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SENATE BILL NO. 567

Offered January 10, 2024

Prefiled January 10, 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—Deeds

Referred to Committee on Commerce and Labor

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 and operation 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 Within 60 days after such written notice is given, the host locality and the applicant shall meet; to 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.

59 **§ 15.2-2316.8. Powers of host localities.**

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

61 1. Hire and pay consultants and other experts on behalf of the host locality in matters pertaining to the
62 siting of a ~~solar project or energy storage project~~ *energy facility*;

63 2. Meet, discuss, and negotiate a siting agreement with an applicant; and

64 3. Enter into a siting agreement with an applicant that is binding upon the governing body of the host
65 locality and enforceable against it and future governing bodies of the host locality in any court of competent
66 jurisdiction by signing a siting agreement pursuant to this article. Such contract may be assignable at the
67 parties' option.

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

74 **§ 15.2-2316.9. Effect of executed siting agreement; land use approval.**

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

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

86 C. Approval of a siting agreement by the local governing body in accordance with subsection B of § 15.2-
87 2316.8 shall deem the ~~solar project or energy storage project~~ *energy facility* to be substantially in accord with
88 the comprehensive plan of the host locality, thereby satisfying the requirements of § 15.2-2232.

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

92 E. *Notwithstanding any contrary provision of law, general or special, an applicant who is issued a*
93 *certificate by the State Corporation Commission in accordance with Chapter 31 (§ 56-626 et seq.) of Title 56*
94 *for an energy facility shall be exempt from obtaining approvals or permits, including any land use approvals*
95 *or permits under the regulations and ordinances of the host locality.*

96 **CHAPTER 31.**

97 **WIND, SOLAR, AND STORAGE FACILITY CERTIFICATION.**

98 **§ 56-626. Definitions.**

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

102 "Applicant" means an applicant for a certificate.

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

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

108 "Compatible renewable energy ordinance" means an ordinance that provides for the development of
109 energy facilities within the locality, the requirements of which are no more restrictive than the provisions of
110 subsection H of § 56-631. A local governing body is considered not to have a compatible renewable energy
111 ordinance if it has a moratorium on the development of energy facilities in effect within its jurisdiction or a
112 maximum acreage that can be developed for any type of energy facility.

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

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

117 "Energy facility" means an energy storage facility, solar energy facility, or wind energy facility.

118 "Energy storage facility" means a system that absorbs, stores, and discharges electricity.

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

120 "Independent power producer" or "IPP" means a person that is not a Virginia electric utility but owns or

121 operates facilities to generate electric power.

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

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

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

132 "Nameplate capacity" means the designed full-load sustained generating output of an energy facility.
133 Nameplate capacity shall be determined by reference to the sustained output of an energy facility even if
134 components of the energy facility are located on different parcels, whether contiguous or noncontiguous.

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

137 "Occupied community building" means a school, place of worship, day-care facility, public library,
138 community center, or other similar building that the applicant knows or reasonably should know is used on a
139 regular basis as a gathering place for community members.

140 "Participating property" means real property that either is owned by an applicant or an affiliate of the
141 applicant or that is the subject of an agreement that provides for the payment by an applicant to a landowner
142 of monetary compensation related to an energy facility or otherwise provides an applicant with rights to use
143 such real property regardless of whether any part of that energy facility is constructed on the property.

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

147 "Solar energy facility" means a system that captures and converts solar energy into electricity, for the
148 purpose of sale or for use in locations other than solely the solar energy facility property. "Solar energy
149 facility" includes related equipment and facilities such as: photovoltaic solar panels; solar inverters; access
150 roads; distribution, collection, and feeder lines; wires and cables; conduit; footings; foundations; towers;
151 poles; crossarms; guy lines and anchors; substations; interconnection or switching facilities; circuit breakers
152 and transformers; overhead and underground control; communications and radio relay systems and
153 telecommunications equipment; utility lines and installations; generation tie lines; solar monitoring stations;
154 and accessory equipment and structures.

155 "Wind energy facility" means a system that captures and converts wind into electricity, for the purpose of
156 sale or for use in locations other than solely the wind energy facility property. "Wind energy facility"
157 includes related equipment and facilities such as: wind towers; wind turbines; access roads; distribution,
158 collection, and feeder lines; wires and cables; conduit; footings; foundations; towers; poles; crossarms; guy
159 lines and anchors; substations; interconnection or switching facilities; circuit breakers and transformers;
160 overhead and underground control; communications and radio relay systems and telecommunications
161 equipment; monitoring and recording equipment and facilities; erosion control facilities; utility lines and
162 installations; generation tie lines; ancillary buildings; wind monitoring stations; and accessory equipment
163 and structures.

