

# Legislative Analysis



## RENEWABLE ENERGY REQUIREMENTS FOR ELECTRIC SERVICE PROVIDERS: TEN PERCENT BY 2015

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**House Bill 5548**  
**Sponsor: Rep. Jeff Mayes**

**House Bill 5549**  
**Sponsor: Rep. David Palsrok**  
**Committee: Energy and Technology**

**Complete to 1-9-08**

### A SUMMARY OF HOUSE BILLS 5548 & 5549 AS INTRODUCED 12-6-07

In general, House Bills 5548 and 5549 would require electric service providers in Michigan to produce or purchase **ten percent** of the electricity they sell to retail customers in Michigan **from renewable energy resources** by December 31, 2015.

- Renewable energy credits. Providers would use renewable energy credits to meet the ten percent standard, which could be obtained three ways: (1) by producing renewable energy, (2) by purchasing renewable energy, or (3) by obtaining credits from a renewable energy system located in Michigan. In general, credits would be issued at the rate of one credit per one megawatt of electricity, although some categories of renewable energy, notably solar, would be granted additional credits. Unused credits would be good for three years; credits would extinguish upon being used to meet the standard.
- Definition of renewable energy resource. The bill's definition of renewable energy resource includes (1) biomass; (2) geothermal; (3) solar thermal; (4) photovoltaic cells and panels; (5) industrial cogeneration; (6) existing incineration; (7) wind; (8) hydroelectric power, as specified; and (9) landfill gas. See definitions section below.
- PSC responsibilities. The Public Service Commission (PSC) would establish a system for certifying and tracking renewable energy credits. The PSC would also review the reasonableness of the terms of new renewable energy contracts and establish administrative rules to implement the new law.
- Cost recovery. Providers would be able to recover their reasonable and prudent costs of complying with the standard, except for the costs of purchasing credits.
- Municipal utilities. Municipally-owned utilities could not be required to purchase renewable energy credits if they fail to produce or purchase sufficient renewable energy. The act would be enforced against municipal utilities by civil suits in circuit courts.
- Reports. Providers would have to file an annual report with the PSC on their compliance with the bill's requirements; the PSC would have to report to the Legislature every two years.

- Limitation of impact on retail rates. The PSC would have to establish and update every two years a "maximum retail rate impact" for each provider, set at "not less than 110 percent of the cost of construction, operation and maintenance, and generation of a new base load power plant over its lifecycle on a kilowatt per hour basis." If a provider's compliance with the law would cause its retail rates to increase more than the allowable amount, the PSC would reduce the provider's required number of renewable energy credits.
- Methods of compliance. If a provider could not comply with the law by producing electricity from renewable sources, it would have to enter into one or more renewable energy contracts. If a provider could not comply with the law by entering into contracts, it would have to purchase credits from a renewable resource system located in Michigan.
- Extensions of time. For good cause, the PSC could grant providers one or more one-year extensions of time to comply with the law. If a local zoning ordinance prevented a provider from meeting the standard, the PSC would have to grant an extension.
- Consequences of non-compliance. If a provider didn't meet the standard by the 2015 deadline or after any extensions had expired, it would have to purchase renewable energy credits and could not recover the cost of doing so from ratepayers.
- Severability. Both bills contain severability clauses, meaning that if any portion of the bills were ruled invalid by a court, remaining sections would continue in effect.
- Tie-bars. House Bills 5548 and 5549 are tie-barred to each other and to the following bills, meaning that none of the bills will go into effect unless they are all enacted:
  - House Bill 5383 (Brown)(allow electricity co-ops to set own rates)
  - House Bill 5384 (Nofs)(loosen restrictions on municipal joint action agencies)
  - House Bill 5520 (Miller)(limited PSC review of sale of electricity generating assets)
  - House Bill 5521 (Gaffney)(PSC certifications, such as certification of need)
  - House Bill 5522 (LaJoy)(allocation of costs to various ratepayer groups)
  - House Bill 5523 (Clemente)(allow gas and electric utilities to implement proposed rate increases before PSC approval)
  - House Bill 5524 (Accavitti)(modify electric choice program)

## **House Bill 5548**

"Sustainable" portfolio (energy efficiency savings plus renewable energy portfolio). [Section 3] By December 31, 2015, each provider would have to achieve a "sustainable portfolio standard" calculated by adding the energy efficiency savings achieved by a provider or attributable to it under the Energy Efficiency Act (to be created by House Bill 4525) to the renewable energy portfolio standard, described below.

Portfolio for renewable energy. [Section 5(1)] Unless an extension is granted under Section 11 (of House Bill 5549, described below), each provider would have to meet a ten percent portfolio standard for renewable energy by December 31, 2015—by generating or acquiring renewable energy credits in an amount equal to ten percent of the provider's retail electricity sales to Michigan customers during the calendar year.

Allowable methods of obtaining renewable energy credits. Under Section 5(2) of the bill, credits could be obtained by any of the following:

- Producing electric energy from renewable energy systems.
- Purchasing electric energy through a renewable energy contract.
- Obtaining renewable energy credits from a renewable energy system located in Michigan.

