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House Bill 5525 (Substitute H-6 as passed by the House)
Sponsor: Representative Kathy Angerer
House Committee: Energy and Technology
Senate Committee: Energy Policy and Public Utilities

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CONTENT

The bill would create the "Energy Efficient Michigan Act" to do the following:

- Require an electric or natural gas utility to file biennially with the Public Service Commission (PSC) an energy efficiency plan that proposed a set of energy efficiency programs for each customer class.
- Require an energy efficiency plan to provide partial funding for a sales tax rebate program for energy-efficient appliances, and provide that the utility could recover that funding.
- Require a utility's energy efficiency programs to meet minimum efficiency performance standards.
- Allow a utility that exceeded the performance standards to carry forward the excess savings to the next year or receive a financial incentive.
- Allow a utility with a maximum of 200,000 customers to petition the PSC to establish alternative energy efficiency performance standards.
- Require the PSC to allow a utility that undertook approved energy efficiency programs to recover the prudent and reasonable costs of implementing them.
- Allow the PSC to authorize a utility to capitalize certain implementation costs.
- Allow a utility to receive a financial incentive for implementing an energy efficiency plan using products or services of companies headquartered in Michigan.
- Require the PSC to elect a qualified nonprofit organization to serve as energy efficiency program administrator, and allow a utility to make payments to the administrator in lieu of implementing an energy efficiency plan.
- Require the PSC to investigate violations of the proposed Act and impose sanctions if it determined that a violation was the result of a lack of good faith effort by the utility.
- Allow a utility that failed to meet a performance standard in a particular year to achieve additional energy savings in following years.
- Allow the Attorney General or any customer of a municipally owned utility or member of a member-regulated cooperative electric utility to commence a civil action for the utility's failure to comply with certain requirements.
- Allow a "large customer" to submit to the PSC a plan for a self-directed energy efficiency program.
- Require the PSC to promote load management in appropriate circumstances.
- Require the PSC to report to the Legislature every two years on the progress and results of the implementation of the energy efficiency programs, as well as legislative recommendations.

The bill is tie-barred to House Bills 5383, 5524, 5548, 5549, and 5972 through 5977. House Bill 5383 (H-1) would create the "Electric Cooperative Member Regulation Act" to prescribe procedures by which a cooperative electric utility could choose to become member-regulated. House Bill 5524 (H-3) would amend Public Act 3 of 1939, the PSC law, to revise PSC procedures with regard to utility rate filings and amend provisions related to service by alternative electric suppliers (AESs). House Bills 5548 (H-4) and 5549 (H-3) would create the "Renewable Energy Portfolio Act" to require retail electric service providers to achieve a renewable energy portfolio. House Bills 5972 (H-1) through 5976 (H-1) would amend the Michigan Business Tax (MBT) Act to allow one manufacturer of polycrystalline silicon for solar cells and semiconductor microchips that constructed and operated a new facility in Michigan to claim an MBT credit based on electricity costs. House Bill 5977 (H-1) would amend the Michigan Economic Growth Authority Act to allow the Authority to grant the proposed MBT credit and an MBT credit under Public Acts 88 and 92 of 2008.

House Bill 5525 (H-6) is described below in further detail.

Energy Efficiency Plan

Within 60 days after the bill took effect, the PSC would have to issue a temporary order specifying the procedure for a utility to develop and submit an energy efficiency plan to meet energy efficiency performance standards (described below). Pursuant to the Administrative Procedures Act (APA), the PSC would have to promulgate rules specifying the procedure. Within 120 days after the bill took effect and biennially after that, a utility would have to file an energy efficiency plan with the PSC.

("Energy efficiency" would mean a decrease in the consumption of electricity or natural gas achieved through measures or programs that target customer behavior, equipment, devices, or materials without reducing the quality of energy services. The term would not include load management.

Except as otherwise provided, "utility" would mean an electric utility or a natural gas utility. An "electric utility" would be an entity whose transmission or distribution of

electricity is regulated by the PSC. The term would not include a municipally owned utility, a cooperative electricity that elected to become member-regulated, an affiliated transmission company, or an independent transmission company.

"Natural gas utility" would mean an investor-owned business engaged in the sale and distribution of natural gas within this State whose rates are regulated by the PSC.)

An energy efficiency plan would have to propose a set of energy efficiency programs that included offerings for each customer class, including low-income residential. The PSC would have to give utilities flexibility to tailor the relative amount of effort devoted to each customer class based on the specific characteristics of their service territory.

