

Understanding the Legal Pathways of a Renewable Energy Project Under PA 233

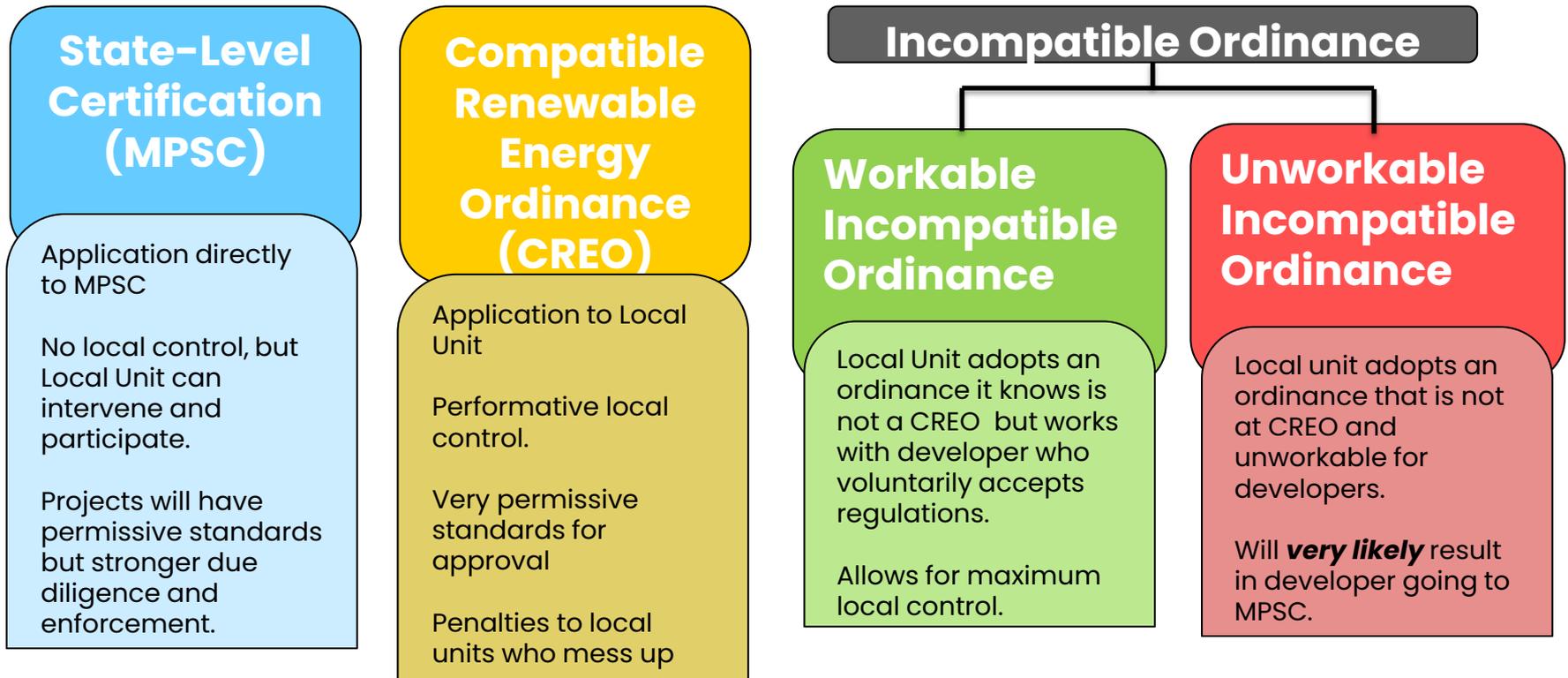


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Act 233 of 2023

- Bill signed into law in November of 2023 and took effect on November 29, 2024.
- Makes significant changes to the permitting process for utility-scale renewable energy facilities including solar, wind, and battery energy storage facilities.
- Creates an **option** for developers to ask the Michigan Public Service Commission (MPSC) to permit a grid-connected renewable energy project if an affected local unit does not have a “compatible renewable energy ordinance” (CREO).
- Severely limits local control.
- Applicability:
 - Solar Energy – 50 MW of nameplate capacity or more.
 - Wind Energy – 100 MW of nameplate capacity or more.
 - Energy storage – 50 MW of nameplate capacity with energy discharge capability of 200+ MWh.

