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House Bill 5548 (Substitute H-4 as passed by the House)
House Bill 5549 (Substitute H-3 as passed by the House)
Sponsor: Representative Jeff Mayes (H.B. 5548)
Representative David Palsrok (H.B. 5549)
House Committee: Energy and Technology
Senate Committee: Energy Policy and Public Utilities

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CONTENT

The bills would create the "Renewable Energy Portfolio Act" to do the following:

-- Require electricity providers to achieve a renewable energy portfolio of at least 4% in 2012, 2013, and 2014, and at least 10% in 2015 and beyond, based on certified credits representing generated renewable energy.
-- Require providers to file with the Public Service Commission (PSC) proposed plans describing how they would meet this renewable energy portfolio standard.
-- Require the plans to include the expected incremental costs of complying with the standard for a 20-year period.
-- Require the plans of providers whose rates are regulated by the PSC to include a mechanism for the recovery of incremental costs of compliance within customer rates; and require other providers' plans to provide for cost allocation.
-- Require the PSC to approve or reject providers' renewable energy portfolio plans, and require the biennial review of plans.
-- Require providers to comply with the renewable energy portfolio standard by producing electricity from renewable energy sources, purchasing electricity through renewable energy contracts, or purchasing renewable energy credits apart from electricity.
-- Establish an allocation formula for a provider with 1.0 million or more retail customers in Michigan to obtain renewable energy credits necessary to meet its portfolio standard in 2015 and beyond.
-- Allow the PSC to extend the deadlines for complying with the portfolio standard.
-- Require the PSC to establish a renewable energy credit certification and tracking program, which could be contracted to and performed by a third party.
-- Require additional energy credits to be granted for electricity produced from solar power, renewable energy systems at peak demand time, or renewable energy systems constructed with equipment made in Michigan or using a workforce composed of State residents.
-- Allow a provider not to comply with the renewable energy portfolio standard if recovery of the cost of compliance would exceed certain rate impacts.
-- Prescribe the calculation of incremental costs of compliance for a rate-regulated provider.
-- Require the PSC to conduct an annual renewable cost reconciliation proceeding for each rate-regulated provider.

-- Prescribe remedies for providers that failed to meet the standard or comply with the Act.
-- Require providers to submit an annual report to the PSC, and require the PSC to report biennially to the Legislature.
-- Provide for the confidentiality of commercially or financially sensitive information filed with the PSC or a third party.

The bills are tie-barred to each other and to House Bills 5383, 5524, 5525, and 5972 through 5977, which are described briefly below. A detailed description of House Bills 5548 (H-4) and 5549 (H-3) follows.

PSC Implementation Order

House Bill 5548 (H-4) would require the PSC, within 60 days of the proposed Act's effective date, to issue a temporary order implementing the Act. The temporary order would have to include at least both of the following:

-- Formats of renewable energy portfolio plans for various categories of providers.
-- Guidelines for request for proposals (RFPs) under the Act.

Within one year after the Act's effective date, the PSC would have to promulgate rules to implement the Act.

The bills would define "provider" as any of the following (subject to provisions that would define the term as a provider whose rates are, or are not, regulated by the PSC):

-- Any person or entity that is regulated by the PSC for the purpose of selling electricity to retail customers in this State.
-- A municipally owned electric utility in this State.
-- A cooperative electric utility in this State.
-- An alternative electric supplier licensed in this State.

Renewable Energy Portfolio Plan – Regulated Rates

For the purpose of these provisions in House Bill 5548 (H-4), "provider" would mean a provider whose rates are regulated by the PSC.

Plan Submission & Approval. Within 90 days after the PSC issued a temporary order, each provider would have to file a proposed renewable energy portfolio plan with the Commission. The proposed plan would have to do all of the following:

-- Describe how the provider would meet the renewable energy portfolio standard.
-- Specify whether the number of megawatt hours (MWH) of electricity used in the calculation of the portfolio would be weather-normalized or based on a three-year running average (an option that could not be changed once approved by the PSC).
-- Include the expected incremental cost of compliance with the renewable portfolio standard for a 20-year period beginning when the PSC approved the plan.
-- Include a nonvolumetric mechanism for the recovery of the incremental costs of compliance within the provider's customer rates.

