

## Compatible Renewable Energy Ordinance

The Planning Commission, in preparation for a public hearing (see below) on a proposed addition to Hayes Township's Zoning Ordinance which would create a Compatible Renewable Energy Ordinance (CREO), is providing information for residents to help them better understand this complex issue.

The State of Michigan's Legislature has passed legislation designed to encourage the development of renewable energy production throughout the State. To achieve this goal, it passed a package of bills (Public Acts 233, 234, and 235) which deal with the development of commercial scale renewable energy projects. Among the many issues this package of bills addressed was the ability of local entities to regulate siting of this type of (commercial scale) project. In essence, the State has set out criteria for energy producers allowing them to establish projects with minimal restrictions. These criteria preempt local control or enforcement of any ordinances which contain rules more restrictive than the State's.

In Public Act 233 the State has directed the Michigan Public Service Commission (MPSC) to administer this program. The MPSC has developed a system in which a developer may seek permits for a project directly from the State if the local unit of government does not have a Commercial Scale Renewable Energy Ordinance **OR** if, in the developer's opinion, the local governmental unit's rules are too restrictive. Developers can ask the MPSC for permits which it can grant without requiring the local unit's approval.

This new law takes effect November 29, 2024. Guidelines are being developed by the MPSC and the Michigan Townships Association (MTA) has been providing information to townships, including Hayes Township, in response to the evolving situation. **As of the last Planning Commission meeting, it was** the opinion of the Township that it is best protected by creating a CREO now to comply with the current understanding of regulations on this matter, with the caveat that the ordinance can be reviewed and amended to reflect any changes or updates that the MPSC may make to these rules in the future. **Since that meeting, the MPSC has issued orders that help clarify the CREO process and the MTA has published sample proposed workable ordinances which are an alternative to the CREO. The Planning Commission did not have this information at its last meeting and will likely discuss whether a CREO or workable ordinance is the better alternative for the Township to pursue.**

The public hearing on the adoption of this CREO ordinance will take place 7 pm November 19, 2024 at the Hayes Township Hall.

Further information:


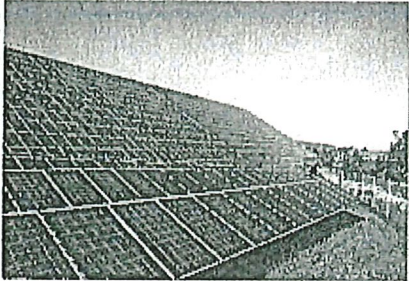
MTA slides  
Township Attorney letter,

Link to MPSC rules, <https://mpsc.my.site.com/sfc/servlet.shepherd/version/download/068cs00000EuxDUAAZ>

Nov 29th  
2024  
New law  
in effect

# Renewable Energy Regulation Update

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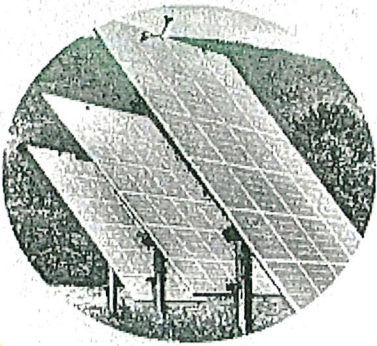
Michigan Public Service Commission

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## Summary of PA 233-234

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- Makes significant changes to the permitting process for utility-scale renewable energy facilities
  - Including solar, wind, and battery energy storage
- **Allows developers to apply directly to the Michigan Public Service Commission (MPSC) to construct utility-scale renewable energy facilities**
  - **Unless all affected local units adopt "compatible renewable energy ordinance" (to be discussed shortly)**
- Severely limits local control



Michigan Public Service Commission

(Seth)

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In short...

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THERE IS NO WAY TO  
PROHIBIT LARGE-SCALE  
RENEWABLE ENERGY  
PROJECTS IN YOUR  
TOWNSHIP

Bauchman Thall, P.C.

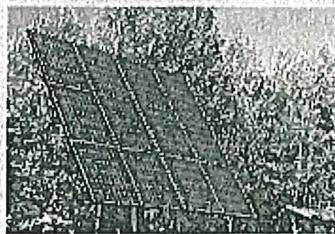
August 2024

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Local authority remains, but limited

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- Can still regulate small scale utility projects
- Can regulate roof-mounted or ground-mounted solar systems as accessory uses on property



Bauchman Thall, P.C.

