP could obtain a certificate for that energy facility from the MPSC. To obtain a certificate for an energy facility, an electric provider or IPP would have to comply with certain requirements described below, and then apply to the MPSC.

"Construction" would mean any substantial action taken constituting the placement, erection, expansion, or repowering of an energy facility. "Repowering", with respect to an energy facility, would mean replacement of all or substantially all the energy facility for the purpose of extending its life. The term would not include repairs related to the ongoing operations that did not increase the capacity or energy output of the energy facility.

"Independent power producer", or IPP, would mean a person that is not an electric utility but owns or operates facilities to generate electric power for sale to electric providers, the State, or local units of government. "Local unit of government" would mean a county, township, city, or village. "Person" would mean an individual, governmental entity authorized by the State, political subdivision of the State, business, proprietorship, firm, partnership, limited partnership, limited liability partnership, co-partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, subchapter S corporation, limited liability company, committee, receiver, estate, trust, or any other legal entity or combination or group of persons acting jointly as a unit.

Local Ordinance Requirements

Under Part 8, a local ordinance could not prohibit or regulate testing activities undertaken by an electric provider or IPP for purposes of determining the suitability of a site for the placement of an energy facility.

If a certificate were issued for an energy facility, a zoning ordinance or limitation imposed after the electric provider or IPP submitted the application for the certificate to the MPSC could not be construed to limit or impair construction, operation, or maintenance of the facility.

Additionally, if a certificate were issued, the certificate and Part 8 would preempt a local policy, practice, regulation, rule, or other ordinance that prohibited, regulated, or imposed additional or more restrictive dimensional and use limitations or requirements on the construction, operation, use, dimensions, replacement, or maintenance of an energy facility.

Unless otherwise provided, Part 8 would not exempt an electric provider or IPP to whom a certificate was issued from obtaining any other permit, license, or permission to engage in the construction or operation of an energy facility that was required by any other law of the State, any rule promulgated under a law of the State, or a local ordinance.

Site Plan

A site plan would have to meet application filing requirements established by MPSC rule or order to maintain consistency between applications.

A site plan would have to include the following:

- The location and 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, which could include records of consultation with relevant State, tribal, and Federal agencies.
- Additional information required by MPSC rule or order that directly related to the site plan.

An electric provider or IPP would have to submit a copy for informational purposes to the clerk of each affected local unit when the provider or producer submitted a site plan to the MPSC.

"Affected local unit" would mean a unit of local government in which all or part of a proposed energy facility will be located.

If the MPSC issued a certificate for an energy facility, the electric provider or IPP could make minor changes, as defined by the MPSC, to the site plan if the changes were within the footprint of the previously approved site plan.

Public Meeting Requirements

An electric provider or IPP that proposed to obtain a certificate for and construct an energy facility would have to hold a public meeting in each affected local unit. At least 30 days before a meeting, the electric provider or IPP would have to notify the clerk of the affected local unit in which a public meeting would be held of the time, date, location, and purpose of the meeting and provide a copy of the site plan or the address of an internet site where a site plan for the energy facility was available for review.

At least 14 days before the meeting, the electric provider or IPP would have to publish notice of the meeting in a newspaper of general circulation in the affected local unit or in a comparable digital alternative. The notice would have to include a copy of the site plan or the address of an internet site where the site plan was available for review. The MPSC would also have to prescribe the format and content of the notice. A public meeting held in a township would be considered to be held in each village located within the township.

At least 60 days before a public meeting, the electric provider or IPP planning to construct an energy facility would have to offer in writing to meet with the chief elected official of each affected local unit, or the chief elected official's designee, to discuss the site plan.

Certification Application Requirements

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

- The complete name, address, and telephone number of the applicant.
- The planned date for the start of construction and the expected duration of construction.