For a provider that was an electric utility with 1.0 million or more retail customers in this State as of January 1, 2008, the proposed plan also would have to describe the bidding process the provider would use (under provisions concerning contracts for the purchase of renewable energy credits). The description would have to include measures to be employed in the preparation of RFPs and the handling and evaluation of proposals received to ensure that any bidder that was an affiliate of the provider was not given a competitive advantage over any other bidder, and that each bidder, including an affiliate, was treated in a fair and nondiscriminatory manner.

The PSC would have to conduct a contested case hearing on a proposed plan pursuant to the Administrative Procedures Act (APA). If a renewable energy generator filed a petition to intervene as prescribed in the PSC's rules for interventions generally, the Commission would have to grant the petition. After the hearing and within 90 days after the proposed plan was filed with the PSC, the Commission would have to approve the plan, with any changes consented to by the provider, or reject it. A provider would not begin recovery of the incremental costs of compliance within its rates until the PSC had approved its plan.

("Incremental costs of compliance" would mean the net revenue required by a provider to comply with the renewable energy portfolio standard, calculated as provided in House Bill 5549 (H-3). "Renewable energy generator" would mean a person that, with its affiliates, has constructed or has owned and operated one or more renewable energy systems with combined gross generating capacity of at least 10 megawatts.)

Revenue Recovery Mechanism. A provider's approved plan would have to establish a nonvolumetric mechanism for the recovery of the incremental costs of compliance within the provider's customer rates. The revenue recovery mechanism could not result in rate impacts that exceeded the monthly maximum retail rate impacts specified in House Bill 5549 (H-3). A customer participating in a PSC-approved voluntary renewable energy program under an agreement in effect on the effective date of the proposed Act could not incur charges under the revenue recovery mechanism except to the extent those charges exceeded the charges the customer was incurring for the voluntary program. This limitation on charges would apply only during the term of the agreement, not including automatic renewals, or until one year after the Act's effective date, whichever was later.

Before entering into an agreement with a customer to participate in a PSC-approved voluntary renewable energy program and before the last automatic monthly renewal of such an agreement that would occur less than one year after the Act's effective date, a provider would have to notify the customer that the customer would be responsible for the full applicable charges under the revenue recovery mechanism as well as under the voluntary program.

If proposed by the provider in its plan, the revenue recovery mechanism would have to result in an accumulation of reserve funds in advance of expenditure and the creation of a regulatory liability that would accrue interest at the average short-term borrowing rate available to the provider during the appropriate period. Also, if proposed by the provider, the PSC would have to establish a minimum balance of accumulated reserve funds (as provided in House Bill 5549 (H-3) for modification of the revenue recovery mechanism if incremental costs of compliance exceeded it).

A revenue recovery mechanism would be subject to adjustment as provided in the bills.

Plan Review & Amendment. Every two years after initial approval of a renewable energy portfolio plan, the PSC would have to review the plan. The PSC would have to conduct a contested case hearing under the APA. A renewable energy generator could intervene as provided above. The annual renewable cost reconciliation for that year could be joined with the overall plan review in the same contested case hearing. After the hearing, the PSC would have to approve, with any changes consented to by the provider, or reject any proposed amendments to the plan.

If a provider proposed to amend its renewable energy portfolio plan at a time other than during the biennial review process, the provider would have to file the proposed amendment with the PSC. If the amendment would modify the revenue recovery mechanism, the PSC would have to conduct a contested case hearing, in which a renewable energy generator could intervene. The annual renewable cost reconciliation could be joined with the plan amendment in the same proceeding. After the hearing and within 90 days after the amendment was filed, the PSC would have to approve, with any changes consented to by the provider, or reject the amendment.

Renewable Energy Portfolio Plan – Nonregulated Rates

For the purpose of these provisions in House Bill 5548 (H-4), "provider" would mean a provider whose rates are not regulated by the PSC.

