

HOUSE BILL No. 4575

May 12, 2015, Introduced by Reps. Cole, Chatfield, Lucido, Glenn, Kivela, LaFontaine, Webber, Barrett, Inman, Potvin, McBroom, Rendon, Johnson, Pettalia, Crawford, Hovey-Wright, Brunner, LaVoy, Plawecki, Byrd, Moss, Santana, Victory, Lane, Derek Miller, Garrett, Nesbitt, Franz, Bumstead, Jacobsen, Brett Roberts, Outman, Sheppard, Hughes, Maturen and Kosowski and referred to the Committee on Energy Policy.

A bill to regulate the siting and construction of certain electric transmission lines; to prescribe powers and duties of certain state and local entities and officials; to create a board; to prescribe the board's powers and duties; and to provide for certain fees.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan electric infrastructure act".

3 Sec. 2. As used in this act:

4 (a) "Board" means the Michigan electric infrastructure board
5 created in section 3.

6 (b) "Commission" means the Michigan public service commission
7 created in section 1 of 1939 PA 3, MCL 460.1.

1 (c) "Construction" means any substantial action constituting
2 placement or erection of the foundations, trenches, facilities,
3 equipment, or structures supporting a transmission line including,
4 but not limited to, the conductors, wires, or other equipment
5 attached to the structures. Construction does not include
6 preconstruction activity or the addition of circuits to an existing
7 transmission line.

8 (d) "Electric utility" means a person, partnership,
9 corporation, association, or other legal entity whose transmission
10 or distribution of electricity the commission regulates under 1909
11 PA 106, MCL 460.551 to 460.559, or 1939 PA 3, MCL 460.1 to 460.11.
12 Electric utility does not include an independent transmission
13 company.

14 (e) "Good cause" means an event or circumstance, whether or
15 not foreseeable, not caused by a qualified developer that prevents
16 the qualified developer from complying with an obligation under
17 this act. Good cause does not include a strike or other labor
18 unrest that affects only the qualified developer, an increase in
19 prices or other change in general economic conditions, or a change
20 in law or regulations.

21 (f) "Independent transmission company" means that term as
22 defined in section 2 of the electric transmission line
23 certification act, 1995 PA 30, MCL 460.562.

24 (g) "Municipality" means a city, township, or village.

25 (h) "Notice to construct" means a notice issued by the board
26 granting an entity the sole right to construct a transmission line
27 until the notice to construct expires.

1 (i) "Preconstruction activity" means that term as defined in
2 section 2 of the electric transmission line certification act, 1995
3 PA 30, MCL 460.562.

4 (j) "Qualified developer" means either of the following:

5 (i) An independent transmission company that commits to
6 support and advocate for the implementation of 1 resource adequacy
7 zone that includes both the Upper and Lower Peninsulas of this
8 state.

9 (ii) An entity that the board determines meets all of the
10 criteria stated in section 5(4).

11 (k) "Resource adequacy zone" means a geographic area, defined
12 by a regional transmission organization, for which there must be
13 access to sufficient total generation capacity, both internal and
14 importable into the zone, to serve load in accordance with the
15 regional transmission organization's requirements.

16 (l) "Route" means real property or other infrastructure on or
17 across which a transmission line is constructed or proposed to be
18 constructed.

19 (m) "Transmission line" means all structures, equipment, and
20 real property necessary to transfer electricity at system bulk
21 supply voltage of 100 kilovolts or more.

22 (n) "Utility corridor" means the geographic area necessary to
23 accommodate the construction and operation of 1 or more electric
24 transmission or distribution lines.

25 Sec. 3. (1) The Michigan electric infrastructure board is
26 created within the department of licensing and regulatory affairs.
27 The board shall consist of 7 members, appointed by the governor as

1 follows:

2 (a) One individual representing the department of
3 environmental quality.

4 (b) One individual representing the department of natural
5 resources.

6 (c) One individual representing the state energy office.

7 (d) One individual representing the Michigan economic
8 development corporation.

9 (e) One individual representing the technical staff of the
10 commission.