PSC review of renewable energy contracts. [Section 5(3)] The PSC would determine whether a renewable energy contract entered into after the bill's effective date contains reasonable terms and conditions, including the length of the contract.

Cost recovery for all reasonable and prudent compliance costs except for purchasing credits. [Section 5(4)] The PSC would have to treat all costs reasonably and prudently incurred by a regulated utility to comply with the bill as a cost of service and allow for the recovery of these costs. However, costs incurred in obtaining renewable energy credits under Section 11(3) (of House Bill 5549, described below) would not be recoverable.

Renewable Energy Credit Program. [Section 7(1)] The PSC would be required to establish a renewable energy credit program with all of the following features:

- All existing renewable energy systems operating on the bill's effective date would be certified as eligible to receive credits.
- Credits would be transferable under a method determined by the PSC.
- Unless the parties' contract provided otherwise, the *generator* of renewable energy (not the *purchaser*) would own credits under power purchase agreements in effect on the bill's effective date.
- Renewable energy credits purchased from a Michigan source would not have to be used in Michigan.

Credits. [Section 7(2)] In general, one credit would be granted for each megawatt hour of electricity from a renewable energy resource, with extra credits for some types, as described below. (If energy is produced from both renewable and non-renewable resource, the PSC would grant credits based on the proportion of the renewable energy used.) Additional credits would be granted as follows:

- **Solar:** an additional 1.5 credits per megawatt hour.
- **Michigan-located source of renewable energy:** an additional 0.10 credit per megawatt hour.

- **Renewable energy generated using Michigan-made equipment:** an additional 0.10 credit per megawatt hour.
- **Renewable energy produced at peak demand time, from a source other than wind:** an additional 0.05 credits per megawatt hour. (Peak demand time would be determined by the PSC.)

Certification and Tracking Program. [Section 7(3)] The PSC would have to set up a renewable energy credit certification and tracking program, which could be contracted to and performed by a third party after competitive bidding. The certification and tracking program would include:

- Certification that a renewable energy system is a "qualified renewable energy system."
- Certification that a system's operator is in compliance with state and federal law applicable to the operation of a renewable energy system at the time the certification is granted.
- Determining the date that a credit is valid for transfer.
- A method for ensuring the proper accounting of energy credits that are traded and sold.

Municipally-owned utilities. [Section 13] The PSC could not require a municipally-owned utility to purchase renewable energy credits. The bill's requirements would be enforced against municipal utilities by civil actions for injunctive relief in state circuit courts by persons "adversely affected" by the utility's failure to comply. Before filing an action, the plaintiff would have to give the municipally-owned utility and the PSC at least 60 days' notice of intent to sue, the basis for the suit, and the relief sought. The court could award the costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party.

Annual report by provider to PSC. [Section 15] Each provider of electric service would have to submit an annual report to the PSC after the end of each calendar year describing actions taken by the provider to comply with the portfolio standard. The provider would have to submit the report within the time set by the PSC and in a commission-approved format. The report would have to include the following information:

- The amount of electricity and renewable energy credits that the provider generated or acquired during the reporting period and the amount of renewable energy credits that the provider acquired, sold, or traded to comply with its standard.
- The capacity of each renewable energy system owned, operated, or controlled by the provider, the total amount of electricity generated by each system during the reporting period and the percentage of the total that was generated directly from renewable energy.
- Whether, during the reporting period, the provider began construction on, acquired, or placed into operation any renewable energy system.

Biennial report by PSC to Legislature. [Section 17] Every two years, the PSC would have to file a report with the Legislature that (1) summarizes the data it has collected from providers, (2) discusses the status of renewable energy in Michigan and the effect of the bill on electricity prices, and (3) recommends changes in the definition of renewable energy resource to reflect environmentally preferable technology.

Rules. The PSC would be required to promulgate rules to implement the new law pursuant to the Administrative Procedures Act of 1969.

Severability. The act to be created by the bill would be severable—that is, if any portion were later invalidated by a court, remaining sections would continue in effect.

## **House Bill 5549**

Maximum retail rate impact. [Section 7] Ninety days after the bill's effective date, and at least every two years thereafter, the PSC would have to establish a "maximum retail rate impact" for each provider of complying with "this section." ["This section" probably refers to Section 5 of House Bill 5548, setting forth the ten percent renewable portfolio standard.] The "maximum retail rate impact" would be set at "not less than 110 percent of the cost of construction, operation and maintenance, and generation of a new base load power plant over its lifecycle on a kilowatt per hour basis."

In determining the maximum retail rate impact, the PSC would have to consider and make specific findings as to each of the following: (1) capital costs, including lifecycle capital additions; (2) financing and interest costs; (3) forecasted inflation; (4) construction costs; (5) operation and maintenance costs; (6) fuel cost, transportation of fuel costs, and fuel disposal costs; (7) costs of transmitting, generation, and interconnection; (8) emission controls; (9) taxes and penalties on carbon and emissions; (10) costs of security measures; and (11) other costs the commission considers appropriate.

