

2024 SESSION**HB 636 Siting of energy facilities; approval by the State Corporation Commission.**

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SUMMARY AS INTRODUCED:

Siting of energy facilities; approval by the State Corporation Commission. Establishes a procedure under which an electric utility or independent power provider (applicant) is able to obtain approval for a certificate from the State Corporation Commission for the siting of an energy facility rather than from the governing body of a locality. Under the bill, applicants are authorized to submit an application to the Commission if (i) the locality fails to timely approve or deny an application; (ii) the application complies with certain requirements for Commission approval, but a host locality denies the application; or (iii) the locality amends its zoning ordinance after it has notified the applicant that its requirements are compatible with the requirements for Commission approval, and the amendment imposes additional requirements that are more restrictive. The bill provides that an applicant who is issued a certificate by the Commission for an energy facility is exempt from obtaining approvals or permits, including any land use approvals or permits under the regulations and ordinances of the locality.

The bill applies to any solar energy facility with a capacity of 50 megawatts or more, any wind energy facility with a capacity of 100 megawatts or more, and any energy storage facility with a nameplate capacity of 50 megawatts or more and an energy discharge capability of 200 megawatt hours or more.

FULL TEXT

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HISTORY

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2024 SESSION

24102984D

HOUSE BILL NO. 636

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact §§ 15.2-2316.6 through 15.2-2316.9 of the Code of Virginia and to amend the Code of Virginia by adding in Title 56 a chapter numbered 31, consisting of sections numbered 56-626 through 56-636, relating to siting of energy facilities; approval by the State Corporation Commission.

 Patron-- Sullivan

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2316.6 through 15.2-2316.9 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 56 a chapter numbered 31, consisting of sections numbered 56-626 through 56-636, as follows:

Article 7.3.

Siting of ~~Solar Projects and Energy Storage Projects~~ Facilities.

§ 15.2-2316.6. Definitions.

As used in this article, unless the context requires a different meaning:

"Energy facility" means a solar energy facility, wind energy facility, or energy storage facility.

"Energy storage ~~facilities~~ facility" means the energy storage equipment and technology within an energy storage project that is capable of absorbing energy, storing such energy for a period of time, and redelivering such energy after it has been stored a system that absorbs, stores, and discharges electricity. "Energy storage facility" does not include fossil fuel storage or power-to-gas storage that directly uses fossil fuel inputs.

~~"Energy storage project" means the energy storage facilities within the project site.~~

"Host locality" means any locality within the jurisdictional boundaries of which construction of ~~a commercial solar project or an energy storage project~~ an energy facility is proposed.

"Solar ~~facilities~~ energy facility" means ~~commercial solar photovoltaic (electric energy) generation facilities~~ 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. "Solar energy facility" includes related equipment and facilities such as: 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; overhead and underground control; communications and radio relay systems and telecommunications equipment; utility lines and installations; generation tie lines; solar monitoring stations; and accessory equipment and structures. "Solar ~~facilities~~ energy facility" does not include any solar ~~project~~ energy facility that is (i) described in § 56-594, 56-594.01, 56-594.02, or 56-594.2, or (ii) five megawatts or less.

~~"Solar project" means the solar facilities, subject to this chapter, that are within the project site.~~

"Wind energy facility" means a system that captures and converts wind into electricity, for the purpose of sale or for use in locations other than solely the wind energy facility property. "Wind energy facility" includes related equipment and facilities such as: wind towers; wind turbines; 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; overhead and underground control; communications and radio relay systems and

telecommunications equipment; monitoring and recording equipment and facilities; erosion control facilities; utility lines and installations; generation tie lines; ancillary buildings; wind monitoring stations; and accessory equipment and structures.

§ 15.2-2316.7. Negotiations; siting agreement.