11 (f) One resident of the Upper Peninsula.

12 (g) One resident of the Lower Peninsula.

13 (2) The members initially appointed under subsection (1) shall
14 be appointed within 30 days after the effective date of this act.

15 (3) The board shall exercise its powers, duties, and decision-
16 making authority independently of the commission.

17 (4) The board shall ensure that adequate resources will be
18 able to reach electric consumers in this state through the
19 construction of transmission infrastructure that will reduce
20 congestion and energy prices in this state, provide for additional
21 transmission capacity in this state, ensure reliable and efficient
22 operation of the integrated electrical transmission system in this
23 state, and support this state's energy policy goals.

24 Sec. 5. (1) Within 30 days of the initial appointment of the
25 board under section 3, the board shall publish a list of counties
26 within this state that contain transmission facilities on which
27 constraints have caused congestion in the 5 years preceding the

1 publication of that list, leading to increased electricity prices.

2 (2) Within 60 days after the board publishes the list under
3 subsection (1), the board shall request interested entities to
4 submit proposals identifying any proposed transmission line
5 necessary to do any of the following:

6 (a) Provide additional transmission capacity to the geographic
7 areas of this state that include the counties identified in
8 subsection (1), reduce congestion, constraints, and losses on the
9 electrical system in this state, and reduce the overall cost of
10 delivered energy in this state.

11 (b) Ensure the deliverability of generation resources both
12 internal and external to this state to loads throughout this state
13 for purposes of resource adequacy.

14 (c) Facilitate generation resource diversification.

15 (d) Increase the electrical connectivity between the Upper and
16 Lower Peninsulas of this state beyond the capability provided by
17 the 2 circuits connecting the Upper and Lower Peninsulas of this
18 state existing on the effective date of this act by adding
19 additional circuitry beyond the normal power carrying capacity of
20 these circuits to enable the formation of 1 resource adequacy zone
21 within the Midcontinent Independent System Operator footprint in
22 this state.

23 (3) Any proposals submitted under subsection (2) must include
24 all of the following:

25 (a) A preliminary cost estimate for the identified
26 transmission line.

27 (b) An analysis of the estimated cost impact to retail

1 ratepayers if the cost of the transmission line were allocated to
2 all retail electric customers located in the Midcontinent
3 Independent System Operator footprint in this state.

4 (c) Any benefits associated with the transmission line.

5 (d) A statement from the entity submitting the proposal that
6 indicates why that entity is a qualified developer.

7 (4) After receiving a proposal under subsection (2), the board
8 shall determine whether an interested entity is a qualified
9 developer. To be considered a qualified developer, an entity must
10 be an independent transmission company or must demonstrate all of
11 the following:

12 (a) A commitment to support and advocate for the
13 implementation of a resource adequacy zone that includes both the
14 Upper and Lower Peninsulas of this state.

15 (b) Managerial expertise and capability, as demonstrated by
16 all of the following:

17 (i) A history of singular corporate focus on transmission.

18 (ii) The continuous operation of a networked transmission
19 system in this state during the 5 years before a proposal is
20 submitted under subsection (2).

21 (iii) A governance structure or control of the entity that is
22 independent of the users of the transmission facilities, and that
23 no member of the entity's board of directors has an affiliation
24 with a user of the transmission facilities or with an affiliate of
25 a user during the member's tenure on the board, that would unduly
26 affect the entity's performance. As used in this subparagraph,
27 "user" means any entity or affiliate of that entity that buys or

1 sells electricity in the entity's region or in a neighboring
2 region.

3 (iv) Technical and engineering qualifications and experience
4 in the design, construction, operation, and maintenance of
5 transmission lines.

6 (c) Financial strength and capability, as demonstrated by all
7 of the following:

8 (i) That securities of that entity have been issued through an
9 initial public offering.

10 (ii) That the entity has securities traded on at least 1 stock
11 exchange or in the over-the-counter market.

12 (iii) That the entity has a registration statement on file
13 with the federal Securities and Exchange Commission.