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## Projects Covered by New Law

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- Solar Energy – 50 MW or more across nameplate capacity
- Wind Energy – 100 MW or more across nameplate capacity
- Battery Storage – 50 MW or more across nameplate capacity
- Existing project – expansion or repowering of existing project that meets the above requirements

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## Key Provisions

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- State law regulates the following for all renewable projects:
  - Setbacks
  - Noise
  - Height
  - Lighting
  - Fencing
  - Fire safety
  - And more....
- See statute for exact numbers for each type of system (solar, wind, battery storage)

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## Purchasing and Leasing Property

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- **Important Note:** This new law cannot force a property owner to sell or lease their land for renewable energy projects
- **However:** Obtaining land has not yet posed a significant challenge for developers
- Developers are offering multi-million-dollar lease agreements for property in viable locations
  - 20-30 year leases
  - Property owner just has to sit back and earn money
  - Often much more profitable than farming the land

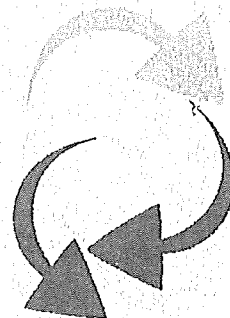
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## Project Approval Options

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Three main avenues for approval:

1. Entirely through the State (MPSC)
2. State-Township mix - CREO
3. Entirely through the Township  
(non-CREO/"workable")

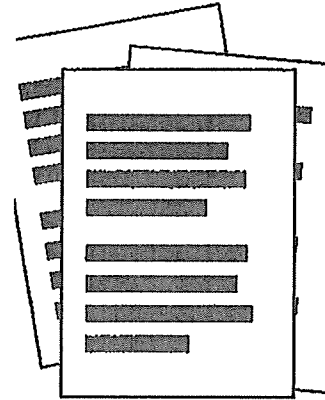


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## MPSC state application process: basics

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- **Developers apply directly to State (MPSC)**
    - Township may intervene, but does not have approval/decision-making authority
  - **General contents of application\***
    - Basic site plan
    - Expected public benefits
    - Impact on environment and natural resources (and mitigation)
    - Effects on public health/safety
    - Feasibility of alternative locations (if site is undeveloped)
    - Stormwater assessment
    - Fire response plan
    - Decommissioning plan
- \*This is not a complete list. See statute for all requirements.



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## MPSC State application process: Considerations for approval

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**MPSC will consider the following factors\* before approving an application:**

- Consider feasible alternative locations;
- Impact on local land use;
- Percentage of land in township already dedicated to energy generation;
- Vegetative ground cover/pollinator standards;
- Public benefits of energy facility justify its construction;
- Considerations of environmental impact;
  - Sensitive habitats and waterways; floodplains; wildlife corridors; endangered species
- Community Host Agreement;
- Will not unreasonably diminish (prime) farmland;
- Compliance with Section 226(8); [on next slides]

\*This is not a complete list. See statute for all requirements.

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MPSC application process:  
Monetary benefits to local governments

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- Intervenor Funds
  - Up to \$75,000 (to be determined by MPSC, likely much lower)
  - Deposited into special fund only for use in challenging application during MPSC process
- Host Community Agreement
  - One-time, \$2,000 per megawatt payment to the Township
  - Must be used for police, fire, public safety, infrastructure. Can be used for other projects if applicant consents
  - If Township refuses to enter agreement/take money, applicant can give the money to community groups instead

Benjamin Hall, P.C.

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Compatible Renewable Energy Ord (CREO)

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- CREO is an ordinance adopted by all local units transferring permitting authority to them instead of the State/MPSC
- All affected local governments must have a CREO in order for applicant to be required to use it
  - This includes any townships, counties, villages, or cities where project is located
- Must approve/deny entire application within 120 days

Benjamin Hall, P.C.