A. Any applicant for ~~a solar project or an energy storage project~~ *the construction of an energy facility* shall give to the host locality written notice of the applicant's intent to locate in such locality and request a meeting. Such applicant shall meet, discuss, and negotiate a siting agreement with such locality. *Within 30 days following the initial meeting, the host locality shall notify the applicant if the host locality has a compatible renewable energy ordinance, as that term is defined in § 56-626.*

B. The siting agreement may include terms and conditions, including (i) mitigation of any impacts of such ~~solar project or energy storage project~~ *energy facility*; (ii) financial compensation to the host locality to address capital needs set out in the (a) capital improvement plan adopted by the host locality, (b) current fiscal budget of the host locality, or (c) fiscal fund balance policy adopted by the host locality; or (iii) assistance by the applicant in the deployment of broadband, as defined in § ~~56-585.1:9~~, in such locality.

§ 15.2-2316.8. Powers of host localities.

A. The governing body of a host locality shall have the power to:

1. Hire and pay consultants and other experts on behalf of the host locality in matters pertaining to the siting of ~~a solar project or energy storage project~~ *an energy facility*;
2. Meet, discuss, and negotiate a siting agreement with an applicant; and
3. Enter into a siting agreement with an applicant that is binding upon the governing body of the host locality and enforceable against it and future governing bodies of the host locality in any court of competent jurisdiction by signing a siting agreement pursuant to this article. Such contract may be assignable at the parties' option.

B. If the parties to the siting agreement agree upon the terms and conditions of a siting agreement, the host locality shall schedule a public hearing, pursuant to subsection A of § ~~15.2-2204~~, for the purpose of consideration of such siting agreement. If a majority of a quorum of the members of the governing body present at such public hearing approve of such siting agreement, the siting agreement shall be executed by the signatures of (i) the chief executive officer of the host locality and (ii) the applicant or the applicant's authorized agent. The siting agreement shall continue in effect until it is amended, revoked, or suspended.

§ 15.2-2316.9. Effect of executed siting agreement; land use approval.

A. Nothing in this article shall be construed to exempt an applicant from any other applicable requirements to obtain approvals and permits under federal, state, or local ordinances and regulations. An applicant may file for appropriate land use approvals for the ~~solar project or energy storage project~~ *energy facility*, as applicable, under the regulations and ordinances of the host locality at or after the time the applicant submits its notice of intent to site ~~a solar project or energy storage project~~ *an energy facility* as set forth in subsection A of § ~~15.2-2316.7~~. *Notwithstanding any other provision of law, such land use approvals for the energy facility shall be approved or denied no later than 120 days after filing. The applicant and the host locality may jointly agree to extend this deadline by up to 120 days.*

B. Nothing in this article shall affect the authority of the host locality to enforce its ordinances and regulations to the extent that they are not inconsistent with the terms and conditions of the siting agreement.

C. Approval of a siting agreement by the local governing body in accordance with subsection B of § ~~15.2-2316.8~~ shall deem the ~~solar project or energy storage project~~ *energy facility* to be substantially in accord with the comprehensive plan of the host locality, thereby satisfying the requirements of § ~~15.2-2232~~.

D. The failure of an applicant and the governing body to enter into a siting agreement may be a factor in the decision of the governing body in the consideration of any land use approvals for ~~a solar project or energy storage project~~ *an energy facility*, but shall not be the sole reason for a denial of such land use approvals.

E. Notwithstanding the provisions of this chapter, any local zoning ordinance, or any other provision of law, an applicant who is issued a certificate by the State Corporation Commission in accordance with Chapter 31 (§ 56-626 et seq.) of Title 56 for an energy facility shall be exempt from obtaining approvals or permits, including any land use approvals or permits under the regulations and ordinances of the host locality.

CHAPTER 31. WIND, SOLAR, AND STORAGE FACILITY CERTIFICATION.

§ 56-626. Definitions.

"Aircraft detection lighting system" means a sensor-based system designed to detect aircraft as they approach a wind energy facility and that automatically activates obstruction lights until they are no longer needed.

"Applicant" means an applicant for a certificate.

"Certificate" means a certificate issued for an energy facility under § 56-631.

"Community-based organization" means a workforce development and training organization, labor union, local governmental entity, Virginia-recognized or federally recognized tribe located in the Commonwealth, environmental advocacy organization, or an organization that represents the interests of underserved communities.