Plan Submission & Approval. Within 90 days after the PSC issued a temporary order, each provider would have to file a proposed renewable energy portfolio plan with the Commission. The proposed plan would have to meet all of the following:

-- Describe how the provider would meet the renewable energy portfolio standard.
-- Specify whether the number of MWH of electricity used in the calculation of the portfolio would be weather-normalized or

based on a three-year running average (an option that could not be changed once approved by the PSC).
-- Include the expected incremental cost of compliance with the standard for a 20-year period beginning when the PSC approved the plan.
-- Describe the manner in which the PSC would allocate costs.

The PSC would have to provide an opportunity for public comment on the proposed plan. This would not be required if the provider were a municipally owned electric utility and its governing body already had provided an opportunity for public comment and filed the comments, along with the plan, with the PSC. After the applicable opportunity for public comment and within 90 days after the proposed plan was filed, the PSC would have to approve the plan, with any changes consented to by the provider, or reject it. The provider could not begin recovery of the incremental costs of compliance within its rates until the PSC had approved its plan. If the provider were a municipally owned electric utility, however, it could begin recovery upon approval of its proposed plan by the utility's governing body.

Plan Review & Amendment. Every two years after initial approval of a renewable energy portfolio plan, the PSC would have to review it. The PSC would have to provide an opportunity for public comment unless the provider were a municipally owned electric utility and its governing body already had provided an opportunity for public comment and filed the comments with the Commission. After the applicable opportunity for public comment, the PSC would have to approve, with any changes consented to by the provider, or reject any proposed amendments.

If a provider proposed to amend its plan at a time other than during the biennial review, it would have to file the proposed amendment with the PSC. The Commission would have to provide an opportunity for public comment unless the provider were a municipally owned electric utility and its governing body already had provided an opportunity for public comment and filed the comments with the PSC. After the opportunity for public comment and within 90 days after the amendment was filed, the PSC would have to approve the amendment, with any changes consented to by the provider, or reject it.

Distribution Territory

House Bill 5548 (H-4) would require the PSC to ensure that plans submitted by providers serving the same distribution territory did not create an unfair competitive advantage for any of those providers.

Portfolio Standard

House Bill 5548 (H-4) would require each provider to do all of the following (subject to provisions in House Bill 5549 (H-3) concerning deadline extensions and compliance exceptions):

-- Achieve a renewable energy portfolio of at least 4% in each of years 2012, 2013, and 2014.
-- Achieve a renewable energy portfolio of at least 10% in 2015.
-- In 2016 and each subsequent year, maintain a renewable energy portfolio that consisted of at least the same number of renewable energy credits as required in 2015.

For the years 2012 through 2015, "renewable energy portfolio" would mean the percentage determined by the following calculation for a given provider and year:

-- Determine the number of renewable energy credits used to comply with the proposed Act during that year.
-- Divide by one of the following at the provider's option as specified in its renewable energy portfolio plan: 1) the number of weather-normalized MWH of electricity sold by the provider during the previous year to retail customers in this State; or 2) the average number of MWH of electricity sold by the provider annually during the previous three years to retail customers in this State.
-- Multiply by 100.

For 2016 and subsequent years, "renewable energy portfolio" would mean the number of renewable energy credits used to comply with the Act during that year.

"Renewable energy credit" would mean a credit certified under the Act representing generated renewable energy. "Renewable

energy" would mean electricity generated using a renewable energy system.

"Renewable energy system" would mean a facility, electricity generation system, or integrated set of electricity generation systems that use one or more renewable energy resources to generate electricity. The term would not include either of the following:

-- A hydroelectric facility that uses a dam constructed after the Act's effective date unless the dam is a repair or replacement of one in existence on that date.
-- An incinerator unless it is a municipal solid waste incinerator as defined in the Natural Resources and Environmental Protection Act, and was brought into service before the effective date of the proposed Act.