- A description of the energy facility, including a site plan.
- A description of the expected use of the energy facility.
- Expected public benefits of the proposed energy facility.
- The expected direct impacts of the proposed energy facility on the environment and natural resources and how the applicant intended to address and mitigate those impacts.
- 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 would be located.
- A statement and reasonable evidence that the proposed energy facility would not commence commercial operation until it met State and Federal environmental laws.
- A summary of the community outreach and education efforts undertaken by the electric provider or IPP, including a description of the public meetings and meetings with elected officials.
- Evidence of consultation, prior to the submission of the application, with the Department of Environment, Great Lakes, and Energy and other relevant State and Federal agencies 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 were undeveloped land, a description of feasible alternative developed locations, including vacant industrial property and brownfields, and an explanation of why that land was not chosen.
- If the energy facility were reasonably expected to have an impact on television signals, microwave signals, agricultural global position systems, military defense radar, radio reception, or weather and doppler radio, a plan to minimize and mitigate that impact.
- If the energy facility were 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 IPP.
- If the energy facility included an energy storage facility, an emergency response plan.
- A decommissioning plan that included financial assurance in the form of a bond, a parent company guarantee, or an irrevocable letter of credit, but excluding cash.
- Other information reasonably required by the MPSC.

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 IPP except pursuant to court order.

Part 8 specifies that the amount of financial assurance could not be less than 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. The financial assurance component of the decommissioning plan 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.

Application Approval

Within 60 days after receipt of an application, the MPSC would have to determine whether the application was complete. If the MPSC determined that the application was incomplete, the MPSC would have to advise the applicant in writing of the information necessary to make the application complete. If the MPSC failed to timely notify the applicant that an application was incomplete, the application would be considered complete.

Within 30 days after the MPSC determined that an application was complete, the applicant would have to publish and send notice of an opportunity to comment on the application to the clerk of each affected local unit.

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 would have to contain a title that included the name of the applicant and the words "NOTICE OF INTENT TO CONSTRUCT _____ FACILITY", with the words "ENERGY" or "ENERGY STORAGE", as applicable, entered in the blank space. The Act would allow the MPSC 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.

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

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

Under Part 8, the MPSC would have to grant the application and issue a certificate or deny the application within one year after a complete application was filed.

In evaluating the 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 taking additional reasonable action related to the impacts of the proposed energy facility, including 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, as established by the "Michigan Pollinator Habitat Planning Scorecard for Solar Sites" developed by the Michigan State University (MSU) Department of Entomology that were in effect on bill's enactment date or any applicable successor standards approved by the MPSC as reasonable and consistent with the purposes of this provision.
- Providing for community improvements in the local affected unit.

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 MSU of Entomology and supporting regional partners.

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

- The public benefits of the proposed energy facility justified its construction.

- The applicant had considered and addressed impacts to the environment and natural resources, including sensitive habitats and waterways, wetlands and floodplains, wildlife corridors, parks, historic and cultural sites, and threatened or endangered species.
- The applicant met the conditions established under Agreements, described further below.
- The applicant certified that the workers employed for the construction of the energy facility would be paid at least the prevailing wage in the local unit of government in which the proposed energy facility was located.
- The applicant certified that the applicant would enter and adhere to an agreement with at least one labor organization in regard to the construction of the energy facility.
- The proposed energy facility did not present an unreasonable threat to public health or safety.

An energy facility also would have to meet other, unspecified requirements to comply with the standards described below.

For a solar energy facility, all the following:

- The solar energy facility was completely enclosed with fencing in compliance with the latest version of the National Electric Code as of the bill's enactment date or any applicable successor standard approved by the MPSC as reasonable and consistent with the purposes of the Part 8.
- Solar panel components did not exceed a maximum height of 25 feet above ground when the arrays were at full tilt.
- The solar energy facility did not generate a maximum sound greater than 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.

Additionally, the solar energy facility would have to meet the following setback requirements.

Setback Description	Setback Distance
Occupied community buildings and dwellings on nonparticipating properties	150ft from the nearest point on the outer wall
Public road right-of-way	50ft measured from the nearest edge of a public road right-of-way
Nonparticipating parties	50ft measured from the nearest shared property line

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

For a storage facility, the following:

- The energy storage facility complied with the version of NFPA 855 "Standard for the Installation of Stationary Energy Storage Systems" in effect on the bill's enactment date or any applicable successor standard adopted by the MPSC as reasonable and consistent with the purposes of Part 8.
- The energy storage facility did not generate a maximum sound greater than 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property.