"Compatible renewable energy ordinance" means an ordinance that provides for the development of energy facilities within the locality, the requirements of which are no more restrictive than the provisions of subsection H of § 56-631. A local governing body 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.

"Construction" means any substantial action taken constituting the placement, erection, expansion, or repowering of an energy facility.

"Dark sky-friendly lighting solution" means a light fixture that is designed to minimize the amount of light that escapes upward into the sky.

"Energy facility" means an energy storage facility, solar energy facility, or wind energy facility. An energy facility may be located on more than one parcel of property, including noncontiguous parcels, but shares a single point of interconnection to the grid.

"Energy storage facility" means a system that absorbs, stores, and discharges electricity. "Energy storage facility" does not include fossil fuel storage or power-to-gas storage that directly uses fossil fuel inputs.

"Host locality" means locality in which all or part of a proposed energy facility will be located.

"Independent power producer" or "IPP" means a person that is not an electric utility but owns or operates facilities to generate electric power.

"Light intensity dimming solution technology" means obstruction lighting that provides a means of tailoring the intensity level of lights according to surrounding visibility.

"Light-mitigating technology" means an aircraft detection lighting system, a light intensity dimming solution technology, or a comparable solution that reduces the impact of nighttime lighting while maintaining night conspicuity sufficient to assist aircraft in identifying and avoiding collision with the wind energy facilities.

"Maximum blade tip height" means the nominal hub height plus the nominal blade length of a wind turbine, as listed in the wind turbine specifications provided by the wind turbine manufacturer. If not listed in the wind turbine specifications, maximum blade tip height means the actual hub height plus the actual blade length.

"Nameplate capacity" means the designed full-load sustained generating output of an energy facility. Nameplate capacity shall 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.

"Nonparticipating property" means a property that is adjacent to an energy facility and that is not a participating property.

"Occupied community building" means 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.

"Participating property" means 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.

"Repowering" means, with respect to an energy facility, replacement of all or substantially all of the energy facility for the purpose of extending its life. Repowering does not include repairs related to the ongoing operations that do not increase the capacity or energy output of the energy facility.

"Solar energy facility" means 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. "Solar energy facility" includes related equipment and facilities such as: 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; overhead and underground control; communications and radio relay systems and telecommunications equipment; utility lines and installations; generation tie lines; solar monitoring stations; and accessory equipment and structures.

"Wind energy facility" means a system that captures and converts wind into electricity, for the purpose of sale or for use in locations other than solely the wind energy facility property. "Wind energy facility" includes related equipment and facilities such as: wind towers; wind turbines; 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; overhead and underground control; communications and radio relay systems and telecommunications equipment; monitoring and recording equipment and facilities; erosion control facilities; utility lines and installations; generation tie lines; ancillary buildings; wind monitoring stations; and accessory equipment and structures.

§ 56-627. Applicability of chapter.

A. This chapter shall apply to any (i) solar energy facility with a nameplate capacity of 50 megawatts or more, (ii) wind energy facility with a nameplate capacity of 100 megawatts or more, and (iii) energy storage facility with a nameplate capacity of 50 megawatts or more and an energy discharge capability of 200 megawatt hours or more.

B. To obtain a certificate for an energy facility, an electric utility or IPP shall comply with the requirements of §§ 56-628 and 56-629, and then submit to the Commission an application as described in § 56-630.

C. If the Commission has issued a certificate for an energy facility, the electric utility or IPP may make minor changes, as defined by the Commission, to the site plan if the changes are within the footprint of the previously approved site plan.

D. The provisions of this chapter shall not apply to an energy facility that is owned or controlled by a locality and is located entirely within such locality.

§ 56-628. Certificate application; procedure and qualification.

A. An electric utility or independent power producer that proposes to construct an energy facility shall give to each host locality written notice of the applicant's intent to locate in such host locality and request a meeting. Such applicant shall meet, discuss, and negotiate a siting agreement with such locality in accordance with the provisions of Article 7.3 (§ 15.2-2316.6 et seq.) of Title 15.2.