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

-- Biomass.
-- Solar energy.
-- Wind energy.
-- Kinetic energy of moving water, including waves, tides, or currents; water released through a dam; and water released from a pumped storage facility to the extent the water was pumped into the facility using renewable energy.
-- Hydrogen synthesis gas produced from the plasma gasification of industrial byproducts or electronic waste.
-- Geothermal energy.
-- Industrial thermal energy.
-- Municipal solid waste, including landfilled municipal solid waste that produces landfill gas.

"Biomass" would mean any organic matter that is not derived from fossil fuels, that can be converted to usable fuel for the production of energy, and that is available on a renewable basis, including agricultural crops and crop wastes; short-rotation energy crops; herbaceous plants; trees and wood, but only if derived from sustainably managed forests or procurement systems; paper and pulp products; precommercial wood thinning waste, brush, or yard waste; wood waste and residue from the processing of wood products or paper; animal waste; wastewater sludge or sewage; aquatic plants; food production and processing waste; and organic byproducts from the production of biofuels.

"Electronic waste" would mean any of the following discarded items: a computer, including a monitor or peripheral; a television; a telephone; a personal digital assistant device; a radio; a compact disc or digital video disc or a CD or DVD player; and other similar items as determined by the PSC.

Deadline Extensions

House Bill 5549 (H-3) would allow the PSC, upon petition by a provider and for good cause, to grant two extensions of the renewable energy portfolio standard deadlines. Each extension could be for up to one year. Good cause would include the provider's inability, as determined by the PSC, to meet the portfolio standard because of a renewable energy system feasibility limitation, including renewable energy system site requirements, zoning, siting, land use issues, permits, including environmental permits, a certificate of need process under the PSC law, or any other necessary governmental approvals that effectively limited availability of renewable energy systems, if the provider had exercised reasonable diligence in securing the necessary governmental approvals.

A feasibility limitation also would include any of the following:

-- Equipment cost or availability issues, including electrical equipment or renewable energy system component shortages or costs that effectively limited availability of renewable energy systems.
-- Cost, availability, or time requirements for electric transmission and interconnection.
-- Projected or actual unfavorable electric system reliability or operational impacts.
-- Labor shortages that effectively limited availability of renewable energy systems.

If two extensions of the 2015 portfolio standard deadline had been granted, upon subsequent petition by a provider at least six months before the second extended deadline expired, the provider would be considered to be in compliance with the proposed Act at a renewable energy portfolio determined by the PSC to be attainable by that provider.

Any provider that made a good faith effort to spend the full amount of incremental costs of compliance as outlined in its approved renewable energy portfolio plan, revised, subject to extensions, or subject to revisions under renewable cost reconciliation, would have to be considered in compliance with the Act.

Compliance with Standard: Energy Credits

The following provisions are contained in House Bill 5548 (H-4).

Obtaining Renewable Energy Credits. A provider would have to comply with the renewable energy portfolio standard by obtaining renewable energy credits by any of the following means:

-- Producing electricity from renewable energy systems.
-- Purchasing electricity through a renewable energy contract.
-- Purchasing renewable energy credits apart from electricity.

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

Provider with 1.0 Million or More Customers. A provider that was an electric utility with at least 1.0 million retail customers in Michigan as of January 1, 2008, would have to obtain the renewable energy credits necessary to meet its portfolio standard in 2015 and beyond as described below.

At the provider's option, up to 33-1/3% of the credits would be from renewable energy systems that were developed and owned by the provider. The provider would have to bid competitively any contracts for engineering, procurement, or construction of any new renewable energy systems described in this provision.

At the provider's option, up to 33-1/3% of the credits would be from renewable energy systems that were developed by one or more third parties pursuant to a contract with the provider, under which the ownership of the systems could be transferred to the provider, but not before the systems began commercial operation. A transfer of ownership resulting from such a contract would not count toward the new renewable energy system ownership limit under the previous provision. Any such contract would have to be executed after a competitive bidding process conducted under guidelines issued by the PSC. An affiliate of the provider could submit a proposal in response to an RFP, subject to the code of conduct that applies to all electric utilities under the PSC law, and the sanctions for violating it.