164 **§ 56-627. Applicability of chapter.**

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

169 B. To obtain a certificate for an energy facility, an electric utility or IPP shall comply with the
170 requirements of §§ 56-628 and 56-629, and then submit to the Commission an application as described in §
171 56-630.

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

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

177 **§ 56-628. Certificate application; procedure and qualification.**

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

182 B. If, within 30 days following a meeting described in subsection A, the local governing body of each host

183 locality notifies the electric utility or IPP planning to construct the energy facility that the host locality has a
 184 compatible renewable energy ordinance, then the electric utility or IPP shall file for approval with each host
 185 locality. A local governing body with which an application is filed shall approve or deny the application
 186 within 120 days after receiving the application. The applicant and locality may jointly agree to extend this
 187 deadline by up to 120 days.

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

194 D. At least 60 days prior to submitting an application pursuant to subsection C, an electric utility or IPP
 195 shall hold a public meeting in each host locality if a public meeting was not previously held in such host
 196 locality in accordance with the provisions of subsection B of § 15.2-2316.8. At least 30 days before such a
 197 meeting, the electric utility or IPP shall notify the clerk of the host locality in which a public meeting will be
 198 held of the time, date, location, and purpose of the meeting and provide a copy of the site plan as described in
 199 § 56-629 or the website address where a site plan for the energy facility is available for review. At least 14
 200 days before the meeting, the electric utility or IPP shall publish notice of the meeting in a newspaper of
 201 general circulation in the host locality or in a comparable digital alternative. The notice shall include a copy
 202 of the site plan or the website address where the site plan is available for review. The Commission shall
 203 further prescribe the format and content of the notice.

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

206 **§ 56-629. Site plan.**

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

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

214 **§ 56-630. Application requirements.**

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

- 216 1. The complete name, address, and telephone number of the applicant;
- 217 2. The planned date for the start of construction and the expected duration of construction;
- 218 3. A description of the energy facility, including a site plan as described in § 56-629;
- 219 4. A description of the expected use of the energy facility;
- 220 5. Expected public benefits of the proposed energy facility;
- 221 6. The expected direct impacts of the proposed energy facility on the environment and natural resources
 222 and how the applicant intends to address and mitigate these impacts;
- 223 7. Information on the effects of the proposed energy facility on public health and safety;
- 224 8. A description of the portion of the community where the energy facility will be located;
- 225 9. A statement that the proposed energy facility will not commence commercial operation until it complies
 226 with applicable state and federal environmental laws;
- 227 10. A summary of the community outreach and education efforts undertaken by the electric utility or
 228 independent power producer, including a description of the public meetings and meetings with elected
 229 officials;
- 230 11. Evidence of consultation, before submission of the application, with the Department of Environmental
 231 Quality and the Department of Energy and other relevant state and federal agencies before submitting the
 232 application;
- 233 12. Interconnection queue information for the applicable regional transmission entity;
- 234 13. If the proposed site of the energy facility is undeveloped land, a description of feasible alternative
 235 development locations, including vacant industrial property and brownfields, and an explanation of why they
 236 were not chosen;
- 237 14. If the energy facility is reasonably expected to have an impact on television signals, microwave
 238 signals, agricultural global position systems, military defense radar, radio reception, or weather and
 239 Doppler radar, a plan to minimize and mitigate that impact. Information in the plan concerning military
 240 defense shall not be disclosed by the Commission or the electric utility or independent power producer;
- 241 15. A stormwater assessment and a plan to minimize, mitigate, and repair any drainage impacts at the
 242 expense of the electric utility or IPP. The applicant shall make reasonable efforts to consult with relevant
 243 local officials before submitting the application and shall include evidence of those efforts in its application;
- 244 16. A fire response plan and an emergency response plan;

245 17. A decommissioning plan that is consistent with § 15.2-2241.2. The decommissioning plan shall
 246 include financial assurance to the locality in the form of a bond, a parent company guarantee, or an
 247 irrevocable letter of credit, but shall exclude cash. The amount of the financial assurance shall not be less
 248 than the estimated cost of decommissioning the energy facility, after deducting salvage value, as calculated
 249 by a third party with expertise in decommissioning, hired by the applicant. However, the financial assurance
 250 may be posted in increments as follows: (i) at least 25 percent by the start of full commercial operation, (ii)
 251 at least 50 percent by the start of the fifth year of commercial operation, and (iii) 100 percent by the start of
 252 the tenth year of commercial operation; and

253 18. Other information reasonably required by the Commission.