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

If construction of an energy facility were not commenced within 5 years of the date that a certificate was issued, the certificate would be invalid. The electric provider or IPP 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.

Agreements

The applicant would have to enter into at least one agreement with, or that benefit, at least one community-based organization. Agreements would be legally binding and enforceable if construction of the energy facility commenced. The MPSC would have to enforce this requirement but not the actual agreements, which would be enforceable in a court of competent jurisdiction. Agreements would have to prioritize benefits to the community in which the energy facility was to be located.

The topics and specific terms of the agreements could vary and include any of the following:

- Workforce development, job quality, and job access provisions that included certain information described below.
- 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 awarded grants.

"Community-based organization" would mean a workforce development and training organization, labor union, local governmental entity, Michigan federally recognized Tribe, environmental advocacy organization, or an organization that represents the interests of underserved communities.

The Workforce development, job quality, and job access provisions would have to include 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.

Confidentiality

Except as otherwise provided, information obtained by the MPSC under Part 8 would be public record under FOIA.

An applicant could designate information received from a third party that the applicant submitted to the MPSC in an application for a certificate, or in other certification documents as only for the confidential use of the MPSC. The MPSC would have to notify the electric provider or IPP of a request for public records under FOIA if the scope of the request included information designated as confidential.

If the electric provider or IPP demonstrated to the MPSC's satisfaction that the information designated as confidential were a trade secret or secret process or were production,

commercial, or financial information, the disclosure of which would jeopardize the competitive position of the electric provider or IPP or the person from whom the information was obtained, within 10 days after the receipt of the notice, the MPSC could not grant the request for the information. If the MPSC decided to grant a request, it could not release the information requested until three days after notice of the decision was provided to the electric provider or IPP.

If any person used information obtained by the MPSC to forecast electrical demand, the person would have to structure the forecast so the person to whom the information pertained was not identified unless that person waived confidentiality.

The MPSC would have to issue orders necessary to protect the information in an application for a certificate, or in other certification documents if the MPSC reasonably found the information to be confidential. Information that was confidential under a protective order would be exempt from disclosure under FOIA.

An MPSC order relating to a certificate or other matter provided for under Part 8 would be subject to review in the same manner as provided in Section 6 of the Railroad Code. (Generally, Section 6 describes the procedures for appealing MPSC orders.)

Administration

In administering Part 8, the MPSC would only have those powers and duties granted as described above. The MPSC could consolidate proceedings under Part 8 with contract approval or other certificate of need cases relating to the same energy facility. Part 8 would control in any conflict between the Act and any other law of the State. However, the Electric Transmission Line Certification Act would control in any conflict with Part 8.

BACKGROUND

To sell electricity to consumers in the State, an electric provider's rates and conditions of service must be regulated by the MPSC. The establishment and any change of rates and conditions of service occur through MPSC contested case proceedings. These proceedings generally afford affected parties, such as a provider's customers, trade associations, or IPPs in a provider's footprint, the opportunity to provide evidence for the MPSC's consideration of a provider's proposed changes. The MPSC issues final orders after consideration of all evidence presented, and the rates ultimately must allow an electric provider to recuperate reasonable costs of service.

Qualified facilities (QFs) unregulated by the MPSC, such as IPPs, are guaranteed the opportunity to sell generated electricity to MPSC-regulated electric providers under the Public Utility Regulatory Policies Act (PURPA). Generally, QFs are independent producers of power that fall into two categories: a) a small power production facility, whose primary energy source is hydro, wind, solar, biomass, waste, or geothermal resources; or b) a cogeneration facility that sequentially produces electricity and another form or thermal energy in a way that is more efficient than producing the energy separately. Under PURPA, local "host" utilities are obligated to purchase power from qualified facilities. The MPSC sets the rates at which the host utility will buy power from the QF.¹

¹ "Public Utility Regulatory Policies Act", Michigan Public Service Commission. Retrieved on 10-25-2023.