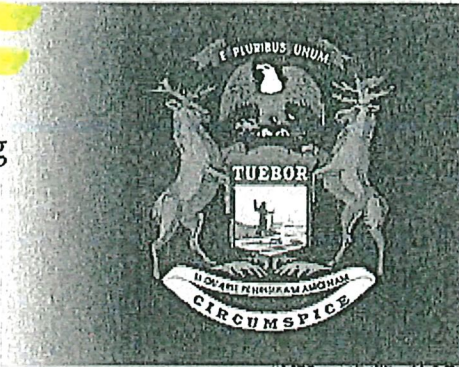
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## Compatible Renewable Energy Ord (CREO)

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- CREO is severely limited
- CREO cannot be more restrictive on any of the items listed in 226(8)
- Essentially, you are doing the State's job for them.
  - We cannot require anything more than is in the State law



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## "Workable" process – NOT A CREO

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- Township adopts ordinance that it knows is not a CREO: sets standards above statute and/or regulates what State does not allow
- Developer voluntarily chooses to follow this local ordinance instead of MPSC
- Developer can always fall back on the State/MPSC process. We cannot force them to go through the Township using a "workable" ordinance.

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## “Workable” process – The Catch

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- Workable sounds great! However....
- Its name comes from being “workable” to the developer.
- Workable does not allow us to completely prohibit, or to add so many restrictions that a developer would never be able to meet them
- Any regulations must be reasonable, otherwise the developer will go to the State
- There is no way to prohibit renewable energy projects in your community.

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## Why Workable?

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- |  |  |
|--|--|
| <ul style="list-style-type: none"><li>• <b>Benefits to Township</b><ul style="list-style-type: none"><li>○ Retains local control</li><li>○ Allows full review and regulation</li><li>○ Set standards important to our community</li><li>○ More expansive community host agreement</li><li>○ More community support</li></ul></li></ul> | <ul style="list-style-type: none"><li>• <b>Benefits to Developer</b><ul style="list-style-type: none"><li>○ Projects approved faster</li><li>○ More community support</li><li>○ Cheaper/easier than MPSC</li></ul></li><li>• Many developers have expressed desire to keep working with Townships despite new law</li><li>• Developers can always go to the State if Township is extremely difficult</li></ul> |
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## CREO vs Workable

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CREO	Workable
<ul style="list-style-type: none"> <li>◦ Can only regulate what is listed in 226(8)</li> <li>◦ Setbacks and sound measured from outer wall of nearest occupied building</li> <li>◦ Solar panels 25 ft high</li> <li>◦ Decommissioning                             <ul style="list-style-type: none"> <li>◦ Uses salvage value</li> <li>◦ Doesn't reach 100% for 5 yrs</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>◦ Can regulate anything as long as reasonable</li> <li>◦ Setbacks and sound from nearest property line</li> <li>◦ Solar panels 16 ft high</li> <li>◦ Limit acreage to be used</li> <li>◦ Limit zoning districts</li> <li>◦ Minimum project size</li> <li>◦ Better decommissioning</li> </ul>

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## Other provisions of Workable

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<ul style="list-style-type: none"> <li>◦ <b>Community Host Agreement</b> <ul style="list-style-type: none"> <li>◦ Require one-time or annual payment to Township</li> <li>◦ For infrastructure, roads, community development</li> </ul> </li> <li>◦ <b>Emergency services</b> <ul style="list-style-type: none"> <li>◦ Require payment for new fire vehicles</li> <li>◦ Payments to cover costs of training personnel</li> </ul> </li> <li>◦ <b>Escrow Fee</b> <ul style="list-style-type: none"> <li>◦ All review costs should be paid by the developer</li> <li>◦ Attorney fees, planners, engineers, environmental scientists</li> </ul> </li> </ul>
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## What does Township need to do now?