B. If, within 30 days following a meeting described in subsection A, the local governing body of each host locality notifies the electric utility or IPP planning to construct the energy facility that the host locality has a compatible renewable energy ordinance, then the electric utility or IPP shall file for approval with each host locality. A local governing body with which an application is filed shall approve or deny the application within 120 days after receiving the application. The applicant and locality may jointly agree to extend this deadline by up to 120 days.

C. An electric utility or IPP may submit an application for a certificate issued by the Commission if (i) a host locality fails to timely approve or deny an application, (ii) the application complies with the requirements of subsection H of § 56-631 but a host locality denies the application, or (iii) a host locality amends its zoning ordinance after it has notified the electric utility or IPP that it has a compatible renewable energy ordinance, and the amendment imposes additional requirements on the development of energy facilities that are more restrictive than those in subsection H of § 56-631.

D. At least 60 days prior to submitting an application pursuant to subsection C, an electric utility or IPP shall hold a public meeting in each host locality if a public meeting was not previously held in such host locality in accordance with the provisions of § 15.2-2316.7. At least 30 days before such a meeting, the electric utility or IPP shall notify the clerk of the host locality in which a public meeting will be held of the time, date, location, and purpose of the meeting and provide a copy of the site plan as described in § 56-629 or the website address where a site plan for the energy facility is available for review. At least 14 days before the meeting, the electric utility or IPP shall publish notice of the meeting in a newspaper of general circulation in the host locality or in a comparable digital alternative. The notice shall include a copy of the site plan or the website address where the site plan is available for review. The Commission shall further prescribe the format and content of the notice.

E. Nothing in this section shall be construed to limit remedies available to an applicant to appeal a denial by a locality under any other law.

§ 56-629. Site plan.

A. A site plan for an energy facility shall meet general requirements established by the Commission. The site plan shall include (i) the location and a description of the energy facility; (ii) a description of the anticipated effects of the energy facility on the environment, natural resources, and solid waste disposal capacity, which may include records of consultation with relevant state, tribal, and federal agencies; and (iii) additional information required by any Commission rule or order that directly relates to the site plan.

B. When it submits a site plan to the Commission, an electric utility or independent power producer shall submit a copy to the clerk of each host locality.

§ 56-630. Application requirements.

A. An application for a certificate submitted to the Commission shall contain:

- 1. The complete name, address, and telephone number of the applicant;*
- 2. The planned date for the start of construction and the expected duration of construction;*
- 3. A description of the energy facility, including a site plan as described in § 56-629;*
- 4. A description of the expected use of the energy facility;*
- 5. Expected public benefits of the proposed energy facility;*
- 6. The expected direct impacts of the proposed energy facility on the environment and natural resources and how the applicant intends to address and mitigate these impacts;*
- 7. Information on the effects of the proposed energy facility on public health and safety;*
- 8. A description of the portion of the community where the energy facility will be located;*
- 9. A statement and reasonable evidence that the proposed energy facility will not commence commercial operation until it complies with applicable state and federal environmental laws;*
- 10. A summary of the community outreach and education efforts undertaken by the electric utility or independent power producer, including a description of the public meetings and meetings with elected officials;*
- 11. Evidence of consultation, before submission of the application, with the Department of Environmental Quality and the Department of Energy and other relevant state and federal agencies before submitting the application;*

12. *Interconnection queue information for the applicable regional transmission entity;*

13. *If the proposed site of the energy facility is undeveloped land, a description of feasible alternative developed locations, including vacant industrial property and brownfields, and an explanation of why they were not chosen;*

14. *If the energy facility is reasonably expected to have an impact on television signals, microwave signals, agricultural global position systems, military defense radar, radio reception, or weather and Doppler radar, a plan to minimize and mitigate that impact. Information in the plan concerning military defense shall not be disclosed by the Commission or the electric utility or independent power producer;*

15. *A stormwater assessment and a plan to minimize, mitigate, and repair any drainage impacts at the expense of the electric utility or IPP. The applicant shall make reasonable efforts to consult with relevant local officials before submitting the application and shall include evidence of those efforts in its application;*