At least 33-1/3% of the credits would have to be from renewable energy contracts that did not require transfer of ownership of the applicable renewable energy system to the provider or from contracts for the purchase of renewable energy credits alone. A renewable energy contract or a contract for the purchase of credits under this provision would have to be executed after a competitive bidding process conducted according to PSC guidelines. An affiliate of the provider could submit a proposal in response to an RFP, subject to the code of conduct and sanctions for violations. Ownership of renewable energy systems by affiliates of the provider resulting from these renewable energy contracts would not count toward the provider's new renewable energy system ownership limit described above. If a provider selected a bid other than the least price conforming bid from a qualified bidder, the provider would have to give prompt notice to the PSC, which would have to determine whether the provider had good cause for selecting that bid. If the PSC determined that the provider did not have good cause, it would have to disapprove the contract.

This allocation formula would not apply to renewable energy credits that were transferred to the provider under provisions regarding agreements under PURPA (the Federal Public Utility Regulatory Policies Act) (described below).

The allocation formula also would not apply to renewable energy credits that were produced or obtained by the provider from renewable energy systems for which recovery in electric rates was approved as of the effective date of the proposed Act, including credits resulting from biomass co-firing of, or use of industrial thermal energy in, electric generation facilities in existence on that date, except to the extent the number of megawatt hours of electricity

generated annually by such energy exceeded the number of MWH generated during the one-year period immediately before the effective date.

A provider could submit a contract entered into under these provisions to the PSC for review and approval. If the PSC approved the contract, it would have to be considered consistent with the provider's renewable energy portfolio plan.

System Location; Source of Credits; Transfer

Under House Bill 5548 (H-4), a renewable energy system that was the source of renewable energy credits used to satisfy the portfolio standard would have to be located either outside of Michigan in the retail electric customer service territory of any provider that was not an alternative electric supplier, or anywhere in this State. For this purpose, retail electric customer service territories would have to be considered to be those recognized by the PSC on January 1, 2008, together with any expansions of retail electric customer service territory that the PSC recognized after that date for purposes of the PSC law. The Commission also could expand a service territory for purposes of this provision if a lack of transmission lines limited the ability to obtain sufficient renewable energy from renewable energy systems that met this location requirement.

The location requirement would not apply if the renewable energy system were a wind turbine or wind farm and the electricity produced from the wind, or the renewable energy credits associated with that electricity, were being purchased under a contract in effect on January 1, 2008. If a provider used electricity and associated renewable energy credits purchased under such a contract to meet renewable energy portfolio requirements established after January 1, 2008, by the legislature of the state where the wind turbine or wind farm was located, the provider could obtain, for the purpose of meeting the portfolio standard, by any means authorized above (for any provider) up to the same number of replacement renewable energy credits from any other wind farm or wind farms located in that state.

The location requirement also would not apply if any of the following were met:

-- The renewable energy system was a wind turbine or wind farm that was under construction and owned by a provider on January 1, 2008.
-- The renewable energy system was a wind farm that had at least one wind turbine meeting the location requirement, and the remaining turbines were within 15 miles of a turbine that was part of that wind farm and that met the location requirement, as determined by the PSC.
-- Before January 1, 2008, a provider that served 75,000 or fewer retail electric customers in Michigan applied for a certificate of authority for the renewable energy system with a state regulatory commission in another state that also was served by that provider, although credits could not be granted for electricity generated using more than 10.0 megawatts of nameplate capacity of the renewable energy system.
-- Electricity generated from the renewable energy system was sold by a nonprofit entity located in Indiana or Wisconsin to a municipally owned electric utility in Michigan or a cooperative electric utility in this State under a contract in effect on January 1, 2008, and the electricity was not being used to meet another state's portfolio standard for renewable energy.
-- Electricity generated from the renewable energy system was sold by a nonprofit entity located in Ohio to a municipally owned electric utility in Michigan under a contract approved by resolution of the utility's governing body by January 1, 2008, and the electricity was not being used to meet another state's renewable energy portfolio standard; however, credits would not be granted for electricity generated using more than 13.4 megawatts of nameplate capacity of the renewable energy system.