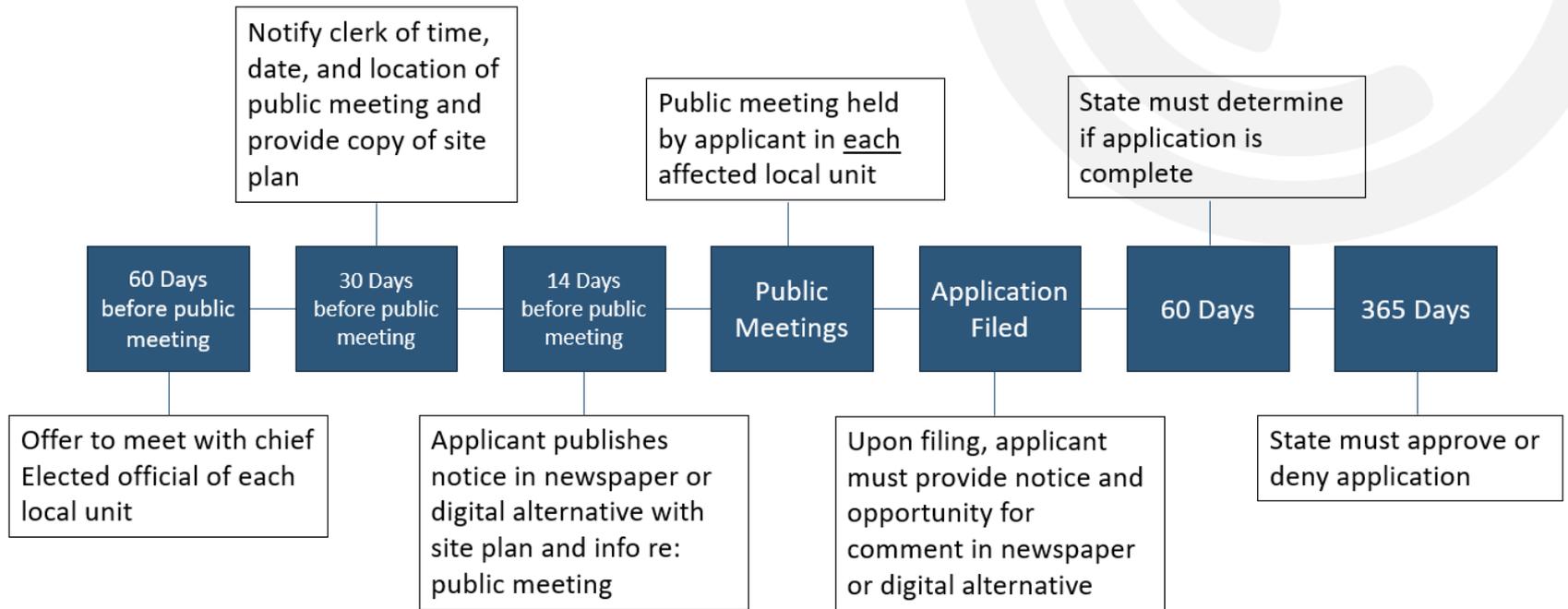
Legal Pathways for a Utility Project



MPSC Pathway: Process

- Offer in writing to meet with chief elected official of Affected Local Unit (ALU), and ALU advises no CREO or intention to work on workable ordinance.
- Public meeting in affected local units.
- Application submitted to MPSC containing requirements in Section 225.
- Proceeding on Application as contested case under Administrative Procedures Act. (local units and nonparticipating property owners may intervene by right)
- 60 days to determine if Application is Complete
- 365 days to decide on application

MPSC Process (cont.)