If the PSC determines that the retail rate impact of a provider's compliance with the law exceeds the maximum allowable impact, the PSC would have to reduce the number of renewable energy credits required of provider by an amount necessary to limit the impact of compliance on retail rates to the determined maximum.

Renewable energy contracts. [Section 9(1)] If a provider could not comply with the portfolio standard by producing its own renewable energy, it would have to comply by entering into one or more renewable energy contracts.

Purchasing renewable energy credits. [Section 9(2)-(3)] If a provider could not meet the standard through production or by entering into renewable energy contracts, it would have to purchase renewable energy credits from a renewable energy system located in Michigan. In general, credits automatically expire three years after the generation of the electricity with which the credits are associated. Credits used to meet a portfolio standard are extinguished upon use.

Petitions for extension of time to meet portfolio standard. [Section 11(1)-(2)] Upon petition, the PSC could for good cause grant a provider one or more one-year extensions of the 2015 deadline to meet the renewable portfolio standard under Section 5. The PSC would have to approve an extension petition if it determines that a provider could not meet its portfolio standard because of a local zoning ordinance. A petitioner would have to provide information requested by the PSC for its deliberations on the extension request. Relevant factors would include the economic impact, availability, cost, and consumer impact.

Consequences of not meeting portfolio standard. [Section 11(3)] If a provider, except for a municipally-owned utility, fails to meet the renewable portfolio standard by the deadline under Section 5 or the last extended deadline, the provider would have to obtain sufficient renewable energy credits to meet the renewable portfolio standard but would be prohibited from recovering the cost of obtaining these credits from its ratepayers.

Severability. The act to be created by the House Bill 5549 would also be severable—that is, if any portion were later invalidated by a court, remaining sections would continue in effect.

Definitions. Note: Both bills contain definition sections. Except where indicated, the following definitions are contained in both bills:

**"Biomass"** would mean "any organic matter than can be converted to usable fuel for the production of energy and is available on a renewable basis" including:

- Agricultural crops and crop wastes.
- Wood and wood wastes, including wood product and paper processing.
- Animal wastes.
- Municipal wastewater sludge.
- Aquatic plants.
- Food production and processing waste.
- Municipal solid waste. [House Bill 5548 only]

**"Electric Utility"** would mean a person, partnership, corporation, association, or other legal entity whose transmission or distribution of electricity is regulated under specified laws concerning transmission and the Customer Choice and Electricity Reliability Act. [House Bill 5548 only]

**"Installed capacity"** would mean "the total amount of electricity a renewable energy system can generate in one hour at full load." [House Bill 5548 only]

**"Portfolio standard"** would mean "the minimum percentage of a provider's total annual retail kilowatt hour electricity sales in [Michigan] that is required to be produced from a renewable energy resource."

**"Provider"** would mean "any person that is in the business of selling electricity to retail customers" in Michigan, including:

- Any person or entity whose sale of electricity to retail customers is regulated by the PSC.
- A municipal electric provider.
- A cooperative electric provider.
- An alternative energy supplier.
- An independent investor-owned electric utility.

**"Renewable energy"** would mean "electricity produced using a renewable energy resource."

**"Renewable energy contract"** would mean "a contract to acquire renewable energy and the associated renewable energy credits from one or more renewable energy systems."

**"Renewable energy credit"** would mean "a certified credit...equal to 1 megawatt hour of generated renewable energy."

**"Renewable energy resource"** would mean any of the following:

- Biomass (see definition above).
- Geothermal.
- Solar thermal.
- Photovoltaic cells and panels.
- Industrial cogeneration "where an integrated unit generates power and either cools, heats, or controls humidity in a building or provides heating, drying, or chilling for an industrial process not including electricity generation."
- An incinerator (provided that it was brought into service before the effective date of the bill and that it complies with all federal and state environmental regulations).
- Wind.
- Hydroelectric from existing facilities or new facilities using existing dams unless those dams are subsequently modified to increase their holding capacity or further restrict water flow or in a manner that does not fully incorporate best environmental practices.
- Hydroelectric from pumped storage hydroelectric facilities to the extent the water was pumped using energy from renewable energy resources.
- Landfill gas.

**"Renewable energy resource"** would *not* include "the burning or heating of tires, garbage, landscape waste, construction or demolition debris, or general household, institutional, commercial, office, or industrial lunchroom waste."

**"Terms and conditions"** would include "the price that a provider of electric service is to pay to acquire electricity and the associated renewable energy credits under a renewable energy contract along with other contract provisions." [House Bill 5548 only]

**FISCAL IMPACT:**

These bills are tie-barred to House Bills 5520-5525 (and to two other bills). That group of six bills is expected to require the addition of 25 to 30 staff to the Michigan Public Service Commission to administer the new programs and standards and the resulting caseload. The cost of this additional staff is estimated to be \$1.5 million to \$1.8 million, assuming that this many staff can be added to the existing MPSC office space. This is a preliminary analysis.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.