Renewable energy from industrial cogeneration could not constitute more than 10.0% of the renewable energy portfolio required by the proposed Act.

If a provider obtained renewable energy for resale to retail or wholesale customers under an agreement under PURPA, ownership of the associated renewable energy credits would have to be as provided by the agreement. If the agreement did not provide for ownership of the credits, then, except to the extent that a separate agreement governed, for the duration of the

PURPA agreement, for every five renewable energy credits associated with the renewable energy, ownership of four of the credits would have to be considered transferred to the provider with the renewable energy, and ownership of one credit would have to be considered to remain with the qualifying cogeneration facility or qualifying small power production facility. If a separate agreement in effect on January 1, 2008, provided for the ownership of the renewable attributes of the generated electricity, the separate agreement would govern until January 1, 2013, or until it expired, whichever occurred first.

If an investor-owned electric utility with fewer than 20,000 customers, a municipally owned electric utility, or a cooperative electric utility obtained all or substantially all of its electricity for resale under a power purchase agreement or agreements in effect on the effective date of the proposed Act, ownership of any associated renewable credits would have to be considered transferred to the provider purchasing the electricity. The number of credits associated with the purchased electricity would have to be determined as described in the bill. These provisions would not apply unless the seller and the provider purchasing the electricity agreed that that they would apply, or, for a seller that was an independent investor-owned electric utility whose retail electric rates were regulated by the PSC, the Commission reduced the number of renewable energy credits required under the portfolio standard for the seller by the number of credits to be transferred to the provider purchasing the electricity.

Rate-Regulated Provider: Contract

Under House Bill 5548 (H-4), if a provider whose rates are regulated by the PSC entered into a renewable energy contract or a contract to purchase renewable energy credits alone, after the proposed Act's effective date, the Commission would have to determine whether the contract provided reasonable terms and conditions that would ensure a favorable economic outcome for the provider and its customers. In making this determination, the PSC would have to consider the contract price and term. If the contract were a renewable energy contract, the PSC also would have to consider at least all of the following:

-- The cost to the provider and its customers of the impacts of accounting treatment of debt and associated equity requirements imputed by credit rating agencies and lenders attributable to the contract.
-- The life-cycle cost of the contract to the provider and customers, including costs, after the contract expired, of maintaining the same renewable energy output in MWH, whether by purchases from the marketplace, by extension or renewal of the contract, or by the providers' purchasing the renewable energy system and continuing its operation.
-- Provider and customer price and cost risks if the renewable energy systems supporting the contract moved from contracted pricing to market-based pricing after the contract expired.

Credit Certification & Tracking Program

House Bill 5548 (H-4) would require the PSC to establish a renewable energy credit certification and tracking program, which could be contracted to and performed by a third party through a system of competitive bidding. The program would have to include all of the following:

-- A process to certify renewable energy systems, including all existing systems operating on the proposed Act's effective date, as eligible to receive renewable energy credits.
-- Certification that the operator of a renewable energy system was in compliance with State and Federal law applicable to the operation of the system when certification was granted.
-- A method for transferability of credits.
-- Determination of the date that a credit was valid for transfer under the Act.
-- A method for ensuring that each credit traded and sold under the Act was properly accounted for.

If a renewable energy system became noncompliant with State or Federal law, renewable energy credits could not be granted for renewable energy generated by that system during the period of noncompliance.

A renewable energy credit purchased from a renewable energy system in Michigan would not have to be used in this State.