16. *A fire response plan and an emergency response plan;*

17. *A decommissioning plan that is consistent with agreements reached between the applicant and other landowners of participating properties and that ensures the return of all participating properties to a useful condition similar to that which existed before construction, including removal of above-surface facilities and infrastructure that have no ongoing purpose. The decommissioning plan shall include financial assurance in the form of a bond, a parent company guarantee, or an irrevocable letter of credit, but shall exclude cash. The amount of the financial assurance shall 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. However, the financial assurance may be posted in increments as follows: (i) at least 25 percent by the start of full commercial operation, (ii) at least 50 percent by the start of the fifth year of commercial operation, and (iii) 100 percent by the start of the tenth year of commercial operation; and*

18. *Other information reasonably required by the Commission.*

B. Within 60 days after receipt of an application, the Commission shall determine whether the application is complete. If the Commission determines that the application is incomplete, the Commission shall advise the applicant in writing of the information necessary to make the application complete. If the Commission fails to timely notify the applicant that an application is incomplete, the application is considered to be complete.

§ 56-631. Certificate; requirements for approval.

A. Upon filing an application with the Commission, the applicant shall make a one-time payment to each host locality for an amount determined by the Commission but not more than \$75,000 per host locality. Each host locality shall use such funds to cover costs associated with participation in the proceeding on the application for a certificate.

B. Upon filing an application with the Commission, the applicant shall provide notice of the opportunity to comment on the application in a form and manner prescribed by the Commission. The notice shall be published in a newspaper of general circulation in each host locality or a comparable digital alternative. The notice shall be written in plain, nontechnical, and easily understood terms and shall contain a title that includes the name of the applicant and the words "NOTICE OF INTENT TO CONSTRUCT _____ FACILITY", with the words "WIND ENERGY", "SOLAR ENERGY", or "ENERGY STORAGE", as applicable, entered in the blank space. The Commission shall further prescribe the format and contents of the notice.

C. The Commission shall conduct a proceeding on the application for a certificate. A host locality, participating property owner, or nonparticipating property owner may intervene by right.

D. The Commission may assess reasonable application fees to the applicant to cover the Commission's administrative costs in processing the application, including costs for consultants to assist the Commission in evaluating issues raised by the application. The Commission may retain consultants to assist the Commission in evaluating issues raised by the application and may require the applicant to pay the cost of the services.

E. The Commission shall approve the application and issue a certificate or deny the application not later than one year after a complete application is filed.

F. In evaluating the application, the Commission shall consider the feasible alternative developed locations described under subdivision A 13 of § 56-630, if applicable, and the impact of the proposed facility on local land use, including the percentage of land within the locality dedicated to energy generation. The Commission may condition its approval of the application on the applicant taking additional reasonable action related to the impacts of the proposed energy facility, including (i) establishing and maintaining for the life of the facility vegetative ground cover except for an application for an energy facility that is proposed to be located entirely on brownfield land; (ii) providing for community improvements in the host locality; and (iii) making a good-faith effort to maintain and provide proper care of the property where the energy facility is proposed to be located during construction and operation of the facility.

G. The Commission shall approve the application and issue a certificate if it determines that:

1. The public benefits of the proposed energy facility justify its construction. For the purposes of this subdivision, public benefits include expected tax revenue paid by the energy facility to local taxing districts, payments to owners of participating property, community benefits agreements, local job creation, and any contributions to meeting identified energy, capacity, reliability, or resource adequacy needs of the Commonwealth. In determining any contributions to meeting identified energy, capacity, reliability, or resource adequacy needs of the Commonwealth, the Commission may consider integrated resource plans approved pursuant to Chapter 24 (§ 56-597 et seq.), renewable energy plans, or other proceedings before the Commission, at the applicable regional transmission entity, or before the Federal Energy Regulatory Commission, as determined relevant by the Commission;

2. The energy facility complies with all applicable state and federal environmental laws;

3. The applicant has 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;

4. The applicant has met the conditions established in § 56-632;

5. The proposed energy facility will not unreasonably diminish farmland, including prime farmland and, to the extent that evidence of such farmland is available in the evidentiary record, farmland dedicated to the cultivation of specialty crops; and