MPSC Pathway : Considerations For Approval

- MPSC will consider the following factors before approving an application:
 - Feasibility of alternative locations;
 - Impact on local land use;
 - Public benefits of energy facility and whether that justifies construction
 - Percentage of land in the ALUs already dedicated to energy generation;
 - Vegetative ground cover/pollinator standards;
 - Environmental impacts – impacts to sensitive habitats waterways, wetlands, wildlife corridors, historic and cultural sites, and threatened or endangered species;
 - Unreasonable diminishment of prime farmland
 - Compliance with Section 226(8).

Section 226(8) Requirements – Solar

Solar Facilities	
Setback: Occupied community buildings and dwellings on nonparticipating properties	300 ft
Setback: Public road right-of-way	50 ft
Setback: Nonparticipating property lines	50 ft
Fencing	National Electric Code Requirements
Height	25 ft (max tilt)
Noise: Nearest dwelling located on adjacent or nonparticipating property	55 dBA
Lighting	“Dark Sky Friendly Solutions”

Section 226(8) Requirements – Wind

Wind Facilities	
Setback: Occupied community buildings and dwellings on nonparticipating properties	2.1x Total Height
Setback: Residences and other structures on participating properties	1.1x Total Height
Setback: Public road right-of-way	1.1x Total Height
Setback: Nonparticipating property lines	1.1x Total Height
Setback: Communication and electric lines	1.1x Total Height
Height	Defer to Federal Aviation Association
Noise: Nearest dwelling located on an adjacent nonparticipating property	55 dBA
Shadow Flicker: Any occupied community building or nonparticipating residence	30 Hours (1 year)
Lighting	“Dark Sky Friendly Solutions”/Light Mitigating Technology
Radar Interference	Defer to MPSC

Section 226(8) Requirements – Battery Energy Storage

Battery Storage Facilities	
Setback: Occupied community buildings and dwellings on nonparticipating properties	300 ft
Setback: Public road right-of-way	50 ft
Setback: Nonparticipating property lines	50 ft
Noise: Nearest dwelling located on an adjacent nonparticipating property	55 dBA
Lighting	“Dark Sky Friendly Solutions”
Additional Compliance	NFPA 855 “Standard for the Installation of Stationary Energy Storage Systems”

MPSC Pathway: Community Benefits

- **Intervener Funds** – Developer pays up to \$75,000 to each ALU for intervenor funds with no more than \$150,000 in total for the project.
 - ALU, participating property owners, and adjacent non-participating property owners may intervene by right.

- **Host Community Agreements** – Developer pays \$2,000 per MW to each ALU to be used for police, fire, public safety, infrastructure, or whatever the Developer and ALU agree upon.

- If an ALU refuses to enter into an agreement or take the money, the applicant can give the money to other community groups instead.