14 (iv) That the entity has an investment grade credit rating
15 from a nationally recognized statistical rating organization.

16 (v) That the entity has access to capital markets.

17 (vi) That the entity has the ability to cover losses resulting
18 from damage to or failure of any part of the facilities of the
19 transmission line in the normal course of business or financial
20 strategy and experience to facilitate timely replacements or
21 rebuilds as a result of catastrophic destruction or natural aging.

22 (d) Transmission planning expertise and capability, as
23 demonstrated by all of the following:

24 (i) That the entity has qualified engineers responsible for
25 planning functions.

26 (ii) The entity's prior experience in multiple regional
27 transmission organization planning processes.

1 (iii) The entity's experience in planning transmission lines
2 with a voltage level of at least 300 kilovolts.

3 (iv) The entity's experience in complying with transmission
4 planning criteria and guidelines, including those relevant to
5 interconnection with existing facilities.

6 (v) The entity's experience in addressing public concerns
7 regarding transmission lines.

8 (e) Construction expertise and capability, as demonstrated by
9 all of the following:

10 (i) The entity's history of successful construction of
11 transmission lines at voltage levels of at least 300 kilovolts.

12 (ii) The entity's ability to meet a schedule for the
13 development and completion of the transmission line consistent with
14 the identified date by which the project is needed.

15 (iii) The entity's demonstrated ability to construct projects
16 in accordance with project budgets.

17 (iv) The entity's experience in acquiring rights-of-way to
18 facilitate approval and construction of transmission lines.

19 (v) The entity's land acquisition experience.

20 (vi) The entity's permitting and siting experience.

21 (vii) Whether the entity has a sufficiently sized skilled
22 workforce.

23 (viii) The entity's established supply chain and vendor
24 relationships.

25 (f) Operations and maintenance capability, as demonstrated by
26 all of the following:

27 (i) The entity's performance on benchmarking studies in the

1 areas of reliability, storm response, and safety.

2 (ii) Whether the entity has been registered with the North
3 American Electric Reliability Corporation as a transmission owner,
4 transmission operator, and transmission planner for the 5 years
5 before a proposal is submitted under subsection (2).

6 (iii) The entity's compliance with the North American Electric
7 Reliability Corporation registration requirements and regional
8 entity reliability standards for the 5 years before a proposal is
9 submitted under subsection (2).

10 (iv) Ownership training, certification, and operations center
11 experience.

12 (v) Operation of diverse equipment types, including poles,
13 conduits, insulators, and transformers.

14 (vi) Sufficiently sized skilled workforce.

15 (vii) Sufficient capabilities and competencies to perform
16 operations, maintenance, testing, inspection, repair, and
17 replacement tasks including outage response, switching, emergency
18 repairs, preventative or predictive maintenance, management of
19 spare equipment, real-time operations monitoring and control
20 capabilities, and major facility replacements or rebuilds.

21 (viii) Capability to maintain real-time reliability of the
22 electric transmission system, ensuring comparable and
23 nondiscriminatory transmission access and necessary services,
24 minimizing system congestion, and further addressing real or
25 potential transmission constraints.

26 (ix) Intention to construct, own, operate, and maintain an
27 electric transmission facility that is under consideration by an

1 applicable regional transmission organization.

2 (x) Established supply chain and vendor relationships.

3 (g) Exemplary corporate citizenship, as demonstrated by all of
4 the following:

5 (i) Community outreach.

6 (ii) Communication and information-sharing during all phases
7 of transmission line development, construction, and operation.

8 (iii) Civic contributions to regional, state, and local
9 communities.

10 (iv) Whether the transmission entity operates under policies
11 that promote positive performance designed to satisfy the
12 electricity requirements of customers.

13 (v) A dedicated customer service department.