Additionally, an energy efficiency plan would have to do all of the following:

- Specify necessary funding levels.
- Demonstrate that the proposed programs and funding were sufficient to ensure the achievement of applicable energy efficiency performance standards.
- Demonstrate that the utility's energy efficiency programs, excluding program offerings to low-income residential, collectively would be cost-effective.
- Include a process for obtaining an independent expert evaluation (which would be subject to public review and PSC oversight) of the actual energy efficiency programs to verify the incremental energy savings from each program.
- Allow for the coordination of energy efficiency programs with the programs of other utilities under the direction of the PSC (as described below).
- Include a plan for the practical and effective administration of the proposed programs.

The PSC would have to give utilities flexibility in designing their programs and administrative approach. A utility's energy efficiency programs could be administered by the utility, alone or jointly with other utilities, by a State agency, or by an appropriate experienced nonprofit organization selected after a competitive bid process.

Also, an energy efficiency plan would have to provide funding equal to 1% of the utility's total program spending each year to fund partially a rebate program under the General Sales Tax Act for appliances that met or exceeded energy efficiency guidelines developed by the U.S. Environmental Protection Agency and the U.S. Department of Energy. For the purposes of the proposed Act, all utility expenditures under this provision would have to be considered reasonable. They would have to be recovered by the utility, and be considered to save energy cost effectively and in the amount of 1% of the applicable energy efficiency performance standards.

An energy efficiency plan could provide for the utility to facilitate third-party loans to customers to finance energy efficiency measures.

Within 120 days after receiving a plan from a utility and after an opportunity for public comment, the PSC would have to approve the plan, approve it with changes that the utility consented to, or reject it. If the PSC rejected the plan, it would have to state the reasons for its action. Within 30 days after the PSC rejected a plan, the utility would have to submit a revised plan that addressed the cited reasons for rejection. Within 30 days after receiving a revised plan and after an opportunity for public comment, the PSC would have to approve the plan, approve it with changes that the utility consented to, or reject it. If the PSC rejected the revised plan, it would have to state the reasons. The procedure for rejected plans would have to be repeated until a revised plan was approved or approved with changes consented to by the utility. The PSC's action under these provisions would not affect the applicability of the requirements pertaining to the performance standards.

The PSC would have to coordinate energy efficiency programs among consenting utilities to maximize energy savings on a statewide basis. Money spent by a utility to comply with the proposed Act, however, could be used to fund efficiency programs only in that utility's service territory.

Energy Efficiency Performance Standards

Except as provided below for alternative performance standards, an electric utility's

energy efficiency programs collectively would have to meet the following minimum energy efficiency performance standards:

- Biennial incremental energy savings in 2008-2009 equivalent to 0.3% of total annual weather-normalized retail electricity sales in kilowatt hours (KWh) in 2007.
- Annual incremental energy savings in 2010 equivalent to 0.5% of total annual weather-normalized retail electricity sales in KWh in 2009.
- Annual incremental energy savings in 2011 equivalent to 0.75% of total annual weather-normalized retail electricity sales in KWh in 2010.
- Annual incremental energy savings in 2012 and each year after that equivalent to 1.0% of total annual weather-normalized retail electricity sales in KWh in the preceding year.

A natural gas utility would have to meet the following minimum performance standards using energy efficiency programs:

- Biennial incremental energy savings in 2008-2009 equivalent to 0.1% of total annual weather-normalized retail natural gas sales in therms in 2007.
- Annual incremental energy savings in 2010 equivalent to 0.25% of total annual weather-normalized retail natural gas sales in therms in 2009.
- Annual incremental energy savings in 2011 equivalent to 0.5% of total annual weather-normalized retail natural gas sales in therms in 2010.
- Annual incremental energy savings in 2012 and each year after that equivalent to 0.75% of total annual weather-normalized retail natural gas sales in therms in the preceding year.

If a utility's incremental energy savings in the 2008-2009 biennium or any year after that exceeded the applicable performance standard, those savings could be carried forward and credited to the next year's standard. The amount of the savings carried forward, however, could not exceed one-third of the next year's standard. Savings could not be carried forward if, for its performance during the same biennium or year, the utility accepted a financial incentive (as described below).