6. The proposed energy facility does not present an unreasonable threat to public health or safety.

H. An energy facility meets the requirements of subdivision G 6 if it complies with the following standards, as applicable:

1. For a solar energy facility:

a. The following minimum setback requirements, with setback distances measured from the nearest edge of the perimeter fencing of the facility: (i) for occupied community buildings and dwellings on nonparticipating properties, a minimum of 300 feet from the nearest point on the outer wall; (ii) for a public road right-of-way, a minimum of 50 feet measured from the nearest edge of a public road right-of-way; and (iii) for nonparticipating parties, a minimum of 50 feet measured from the nearest shared property line;

b. Fencing for the solar energy facility complies with the latest version of the National Electric Code as of the effective date of the amendatory act that added this section or any applicable successor standard approved by the Commission as reasonable and consistent with the purposes of this subsection.

c. Solar panel components do not exceed a maximum height of 25 feet above ground when the arrays are at full tilt.

d. The solar energy facility does not generate a maximum sound in excess of 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property. Decibel modeling shall use the A-weighted scale as designed by the American National Standards Institute;

e. The solar energy facility will implement dark sky-friendly lighting solutions; and

f. The solar energy facility will comply with any more stringent requirements adopted by the Commission. Before adopting such requirements, the Commission shall determine that the requirements are necessary for compliance with state or federal

environmental regulations.

2. For a wind energy facility:

- a. The following minimum setback distances, measured from the center of the base of the wind tower: (i) for occupied community buildings and dwellings on nonparticipating properties, a minimum of 2.1 times the maximum blade tip height to the nearest point on the outside wall of the structure; (ii) for dwellings and other structures on participating properties, a minimum of 1.1 times the maximum blade tip height to the nearest point on the outside wall of the structure; (iii) for nonparticipating property lines, 1.1 times the maximum blade tip height; (iv) for a public road right-of-way, 1.1 times the maximum blade tip height to the center line of the public road right-of-way; and (v) for overhead communication and electric transmission, not including utility service lines to individual houses or outbuildings, 1.1 times the maximum blade tip height to the center line of the easement containing the overhead line;*
- b. Each wind tower is sited such that any occupied community building or nonparticipating residence will not experience more than 30 hours per year of shadow flicker under planned operating conditions as indicated by industry standard computer modeling;*
- c. Each wind tower blade tip does not exceed the height allowed under a Determination of No Hazard to Air Navigation by the Federal Aviation Administration under 14 C.F.R. Part 77;*
- d. The wind energy facility does not generate a maximum sound in excess of 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property. Decibel modeling shall use the A-weighted scale as designed by the American National Standards Institute;*
- e. The wind energy facility is equipped with a functioning light-mitigating technology. To allow proper conspicuity of a wind turbine at night during construction, a turbine may be lighted with temporary lighting until the permanent lighting configuration, including the light-mitigating technology, is implemented. The Commission may approve a temporary exemption from the requirements of this subdivision e if installation of appropriate light-mitigating technology is not feasible. A request for a temporary exemption shall be in writing and state (i) the purpose of the exemption, (ii) the proposed length of the exemption, (iii) a description of the light-mitigating technologies submitted to the Federal Aviation Administration, (iv) the technical or economic reason a light-mitigating technology is not feasible, and (v) any other relevant information requested by the Commission;*
- f. The wind energy facility meets any standards concerning radar interference, lighting, subject to subdivision e, or other relevant issues as determined by the Commission; and*
- g. The wind energy facility complies with any more stringent requirements adopted by the Commission. Before adopting such requirements, the Commission shall determine that the requirements are necessary for compliance with state or federal environmental regulations.*