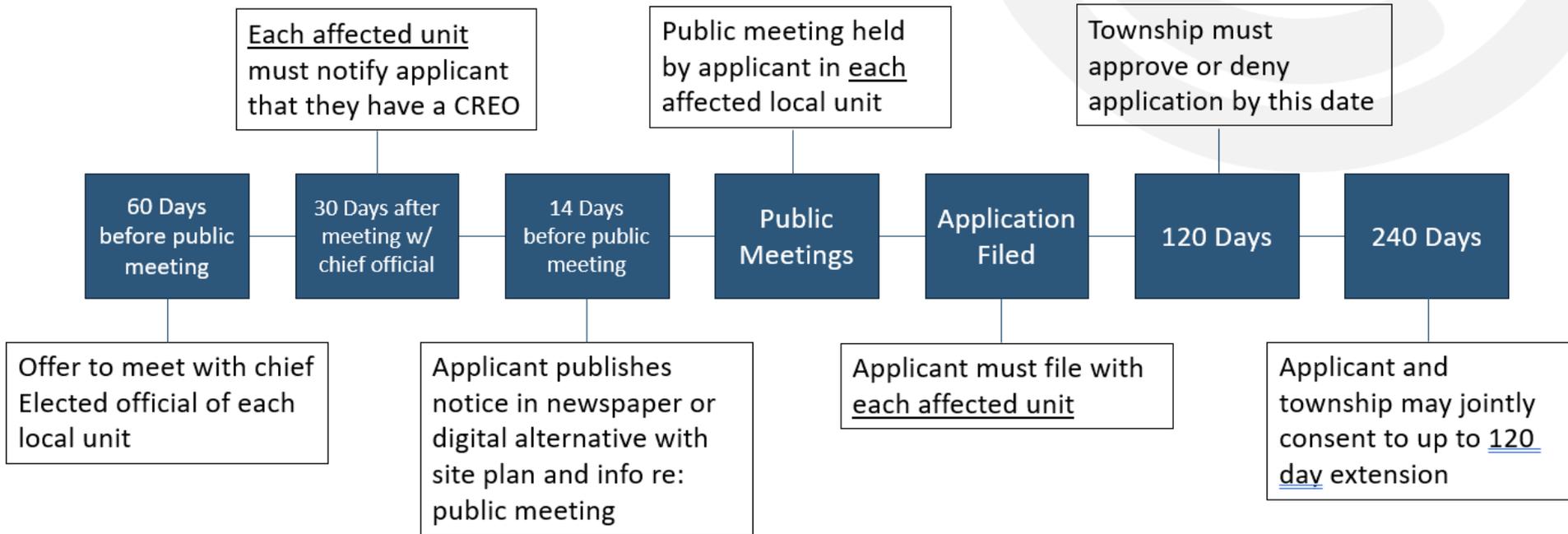


CREO Pathway

- Act 233 requires that each affected local unit of government (ALU) have a **“compatible renewable energy ordinance”** (CREO) which is defined as follows:

“Compatible renewable energy ordinance” means an ordinance that provides for the development of energy facilities within the local unit of government, the requirements of which are no more restrictive than the provisions included in section 226(8). A local unit of government is considered not to have a compatible renewable energy ordinance if it has a moratorium on the development of energy facilities in effect within its jurisdiction.”
- Narrow interpretation is that provisions must be no more restrictive than those outlined in Section 226(8) and codified into a Zoning Ordinance as a permitted use in all zoning districts.
- If an ALU adopts a CREO, the developer is required to first have a project reviewed at the local level.
 - However, there is no room for further negotiation or additional provisions beyond the standards of Section 226(8).
- Every affected ALU must have a CREO

CREO Pathway: Process



CREO Pathway: Dangers

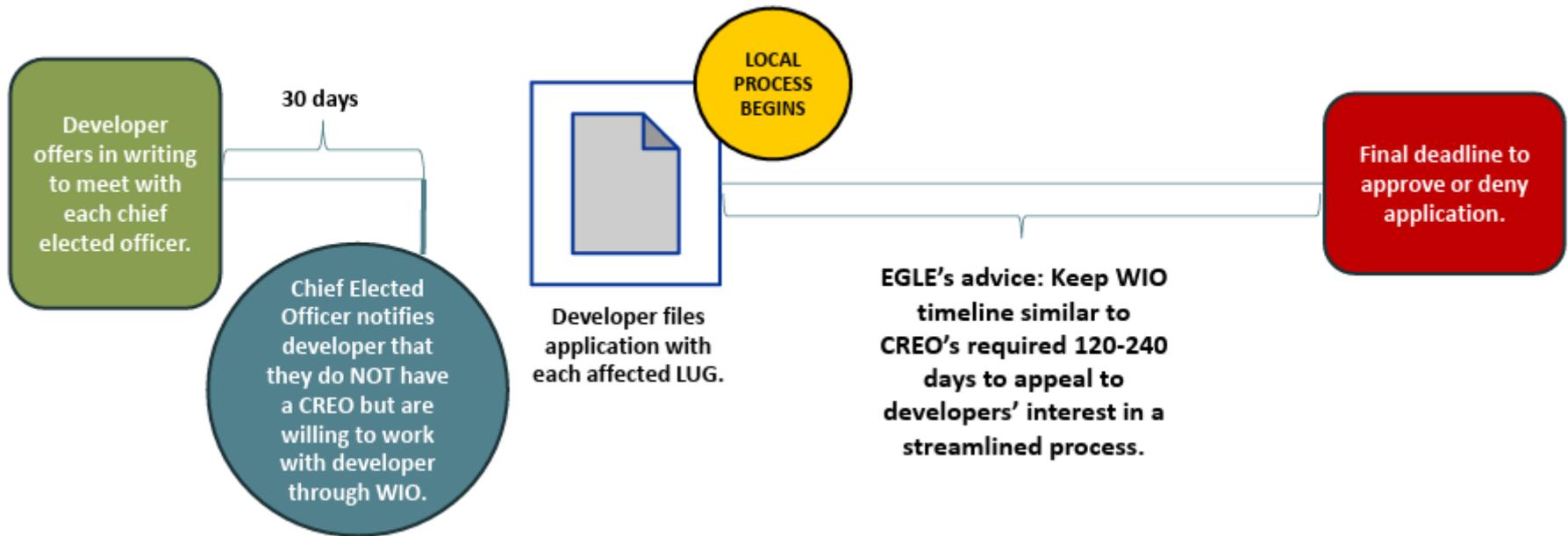
- If a ALU does any of the following, the applicant can take the project to the MPSC for certification on a streamlined path and trigger penalties for the ALU:
 - The ALU fails to act on the application within the given 120 day time-frame.
 - The ALU denies the application that met the CREO standards (i.e. Section 226(8)).
 - After notifying an applicant that they have a CREO, the ALU amends the ordinance to be more restrictive than CREO standards.
 - If, for an intermunicipal project, attempts to site other portions of the project in other jurisdictions locally have failed.
- If any of these violations occur, the project application shifts to the MPSC pathway described above, the ALU loses intervenor funds paid by the developer (up to \$75,000), and the ALU may no longer be able to claim CREO status in the future.