Except as provided above regarding PURPA agreements, one renewable energy credit would have to be granted to the owner of a renewable energy system for each megawatt hour of electricity generated from that system, subject to the following:

-- If a renewable energy system used both a renewable energy resource and a nonrenewable energy resource to generate electricity, the number of credits granted would have to be based on the percentage of the electricity generated from the renewable energy resource.
-- Renewable energy credits could not be granted for renewable energy generated from an incinerator to the extent that the energy was generated by operation of the incinerator in excess of its boilerplate capacity on January 1, 2008.
-- Credits could not be granted for the generation of renewable energy, such as wind energy, used to pump water into a pumped storage facility or to fill other energy storage facilities, but would have to be granted for renewable energy generated upon release from a pumped storage facility or other energy storage facility.
-- Credits could not be granted for renewable energy whose renewable attributes were used by a provider in a PSC-approved voluntary renewable energy program.

Incentive Renewable Energy Credits

Under House Bill 5548 (H-4), subject to the above provisions for granting credits, the following additional renewable energy credits, to be known as "Michigan incentive renewable energy credits", would have to be granted under the following circumstances:

-- Two renewable energy credits for each megawatt hour of electricity from solar power.
-- One-fifth credit for each megawatt hour of electricity generated from a renewable energy system, other than wind, at peak demand time as determined by the PSC.
-- One-tenth credit for each megawatt hour of electricity generated from a renewable energy system constructed using equipment made in this State, as determined by the PSC.
-- One-tenth credit for each megawatt hour of electricity from a renewable energy system constructed using a workforce composed of residents of this State, as determined by the PSC.

The last two credits would be available for the first three years after the renewable energy system first produced electricity on a commercial basis.

Credit Expiration

House Bill 5548 (H-4) provides that a renewable energy credit would expire when used by a provider to comply with its portfolio standard. If not already used, a credit would expire automatically three years after the generation of the electricity associated with the credit. A credit associated with the generation of electricity within 120 days after the start of a calendar year could be used to satisfy the prior year's renewable energy portfolio standard and would expire when used.

Exceptions to Compliance with Standard

Under House Bill 5549 (H-3), a provider would not be required to comply with the renewable portfolio standard to the extent that, as determined by the PSC, recovery of the incremental cost of compliance with the standard pursuant to the renewable energy portfolio plan, as calculated over 20 years beginning when the plan was approved, subject to annual revision, would have a retail rate impact exceeding any of the following:

-- $3 per month per residential customer meter.
-- $16.58 per month per commercial secondary customer meter.
-- $187.50 per month per commercial primary or industrial customer meter.

For a provider whose rates are regulated by the PSC, the Commission would have to determine the appropriate charges for its tariffs that would permit recovery of the incremental cost of compliance subject to these limits.

("Customer meter" would mean an electric meter of a provider's retail customer. It would not include a municipal water pumping meter or additional meters at a single site that were installed specifically to support interruptible air conditioning,

interruptible water heating, net metering, or time-of-day tariffs.)

Incremental Costs of Compliance

House Bill 5549 (H-3) would require the PSC to consider all actual costs reasonably and prudently incurred in good faith to implement a Commission-approved renewable energy portfolio plan by a provider whose rates are regulated by the PSC, to be a cost of service to be recovered by the provider, whether or not those costs were incremental costs of compliance. A provider whose rates are regulated could recover through its retail electric rates all of its incremental costs of compliance during the 20-year period described above, and all reasonable and prudent ongoing costs of compliance during and after that period.

The recovery would include, at least, the provider's authorized rate of return on equity, which would have to remain fixed at the rate of return and debt-to-equity ratio that was in effect in the provider's base rates when the provider's renewable energy portfolio plan was approved. The cost of purchasing renewable energy credits (if the provider failed to meet its standard by the applicable deadline) would not be a recoverable cost of service.

Incremental costs of compliance would have to be calculated in the manner described in the bill.

The PSC would have to authorize a provider whose rates are regulated to spend in any given month more to comply with the proposed Act and implement an approved portfolio plan than the revenue actually generated by the revenue recovery mechanism. A provider whose rates are regulated could recover its PSC-approved pretax rate of return on regulatory assets during the appropriate period, and would have to record interest on regulatory liabilities at the average short-term borrowing rate available to the provider during the appropriate period. Any regulatory assets or liabilities resulting from the recovery of renewable energy through the power supply cost recovery clause under the PSC law would have to continue to be reconciled under that law.