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1. **Consult with attorney and planner**
  - These issues are complicated, not everyone agrees on interpretation
2. **Decide whether you want to follow MPSC, CREO, or “workable”**
3. **If CREO: Talk to neighboring governments and County soon**
  - Everybody needs to be on the same page for a CREO to work
4. **Keep timelines for CREO adoption in mind**
  - If it is a zoning ordinance – need time to draft, PC hearings, Board hearings
  - Need to provide notices of meetings, adoption, etc.
  - Extra time needed to collaborate with County and neighboring jurisdictions

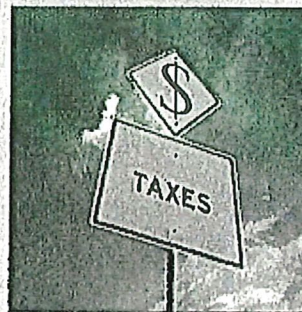
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## Final note: Solar payment in lieu of taxes (PILT)

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- Voluntary option for Townships with solar energy facilities
- Instead of collecting normal taxes, facility may pay a “flat rate” \$7,000/MW per year
  - Townships get standard share of millage, not the full \$7,000
- Township Board reviews and decides – not land use issue



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# Questions

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Ron & Roy,

You have asked me to take a look at the question of Hayes Twp passing a CREO and answer several questions.

Let me start with some overview. Hayes Township does not have to pass a CREO. It can choose to allow the state to issue permits in the Township. There is nothing in the legislation that says a township cannot pass a CREO after November 29. If one is not passed by then and an application is submitted, it goes to the state for consideration and not the township. You can pass a CREO later and, assuming all other conditions that I will mention in a minute are met, then you can start to issue your own permits. Keep in mind this is a zoning ordinance. So, it will have to go through the PC for the public hearing and then on to the Board for passage with the required notices being provided. This is not something you can rush through. I am attaching the statute for your review. Section 233 requires that a utility that wants to construct a facility hold a public meeting in each affected local unit. Affected local unit is defined as a unit of government in which all or part of a proposed energy facility will be located. Local unit is defined as a county, township, city, or village. Therefore, a meeting has to be held in each county, township or city in which the project will be built. So if it straddles a township line into two townships, it must hold a meeting in each township. Since townships are in a county, I suspect that a meeting in a township will also qualify as a meeting in that county. 60 days before that meeting, the utility has to offer in writing to meet with the chief elected official of each affected local unit of government. A utility is required to follow a local CREO if within 30 days of that meeting the elected official from each affected local unit of government advises the utility that the local unit of government has a CREO. Therefore, each local unit of government must have a CREO in place in order to require the utility to follow the ordinance. It makes no sense to me, but a literal reading of the statute would require both Hayes Township and Charlevoix County to have a CREO before Hayes Township could require the utility to follow its CREO. Does the County have an ordinance in place? If not, you cannot enforce yours as the statute is currently written. Also, have surrounding townships adopted CREOs? If not, any project that crosses township borders into a township that has not adopted a CREO cannot be required to comply with Hayes Twp's CREO.

The statute is clear that a CREO cannot be more restrictive than the limitations contained in Section 226(8). That section generally only regulates minimum setbacks, height, sound, dark sky-friendly lighting, shadow flicker in the case of wind turbines. If your ordinance places any additional requirements or is more stringent in the ones listed above, then it is unenforceable. For example, you cannot limit these facilities to any particular zoning districts. You cannot have larger setbacks or more restrictive conditions. If you do, and deny an application because it does not comply with the more restrictive conditions, the Commission will invalidate your ordinance and you will lose the right to issue permits. See Section 233(3)(c). The MTA sample ordinance goes about as far as you can go with conditions. I would not alter it much if you decide to adopt a CREO. You can always amend the CREO as time passes and kinks are worked out.

The MTA suggests that it is possible to have a non-CREO ordinance that a utility may voluntarily choose to follow instead of the CREO or state permit. I am not sure that I share this belief that a utility will voluntarily choose a more restrictive option unless they are getting something pretty valuable in return. I am not sure I see how Hayes Township could offer that value. As this process gets started, we may learn of some ordinance adopted by other municipalities that may be workable in Hayes and consider them at a later date.

Roy asks about the repealer in Section III of the MTA ordinance. I would change that to read that to the extent that this (MTA) CREO ordinance conflict with any other ordinance, this ordinance controls. Don't repeal anything. The reason is that this ordinance only applies to certain large-scale projects. If you look at the definitions of energy storage facility, solar energy facility or wind energy facility, it only applies to project of a certain size or larger. Other smaller projects are not covered by the statute or the CREO and would be governed by the zoning ordinance or other ordinances.

This is a classic example of bad legislation. I am free early next week if you would like to discuss this.

Todd