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

258 **§ 56-631. Certificate; requirements for approval.**

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

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

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

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

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

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

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

288 1. The public benefits of the proposed energy facility justify its construction. For the purposes of this
 289 subdivision, public benefits include expected tax revenue paid by the energy facility to local taxing districts,
 290 payments to owners of participating property, community benefits agreements, local job creation, and any
 291 contributions to meeting identified energy, capacity, reliability, or resource adequacy needs of the
 292 Commonwealth. In determining any contributions to meeting identified energy, capacity, reliability, or
 293 resource adequacy needs of the Commonwealth, the Commission may consider the RPS Program
 294 requirements and the generating and energy storage capacity requirements of § 56-585.5, integrated
 295 resource plans approved pursuant to Chapter 24 (§ 56-597 et seq.), renewable energy plans, or other
 296 proceedings before the Commission, at the applicable regional transmission entity, or before the Federal
 297 Energy Regulatory Commission, as determined relevant by the Commission;

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

299 3. The applicant has considered and addressed impacts to the environment and natural resources,
 300 including sensitive habitats and waterways, wetlands and floodplains, wildlife corridors, parks, historic and
 301 cultural sites, and threatened or endangered species;

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

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

304 H. An energy facility meets the requirements of subdivision G 5 if it complies with the following
 305 standards, as applicable:

306 1. For a solar energy facility:

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

313 b. Fencing for the solar energy facility complies with the latest version of the National Electric Code or
314 any applicable successor standard approved by the Commission as reasonable and consistent with the
315 purposes of this subsection.

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

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

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

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

326 2. For a wind energy facility:

327 a. The following minimum setback distances, measured from the center of the base of the wind tower: (i)
328 for existing occupied community buildings and dwellings on nonparticipating properties, a minimum of 2.1
329 times the maximum blade tip height to the nearest point on the outside wall of the structure; (ii) for existing
330 dwellings and other structures on participating properties, a minimum of 1.1 times the maximum blade tip
331 height to the nearest point on the outside wall of the structure; (iii) for nonparticipating property lines, 1.1
332 times the maximum blade tip height; (iv) for an existing public road right-of-way, 1.1 times the maximum
333 blade tip height to the center line of the public road right-of-way; and (v) for existing overhead
334 communication and electric transmission, not including utility service lines to individual houses or
335 outbuildings, 1.1 times the maximum blade tip height to the center line of the easement containing the
336 overhead line;

337 b. Each wind tower is sited such that any existing occupied community building or nonparticipating
338 residence will not experience more than 30 hours per year of shadow flicker under planned operating
339 conditions as indicated by industry standard computer modeling;

340 c. Each wind tower blade tip does not exceed the height allowed under a Determination of No Hazard to
341 Air Navigation by the Federal Aviation Administration under 14 C.F.R. Part 77;

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

346 e. The wind energy facility is equipped with a functioning light-mitigating technology. To allow proper
347 conspicuity of a wind turbine at night during construction, a turbine may be lighted with temporary lighting
348 until the permanent lighting configuration, including the light-mitigating technology, is implemented. The
349 Commission may approve a temporary exemption from the requirements of this subdivision e if installation of
350 appropriate light-mitigating technology is not feasible. A request for a temporary exemption shall be in
351 writing and state (i) the purpose of the exemption, (ii) the proposed length of the exemption, (iii) a
352 description of the light-mitigating technologies submitted to the Federal Aviation Administration, (iv) the
353 technical or economic reason a light-mitigating technology is not feasible, and (v) any other relevant
354 information requested by the Commission;

355 f. The wind energy facility meets any standards concerning radar interference, lighting, subject to
356 subdivision e, or other relevant issues as determined by the Commission; and

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

360 3. For an energy storage facility:

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

367 b. The energy storage facility complies with the most recent version of NFPA 855 "Standard for the

368 Installation of Stationary Energy Storage Systems" or any applicable successor standard adopted by the
369 Commission as reasonable and consistent with the purposes of this subdivision;

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

374 d. The energy storage facility will implement dark sky-friendly lighting solutions; and

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

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

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

384 **§ 56-632. Community agreements.**

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

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

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

398 **§ 56-633. Completion Report.**

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

401 **§ 56-634. Confidentiality.**

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

405 **§ 56-635. Other proceedings.**

406 The Commission may consolidate proceedings under this chapter with other relevant proceedings
407 including applications for certificates of public convenience and necessity, as determined by the Commission.

408 **§ 56-636. Effect of chapter on other laws.**

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

410 B. Notwithstanding any contrary provision of law, general or special, if a certificate is issued for an
411 energy facility under this chapter:

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

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

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

421 D. Notwithstanding any contrary provision of law, general or special, no local ordinance shall prohibit or
422 regulate testing activities undertaken by an electric provider or independent power producer for purposes of
423 determining the suitability of a site for the placement of an energy facility.

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

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