



# Preparing for **UTILITY-SCALE RENEWABLE ENERGY FACILITIES**

## What is Public Act 233?

**Public Act 233 of 2023 (PA 233)** creates an option for developers (applicants) to ask the Michigan Public Service Commission (MPSC) to grant a siting certificate for qualifying wind, solar, or energy storage facilities under specified conditions. A PA 233 siting certificate partially preempts local zoning authority.

## What Energy Facilities are Covered by PA 233?

- ▶ **Solar energy facilities** with a nameplate capacity of 50 MW or more
- ▶ **Wind energy facilities** with a nameplate capacity of 100 MW or more
- ▶ **Energy storage facilities** with a nameplate capacity of 50 MW or more with a discharge capability of 200 MWh or more.

## How to Retain Local Control

Under PA 233, local units of government retain local zoning control and enforcement authority for siting renewable energy facilities when they have a **Compatible Renewable Energy Ordinance (CREO)**. A CREO is a zoning ordinance that allows the development of energy facilities within the local unit of government subject to requirements no more restrictive than the provisions included in section 226(8) of PA 233.

**Section 226(8) delineates siting regulations for each type of renewable facility (wind, solar, and energy storage):**

- ▶ **Solar:** Setbacks, fencing, height, sound and dark sky lighting
- ▶ **Wind:** Setbacks, sound, light mitigation, shadow flicker, height, radar interference, or other relevant issues as determined by the MPSC
- ▶ **Energy Storage:** Setbacks, compliance with fire protection standards, sound and dark sky lighting

If a local government asserts its zoning ordinance is a CREO but then denies a zoning application on the basis of a provision more restrictive than section 226(8), then the local unit runs the risk that the developer will proceed to the MPSC for siting approval. In that circumstance, the local unit forfeits any right to local intervenor funds. Another option for local units is creating a “workable” zoning ordinance, which provides the opportunity for local governments to retain local zoning control.



## What is a ‘Workable’ Ordinance? Does It Provide an Opportunity to Retain Local Control?

The developer determines what is “workable” and may still seek approval directly from the MPSC. With a “workable” zoning ordinance, the local unit can include additional requirements important to the community (e.g., higher setbacks, vegetative cover, pollinators habitats, or other land use considerations). This is a balancing act. PA 233 was intended to encourage cooperation between local units and applicants in facilitating development of renewable energy projects consistent with Michigan’s statewide clean energy goals.

## When Can Developers Bypass Local Control?

A developer may seek project approval directly from the MPSC if a local unit of government does not have a CREO or has a moratorium on renewable energy development.

## What are the Financial Considerations Associated with PA 233?

- ▶ For projects seeking MPSC approval, PA 233 requires the applicant enter into a host community agreement requiring payment of \$2,000 per megawatt of nameplate capacity within the local unit.
- ▶ For projects seeking MPSC approval, the developer must provide a one-time grant of up to \$75,000 (or \$150,000 for multi-jurisdiction projects) to be deposited into a local compensation fund to cover legal and expert costs for participating in the MPSC siting case. Any unused funds must be refunded to the developer upon conclusion of the case.
- ▶ For projects permitted locally, the local unit of government may be eligible for a one-time EGLE Renewables Ready Communities Award of \$5,000 per megawatt of a project’s nameplate capacity.

## What can Communities do to Prepare Right Now if They Haven’t Already?

- ▶ Adopt a CREO
- ▶ Adopt a “workable” ordinance and/or coordinate with potential developers on “workable” zoning requirements
- ▶ Do nothing (which, in most cases, would mean projects would go to the MPSC)

### More Information

#### [Michigan Public Service Commission](#)

Renewable Energy and Storage Facility Siting website



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