



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bills 1123 and 1124 (as introduced 10-22-14)  
Sponsor: Senator Howard C. Walker  
Committee: Energy and Technology

Date Completed: 12-2-14

### **CONTENT**

**Senate Bill 1124 would add Section 2941a to the Revised Judicature Act (RJA) to do the following:**

- Provide that a wind energy system that complied with the extension siting guidelines and the applicable zoning ordinance in effect on the date the system first began operating would not be a nuisance.
- Allow an action for a nuisance based on a wind energy system's noncompliance to be brought only by those people with respect to whom the violation occurred.
- Require the Public Service Commission (PSC) to adopt the most recent version of the guidelines for siting wind energy systems published by the Michigan State University (MSU) Extension after the bill's effective date, if the updated version would protect human health and safety and the environment and promote the cost-effective generation of electricity from wind.

The bill also would require costs and reasonable attorney fees in a wind energy nuisance action to be taxed against the plaintiff, if the defendant prevailed by reason of compliance with the applicable siting guidelines and zoning ordinance.

**Senate Bill 1123 would amend the Michigan Zoning Enabling Act to provide that a nuisance action for a zoning ordinance violation by a wind energy system would be subject to Section 2941a of the Revised Judicature Act RJA.**

The bills are tie-barred.

### **Senate Bill 1123**

The Michigan Zoning Enabling Act states that, except as otherwise provided by law, a use of land or a dwelling, building, or structure used, erected, altered, razed, or converted in violation of a zoning ordinance or regulation adopted under the Act is a nuisance per se<sup>1</sup>. The bill specifies that an action for nuisance for a violation of a zoning ordinance by a wind energy system would be subject to proposed Section 2941a of the RJA.

---

<sup>1</sup> In general, a "nuisance" is an activity, condition, or structure that is harmful or dangerous, or interferes with a person's use or enjoyment of the person's property; a nuisance may be private, affecting only individual rights, or public, affecting the community at large. A "nuisance per se" is something that would be a nuisance regardless of its location or circumstances; this term includes an activity, condition, or structure declared to be a nuisance per se by statute. A nuisance per se also may exist when the conduct constituting the nuisance is prohibited by law.

## **Senate Bill 1124**

The bill would add Section 2941a to the RJA to provide that a wind energy system would not be a public or private nuisance if it complied with the extension siting guidelines in effect on the date the system first began operating, as well as any applicable zoning ordinance in effect at that time.

("Wind energy system" would mean a system that converted wind energy into electricity through the use of one or more wind turbine generators. The term would include the turbines, blades, and towers as well as related electrical equipment. It would not include wiring to connect the system to the electric grid. "Extension siting guidelines" would mean "Michigan Land Use Guidelines for Siting Wind Energy Systems", published by MSU Extension and, if published after the bill took effect, adopted by the PSC as described below.)

An action for a public or private nuisance based on a wind energy system's noncompliance with the applicable guidelines or ordinance could be brought only by those property owners or other people with respect to whom the violation occurred.

For the bill's purposes, the PSC would have to adopt by rule the most recent version of the "Michigan Land Use Guidelines for Siting Wind Energy Systems", published after the bill's effective date if the changes in the updated version would protect human health and safety and the environment and promote the cost-effective generation of electricity from wind.

Under the RJA, if an action to abate a public nuisance is brought by a private citizen, whether or not the Attorney General or prosecuting attorney intervenes, and the court finds that there was no reasonable ground or cause for the action, costs may be taxed against that citizen. Under the bill, in an action alleging public or private nuisance caused by a wind energy system, if the defendant prevailed for reasons set forth in proposed Section 2941a, costs and reasonable attorney fees would have to be taxed against the plaintiff.

MCL 125.3407 (S.B. 1123)  
600.2425 et al. (S.B. 1124)

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

The bills would have no fiscal impact on local or State government.

Fiscal Analyst: John Maxwell  
Josh Sefton

SAS\S1314\s1123sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.