Incremental energy savings for the 2008-2009 biennium or any year after that would have to be determined for a utility by adding the energy savings expected to be achieved during a one-year period by energy efficiency measures installed during that biennium or year under any energy efficiency programs consistent with the utility's energy efficiency plan.

Alternative Performance Standards

These provisions would apply to utilities that both served a maximum of 200,000 Michigan customers and had average electric rates for residential customers using 1,000 KWh per month that were less than 75% of the average electric rates for those customers for all electric utilities in the State, according to the January 1, 2007, "Comparison of Average Rates for MPSC-Regulated Electric Utilities in Michigan", compiled by the Commission.

Beginning two years after such a utility began implementation of its energy efficiency plan, it could petition the PSC to establish alternative energy efficiency performance standards. The petition would have to identify the efforts the utility had taken to meet the performance standards and demonstrate why they could not be met reasonably with energy efficiency programs that collectively were cost-effective. If the PSC found that the petition met the proposed Act's requirements, it would have to revise the performance standards to a level that could be met reasonably with energy efficiency programs that were cost-effective collectively.

Recovery of Costs

The PSC would have to allow a utility that undertook approved energy efficiency programs to recover the actual costs of implementing them. Costs exceeding the overall funding levels specified in the energy efficiency plan, however, would not be recoverable unless they were prudent and reasonable. Costs would have to be recovered from all gas customers and from residential electric customers by volumetric charges, from all other metered electric customers by per-meter charges, and from unmetered electric customers by an appropriate charge, applied to utility bills. For the electric primary customer rate class customers of electric utilities and large

customers of natural gas utilities, the cost recovery could not exceed 1.7% of utility revenue.

Upon petition by a utility and after an opportunity for public comment, the PSC could authorize the utility to capitalize certain costs of implementing approved energy efficiency programs. To the extent feasible, charges collected from a particular customer rate class would have to be devoted to programs and services for that rate class. The established funding level for the sales tax rebate and low-income residential programs, however, would have to be provided from each customer rate class in proportion to its funding of the utility's total energy efficiency programs. Charges would have to be applied to distribution customers regardless of the source of their electricity or natural gas supply.

A natural gas utility that spent a minimum of 0.5% of total natural gas revenue, including natural gas commodity costs, per year on PSC-approved energy efficiency programs would have to be allowed to implement a symmetrical revenue decoupling true-up mechanism that adjusted for sales volumes that were above or below forecasted levels.

Spending on Energy Efficiency Programs

A natural gas or electric utility could not spend more than the following percentage of total utility sales revenue, including electricity or natural gas commodity costs, in any year on energy efficiency programs without specific approval from the PSC:

- In 2009, 0.75% of total utility sales revenue for 2007.
- In 2010, 1.0% of total utility sales revenue for 2008.
- In 2011, 1.5% of total utility sales revenue for 2009.
- In 2012 and each year after that, 2.0% of total utility sales revenue for the preceding year.

Financial Incentives

If a utility exceeded the energy performance standards or alternative standards during the 2008-2009 biennium or any year after that, as documented through a PSC-approved program evaluation, the Commission, upon application and after a

hearing, could allow the utility to receive a financial incentive for that performance. The incentive mechanism would have to be proposed in the utility's energy efficiency plan and could include a methodology whereby the incentive was calculated as a percentage of the net savings customers received from the energy efficiency programs. As a general principle, the highest incentives would have to be associated with success that demonstrated extraordinary benefits to customers. Any financial incentive would have to be in an amount up to 15% of the utility's actual energy efficiency program expenditures for that year.

If a utility implemented an energy efficiency plan using products or services of companies headquartered in Michigan, as documented through a Commission-approved program evaluation, the PSC, upon application and after a hearing, could allow the utility to receive a financial incentive. The incentive would have to be in amount up to 2.0% of the utility's actual energy efficiency program expenditures for that year.

If approved, a financial incentive would have to be added to the total energy efficiency program costs to be recovered by the utility. An incentive would be subject to the requirement that the utility's energy efficiency programs, excluding program offerings to low-income residential customers, collectively were cost-effective.

Payments to Program Administrator

The PSC would have to elect a qualified nonprofit organization to serve as energy efficiency program administrator through a competitive bid process. The PSC would have to arrange for a biennial independent audit of the program administrator.

Money paid to the program administrator and not spent by the administrator that year would have to remain available for expenditure the following year, subject to provisions described below.