14 (5) Within 120 days after receiving a proposal from a
15 qualified developer under subsection (2), the board shall issue a
16 letter to the qualified developer either rejecting the
17 qualifications or recommendations of the qualified developer in
18 full, requesting that the qualified developer provide more
19 information, or recommending the construction of the proposed
20 transmission line. If the board requests more information under
21 this subsection, the board shall, within 45 days of receiving that
22 information from a qualified developer, either reject the
23 recommendations or recommend construction of the proposed
24 transmission line. If the board issues a letter recommending
25 construction of a proposed transmission line, the qualified
26 developer receiving the letter shall, within 30 days after the
27 board issues the letter, submit an expression of interest in

1 constructing the transmission line identified by the board. If the
2 qualified developer does not submit an expression of interest
3 within 30 days after the board issues a letter under this
4 subsection, the board may issue a new request for submission of
5 proposals under subsection (2). Within 7 days after a qualified
6 developer has submitted an expression of interest, the board shall
7 issue the qualified developer that submitted the expression of
8 interest a notice to construct.

9 (6) The board may take any actions necessary and appropriate
10 to support a transmission line for which a notice to construct has
11 been issued, including coordination with the Midcontinent
12 Independent System Operator, supporting any out-of-cycle review
13 request, execution of any contracts or agreements, and preparation,
14 submission, and support for filings related to that project before
15 the Federal Energy Regulatory Commission or any other regulatory
16 body.

17 (7) The board shall initially give priority to proposals for a
18 transmission line that accomplishes the purpose stated in
19 subsection (2)(d).

20 (8) A document submitted to the board under this section is
21 not subject to disclosure under the freedom of information act,
22 1976 PA 442, MCL 15.231 to 15.246. The business that the board may
23 perform shall be conducted at a public meeting of the board held in
24 compliance with the open meetings act, 1976 PA 267, MCL 15.261 to
25 15.275.

26 Sec. 6. (1) Within 60 days after receiving a notice to
27 construct under section 5, a qualified developer shall submit any

1 necessary documents to the Midcontinent Independent System Operator
2 or other applicable regional transmission organization for any
3 required review and approval.

4 (2) Within 120 days after obtaining any required reviews and
5 approvals from the Midcontinent Independent System Operator or
6 other applicable regional transmission organization, the qualified
7 developer shall apply to the commission for an expedited siting
8 certificate under this act. If a qualified developer does not apply
9 to the commission within 120 days after obtaining any required
10 reviews and approvals from the applicable regional transmission
11 organization, the commission shall revoke the notice to construct
12 and the board may solicit expressions of interest for the
13 transmission line project under section 5. The commission may waive
14 the 120-day time limit if it determines the qualified developer had
15 good cause for failing to apply to the commission for an expedited
16 siting certificate within 120 days.

17 (3) A qualified developer shall include all of the following
18 in an application for an expedited siting certificate:

19 (a) Evidence that the applicant obtained a notice to construct
20 for the transmission line under section 5.

21 (b) The planned date to begin construction of the proposed
22 transmission line.

23 (c) A detailed description, route, and expected configuration
24 and use of the proposed transmission line.

25 (d) Information indicating that the proposed transmission line
26 will comply with all applicable state and federal environmental
27 standards, laws, and rules.

1 (e) A description and evaluation of 1 or more alternate
2 transmission line routes for the proposed transmission line, and a
3 statement of why the proposed route was selected.

4 (f) If a zoning ordinance prohibits or regulates the location
5 or development of any portion of the proposed route, a description
6 of the location and manner in which the zoning ordinance prohibits
7 or regulates the location or construction of the proposed route.

8 (g) Other information reasonably required by commission rules.

9 (4) After applying for an expedited siting certificate, an
10 applicant shall give public notice in the manner and form the
11 commission prescribes of an opportunity to participate in a
12 contested case under subsection (5) regarding the application.
13 Notice shall be published in a newspaper of general circulation in
14 the municipalities through which the proposed transmission line
15 project would run within 14 days after an application is submitted
16 to the commission under subsection (2). The notice shall be sent to
17 each affected municipality and each affected landowner on whose
18 property a portion of the proposed transmission line will be
19 constructed. The notice shall be written in plain, nontechnical,
20 and easily understood terms and contain a title that includes the
21 name of the applicant and the words "Notice of Intent to Construct
22 a Transmission Line".