3. For an energy storage facility:

- a. The following minimum setback requirements, with setback distances measured from the nearest edge of the perimeter fencing of the facility: (i) for occupied community buildings and dwellings on nonparticipating properties, a minimum of 300 feet from the nearest point on the outer wall; (ii) for a public road right-of-way, a minimum of 50 feet measured from the nearest edge of a public road right-of-way; and (iii) for nonparticipating parties, a minimum of 50 feet measured from the nearest shared property line;*
- b. The energy storage facility complies with the most recent version of NFPA 855 "Standard for the Installation of Stationary Energy Storage Systems" or any applicable successor standard adopted by the Commission as reasonable and consistent with the purposes of this subdivision;*
- c. The energy storage facility does not generate a maximum sound in excess of 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property. Decibel modeling shall use the A-weighted scale as designed by the American National Standards Institute;*
- d. The energy storage facility will implement dark sky-friendly lighting solutions; and*

e. The energy storage facility complies with any more stringent requirements adopted by the Commission. Before adopting such requirements, the Commission shall determine that the requirements are necessary for compliance with state or federal environmental regulations.

I. The certificate shall identify the location of the energy facility and its nameplate capacity.

J. If construction of an energy facility is not commenced within five years after the date that a certificate is issued or within five years after any applicable appeals are exhausted, whichever is later, the certificate is invalid. The electric utility or IPP may seek a new certificate for the proposed energy facility. The Commission may extend the five-year period at the request of the applicant and upon a showing of good cause without requiring a new contested case proceeding.

§ 56-632. Community agreements.

A. The applicant for a certificate shall enter into a host community agreement with each host locality. The host community agreement shall require that, upon commencement of any operation, the energy facility owner shall pay the host locality \$2,000 per megawatt of nameplate capacity located within the host locality. The payment shall be used as determined by the host locality.

B. If a host locality refuses to enter into a host community agreement after good-faith negotiations with the applicant, the applicant may enter into a community benefits agreement with one or more community-based organizations within, or that serve residents of, the host locality. The amount paid by the applicant under this subsection shall be equal to, or greater than, what the applicant would pay to the host locality under subsection A. Community benefits agreements shall prioritize benefits to the community in which the energy facility is to be located.

C. A host community agreement or community benefits agreement is legally binding and inures to the benefit of the parties and their successors and assigns. The Commission shall enforce this requirement, but not the actual agreements, which are enforceable in a court of competent jurisdiction.

§ 56-633. Completion Report.

Before commencing commercial operations, an applicant shall file a completion report certifying compliance with the requirements of this act and any conditions contained in the Commission's certificate.

§ 56-634. Confidentiality.

The Commission shall issue orders necessary to protect the information in an application for a certificate, or in other documents required by the Commission for the purposes of certification, if the Commission reasonably finds the information to be confidential.

§ 56-635. Other proceedings.

The Commission may consolidate proceedings under this chapter with other relevant proceedings, as determined by the Commission.

§ 56-636. Effect of chapter on other laws.

A. This chapter shall control in any conflict between this chapter and any other state law.

B. If a certificate is issued for an energy facility under this chapter:

1. The certificate and this chapter shall control over any zoning ordinance, local policy, practice, regulation, rule, or other ordinance that prohibits, regulates, or imposes additional or more restrictive requirements than those specified in the Commission's certificate; and

2. A zoning ordinance or limitation imposed after the electric utility or IPP submitted the application for the certificate to the Commission shall not be construed to limit or impair the construction, operation, or maintenance of the energy facility.

C. If a certificate is not issued, all local policies, practices, regulations, rules, or ordinances relating to the siting of energy facilities, including the local zoning authority's power to grant variances, shall remain in full force and effect.

D. No local ordinance shall prohibit or regulate testing activities undertaken by an electric provider or independent power producer for purposes of determining the suitability of a site for the placement of an energy facility.

E. Except as provided in this section, this chapter shall not exempt an electric utility or IPP to whom a certificate is issued from obtaining any other permit, license, or approval to engage in the construction or operation of an energy facility that is required by this title or any other state or federal law.

F. Commission approval of a certificate shall not confer the power of eminent domain and shall not be considered to be a determination of public use for the purposes of the power of eminent domain.

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MEETS

Friday, 9:00 a.m., House Committee Room B-205, General Assembly Building

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