This requirement would not apply to a utility that paid the following minimum percentage of total utility sales revenue, including electricity or natural gas commodity costs, each year to an independent energy efficiency program administrator selected by the PSC:

- In 2009, 0.75% of total utility sales revenue for 2007.
- In 2010, 1.0% of total utility sales revenue for 2008.
- In 2011, 1.5% of total utility sales revenue for 2009.
- In 2012 and each year after that, 2.0% of total utility sales revenue for the preceding year.

Money received from such a utility by the program administrator would have to be used to administer energy efficiency programs for the utility. Money unspent in any given year would have to be carried forward to be spent in the subsequent year.

The PSC would have to allow a utility that complied with the minimum payments to a program administrator to recover the amount of money transferred. This cost would have to be recovered from residential customers by volumetric charges, from all other metered customers by per-meter charges, and from unmetered customers by an appropriate charge, applied to utility bills.

Money paid by a utility to the program administrator could be used to fund programs only in that utility's service territory. To the extent feasible, charges collected from a particular customer rate class and paid to the program administrator would have to be devoted to programs and services for that rate class.

Compliance Monitoring & Sanctions

The PSC would have to monitor utility performance to ensure compliance with the requirements of the proposed Act. If a utility violated the Act, the PSC would have to investigate the reasons for the violation. If the PSC determined that the violation was a result of a lack of good faith effort by the utility, it would have to impose regulatory sanctions on the utility. The sanctions could include a reduction in the authorized rate of return.

Failure to Meet Performance Standards

If a utility failed to meet the applicable energy performance standard in any particular year, it could achieve additional energy savings, equal to the shortfall, within the following two years, and the additional energy savings would have to be added to the performance standards that applied in

those years. Upon the petition of the utility, however, the PSC would have to waive or reduce the requirement to achieve additional energy savings if it determined that the performance standards could not be met reasonably with energy efficiency programs that collectively were cost-effective.

Municipally Owned Utilities & Member-Regulated Cooperatives

A municipally owned utility or a cooperative electric utility that had elected to become member-regulated under the Electric Cooperative Member-Regulation Act (which House Bill 5383 (H-1) would create) would have to comply with the bill's requirement to file a biennial energy efficiency plan with the PSC. The Commission could recommend changes to the energy efficiency plan of a municipally owned utility or cooperative electric utility that had elected to become member-regulated.

A municipally owned utility or a cooperative electric utility that had elected to become member-regulated would have to comply with the requirements of at least one of the following:

- The performance standards or, in the case of a shortfall, the requirement to achieve additional savings in subsequent years.
- The provisions regarding payments to the PSC-chosen program administrator.

The Attorney General or any customer of a municipally owned utility or member of a cooperative electric utility that had elected to become member-regulated could commence a civil action for injunctive relief against the utility if it failed to comply with the applicable requirements.

An action would have to be commenced in the circuit court for the circuit in which the alleged violation occurred. An action could not be filed unless the plaintiff had given the utility's governing body and the PSC at least 60 days' written notice of the intent to sue, the basis for the suit, and the relief sought. Within 30 days after it received written notice, the governing body and the plaintiff would have to meet and make a good faith attempt to determine if a credible basis for the action existed. If both parties agreed that the basis was credible, the utility would have to take all reasonable steps necessary

to comply with applicable requirements of the proposed Act within 90 days of the meeting.

In issuing a final order in an action, the court could award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party.

By one year after the bill took effect, and every two years after that, a municipally owned utility or cooperative electric utility that had elected to become member-regulated would have to report to its customers or members, the PSC, and its governing body its expenditures on energy efficiency programs during the preceding calendar year, details of each program, and the overall effectiveness of each program.

Large Customers

A large customer could submit to the PSC a plan for a self-directed energy efficiency program. If the customer plan met the bill's requirements, the PSC would have to approve it. After the plan was approved, the large customer would be exempt from charges it otherwise would incur under the bill as long as the plan's goals were achieved, the plan had not expired and was still being implemented, or the plan had been succeeded by a new approved plan.

(With respect to a natural gas utility, "large customer" would mean a customer at a single premises with an annual natural gas billing demand greater than 100,000 decatherms. With respect to an electric utility, the term would mean either of the following:

- A customer at a single premises with an annual electric billing greater than the following: five megawatts, until three years after the utility began implementation of its energy efficiency plan; or two megawatts, beginning three years after implementation of the plan.
- A customer with an aggregate annual electric billing demand of at least 10 megawatts at all facilities within that utility's service territory.)