23 (5) The commission shall conduct a proceeding on an
24 application for an expedited siting certificate as a contested case
25 under the administrative procedures act of 1969, 1969 PA 306, MCL
26 24.201 to 24.328. Upon receiving an application for a certificate,
27 the commission shall grant each affected municipality and each

1 affected landowner full intervener status as of right in commission
2 proceedings concerning the proposed transmission line.

3 (6) The commission shall grant an expedited siting certificate
4 under this act if the commission determines that all of the
5 following requirements are met:

6 (a) The applicant has received a notice to construct for the
7 proposed transmission line under section 5.

8 (b) The proposed transmission line does not represent an
9 unreasonable threat to the public convenience, health, and safety.

10 (c) The proposed or alternate route to be authorized by the
11 expedited siting certificate is feasible and reasonable.

12 (7) If the commission grants an expedited siting certificate
13 for a transmission line under this act, the certificate takes
14 precedence over a conflicting local ordinance, law, rule,
15 regulation, policy, or practice that prohibits or regulates the
16 location or construction of the transmission line. A zoning
17 ordinance or limitation imposed after a qualified developer applied
18 for an expedited siting certificate does not limit or impair the
19 transmission line's construction, operation, or maintenance.

20 (8) In an eminent domain or other related proceeding arising
21 out of or related to a transmission line for which an expedited
22 siting certificate is issued under this act, an expedited siting
23 certificate issued under this act is conclusive and binding as to
24 the public convenience and necessity for that transmission line and
25 the transmission line's compatibility with the public health and
26 safety or any zoning or land use requirements in effect when the
27 application was filed.

1 (9) The commission shall grant or deny an expedited siting
2 certificate within 180 days after receiving an application under
3 this section.

4 Sec. 8. If a transmission line constructed under this act is
5 located within an existing utility corridor owned by an electric
6 utility or independent transmission company other than the
7 qualified developer constructing the transmission line, in addition
8 to any fees or payments related to acquiring the rights to use the
9 utility corridor, the qualified developer constructing the
10 transmission line under this act shall make a 1-time payment to the
11 electric utility or independent transmission company owning that
12 corridor. The payment shall be equal to 50% of the tax assessed to
13 the electric utility or independent transmission company in the
14 prior tax year under the general property tax act, 1893 PA 206, MCL
15 211.1 to 211.155, for the utility corridor in which the
16 transmission line constructed under this act is located.

17 Sec. 9. (1) The costs of a transmission line for which a
18 notice to construct is issued under this act shall be allocated to
19 all retail electric customers located in the Midcontinent
20 Independent System Operator footprint within this state.

21 (2) The revenue requirement for a transmission line for which
22 a notice to construct is issued shall be calculated pursuant to the
23 open access transmission, energy and operating reserve markets
24 tariff administered by the Midcontinent Independent System
25 Operator.

26 (3) The board shall cooperate with the recipient of the notice
27 to construct, the commission, and the Midcontinent Independent

1 System Operator in making any filings necessary to implement the
2 cost allocation established in this section.

3 Sec. 10. The commission shall issue a report to the governor
4 and the legislature on or before the first Monday of March of each
5 year. The report shall include all of the following:

6 (a) A summary of the impact of this act.

7 (b) A list of any transmission lines constructed or approved
8 under this act during the previous year.

9 Sec. 11. Except for a transmission line for which another
10 entity holds a valid notice to construct that has not expired under
11 this act, this act does not prohibit an entity from constructing a
12 transmission line without obtaining an expedited siting
13 certificate.

14 Sec. 12. (1) A commission order relating to any matter
15 provided for under this act is subject to review as provided in
16 section 26 of 1909 PA 300, MCL 462.26.

17 (2) In administering this act, the commission has only those
18 powers and duties granted to it under this act.

19 Sec. 13. This act does not confer the power of eminent domain.

20 Enacting section 1. This act takes effect 90 days after the
21 date it is enacted into law.