Incompatible (Workable) Ordinance Pathway

- ALU adopts an ordinance that it knows is not a CREO: sets standards above statute and/or regulates what State does not allow.
- Developer Voluntarily chooses to follow this local ordinance instead of going to the MPSC.
- Attractive option for both ALU's and Developers because the MPSC Pathway is more expensive, more time intensive, and inherently less popular than working with the local community.



Workable Ordinance Process



Renewables Ready Communities Award

- The Renewables Ready Communities Award (RRCA) provides ALUs \$2,500 - \$5,000 per MW of large-scale solar, storage or wind projects that they have permitted or will host.
- Total amount of funds was applied and program is currently closed, BUT as of October 2025, EGLE received more funding through the EPA and they are expected to launch a second round in early 2026.
- The new round will have no stipulations on how ALUs spend the money provided the local government passes a resolution at a public meeting indicating its intent for the use of funds.
- These payments can be in addition to Host Community Agreement Payments from Developers.



Pros of Each Pathway

State-Level Certification (MPSC)

- Host Community Agreement and Intervenor funds
- All work and accountability is passed to the State
- Indications are MPSC is taking its time to do due diligence on these.

Compatible Renewable Energy Ordinance (CREO)

- Easy and Fast approvals with little administrative burden
- Guarantees process stays local (performatively)
- RRCA payments available

Incompatible Ordinance

Workable Incompatible Ordinance

- Maximum local control
- Ability for enhanced zoning protections
- Ability to get both Host Community Agreement funding and RRCA funding

Unworkable Incompatible Ordinance

Expresses all community preferences. BUT

Will **very likely** result in developer going to MPSC.

Cons of Each Pathway

State-Level Certification (MPSC)

- No local control or process
- At the whims of what the MPSC decides with respect to standards
- No RRCA payments

Compatible Renewable Energy Ordinance (CREO)

- No ability to consider standards outside Section 226(8).
- Penalties and pit falls for not having true CREO or abiding by short timelines.
- Depends on neighboring ALUs
- No Host Community Agreements

Incompatible Ordinance

Workable Incompatible Ordinance

- Requires continued cooperation with Developers
- Risk of being called incompatible
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Unworkable Incompatible Ordinance

High risk of losing local process and shifting to MPSC incurring those "Cons".

What Should Communities Do Next

- Look at Master Plans
- Start thinking about zoning priorities for renewable energy
- Consider workable ordinance or CREO