The plan would have to be an annual or multiyear plan for an ongoing program. If the customer wished, the plan could document that the company achieved over

the previous years the equivalent of the proposed Act's energy efficiency goals. The plan would have to use the Act's definition of "energy efficiency". Energy efficiency would have to be calculated based on weather-normalized retail sales.

The plan would have to apply to all premises owned by the customer and its subsidiaries in the relevant utility's service territory. All owned premises in the large customer plan would have to be grouped by the serving utility. If the aggregate energy efficiency reductions of the plan met or exceeded the proposed Act's goals, then all premises covered by the plan would be exempt from the energy efficiency program charges.

A large customer would have to submit to the PSC every two years verification of the completion of the plan and sufficient information to determine if its annual goals had been achieved. Along with submission of the verification, the customer also would have to submit an updated plan that outlined how the customer intended to continue to meet the Act's goals.

If the PSC determined, after providing an opportunity for an evidentiary hearing, that a large customer failed to complete an energy efficiency project for which it obtained Commission approval, the customer would have to pay the relevant utility the amount of any charges from which it was exempted for that project, prorated to reflect any energy savings that were achieved by it. The utility would have to use the payment for its energy efficiency program.

A facility of a large customer that was included in its plan would be prohibited from participating in the relevant utility's energy efficiency program.

Upon a large customer's request, all submissions to the PSC by the customer would be confidential and exempt from disclosure under the Freedom of Information Act.

A knowledgeable official of a large customer would have to submit its plan along with an affidavit that the information in the plan was true and correct to the best of the official's knowledge and behalf.

A large customer's projected energy savings under a PSC-approved energy efficiency project or plan would have to count as the relevant utility's incremental energy savings under the performance standards or alternative standards, as applicable.

A large customer would have to pay to the PSC costs the Commission incurred in conjunction with a proposed large customer plan.

Load Management

The PSC would have to promote load management in appropriate circumstances, including allowing rate recovery for prudent load management expenditures.

("Load management" would mean measures or programs that decrease peak electricity demands or shift demands from peak to off-peak periods.)

Statements to Customers

Annually, a utility would have to submit to its customers in their bills a statement specifying the reduction in electricity or natural gas usage in Michigan attributable to the proposed Act during the previous year. The statement also would have to encourage each customer to compare the customer's energy usage during the current and preceding year. The statement would have to indicate that it was being made to comply with the Act's requirements. A cooperative electric utility required to submit a statement to its members under these provisions would have to submit it in a periodical issued by an association of rural electric cooperatives.

PSC Reports

By one year after the bill took effect, and every two years after that, the PSC would have to report to the Legislature on the progress and results from the implementation of the energy efficiency programs required to be implemented under the proposed Act, including the net benefit to customers. The PSC would have to make copies of the report available for distribution to the public. The Department of Labor and Economic Growth would have to post the report on its website.

By March 31 of every odd-numbered year, beginning in 2009, the PSC would have to submit to the Legislature a report that evaluated the proposed Act and made any recommendations the PSC had for amendments to it.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would increase the responsibilities of the Public Service Commission. Additional staff would be required to implement the new programs that the bill would establish. The PSC has estimated that this would require an additional 9.0 full-time equivalent employees (FTEs). The estimated cost of these positions is approximately \$864,000 annually. The administrative costs of the PSC are appropriated in the budget for the Department of Labor and Economic Growth and are funded by assessments paid by public utilities regulated by the Commission. Municipally owned utilities under current law are not regulated by the PSC and are specifically excluded from paying public utility assessments.

The bill is tie-barred to House Bill 5524. House Bill 5524 (H-3) would provide the PSC with an additional 25.0 full-time equivalent employees (FTEs) and a supplemental appropriation of \$1.0 million in FY 2007-08 from public utility assessments. The cost of 25.0 FTEs on an annual basis is approximately \$2.4 million. The PSC has estimated that the combined staffing requirements of House Bills 5524 (H-3), 5525 (H-6), 5548 (H-4), and 5549 (H-3) are 50.0 FTEs. These positions would cost approximately \$4.8 annually.

Under House Bill 5525 (H-6), municipally owned utilities would be subject to PSC regulations regarding energy efficiency plans and would be required to report to their members and the PSC the amount of their expenditures on energy efficiency programs. The municipally owned utilities would incur an unknown amount of additional costs to comply with these requirements.

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