If a provider's incremental costs of compliance in any given month during the 20-year period beginning when its plan was approved were in excess of the revenue recovery mechanism as adjusted under House Bill 5548 (H-4), and in excess of the balance of any accumulated reserve funds, subject to the minimum balance established by the PSC, the provider immediately would have to notify the Commission. The PSC promptly would have to commence a contested case hearing and modify the revenue recovery mechanism so that the minimum balance was restored. If the PSC determined, however, that recovery of the incremental costs of compliance otherwise would exceed the maximum retail rate impacts specified above, the Commission would have to set the revenue recovery mechanism for that provider to correspond to the maximum retail rate impacts. Excess costs would have to be accrued and deferred for recovery. By the expiration of the 20-year period, for a provider whose rates are regulated, the PSC would have to determine the amount of deferred costs to be recovered and the recovery period, which could not exceed five years and could not begin until the 20-year period expired. The recovery would have to be proportional to the retail rate impacts for each customer class. If the retail rate impact were below those limits, however, the recovery would have to begin immediately but, until the 20-year period expired, could occur only to the extent allowed by the limits.

If a provider whose rates are regulated had a regulatory liability when the 20-year period expired, the refund to customer classes would have to be proportional to the amounts they paid under the revenue recovery mechanism.

After compliance with the renewable energy portfolio standard for 2015 was achieved, the actual costs reasonably and prudently incurred to continue to comply with the proposed Act both during the 20-year period and after it concluded, would be considered costs of service. The PSC would have to determine a mechanism for a rate-regulated provider to recover those costs in its retail electric rates. Remaining and future regulatory assets would have to be recovered consistent with preceding requirements and with cost reconciliation provisions.

Renewable Cost Reconciliation

House Bill 5548 (H-4) would require the PSC, concurrently with the submission of each annual report to the Commission, to commence an annual renewable cost reconciliation for each provider whose rates are regulated by the Commission. The proceeding would have to be conducted as a contested case under the APA. Reasonable discovery would have to be permitted before and during the proceeding to assist in obtaining evidence concerning reconciliation issues, including the reasonableness and prudence of expenditures and the amounts collected pursuant to the revenue recovery mechanism.

At the renewable cost reconciliation, a provider could propose any necessary modifications of the revenue recovery mechanism to ensure the provider's recovery of its incremental cost of compliance with the renewable portfolio standard during the 20-year period.

The PSC would have to reconcile the pertinent revenue recorded and the allowance for the nonvolumetric revenue recovery mechanism with the amounts actually expensed and projected according to the provider's plan for compliance. The Commission would have to consider any issue regarding the reasonableness and prudence of expenses for which customers were charged in the relevant reconciliation period. In its order, the PSC would have to do all of the following:

-- Determine the provider's compliance with the renewable energy portfolio standard (subject to provisions regarding deadline extensions and exceptions to compliance).
-- Adjust the revenue recovery mechanism for the incremental costs of compliance.
-- Establish the price per megawatt hour for renewable capacity and renewable energy to be recovered through the power supply cost recovery clause under the PSC law.
-- Adjust, if needed, the minimum balance of accumulated reserve funds established by the PSC.

The PSC would have to ensure that the retail rate impacts under the renewable cost reconciliation revenue recovery mechanism did not exceed the maximum retail rate impacts specified in House Bill 5549 (H-3). The PSC also would have to ensure that the recovery mechanism was projected to maintain a minimum balance of accumulated reserve so that a regulatory asset did not accrue.

If a provider had recorded a regulatory liability in any given month during the 20-year period, interest on the regulatory liability balance would have to be accrued at the average short-term borrowing rate available to the provider during the appropriate period, and would have to be used to fund incremental costs of compliance incurred in subsequent periods within the 20-year period.

Failure to Meet Standard; Violations

House Bill 5548 (H-4) contains the following provisions.

Rate-Regulated Provider. If a provider whose rates are regulated by the PSC failed to meet the renewable energy portfolio standard by the applicable deadline (subject to provisions for extensions and exceptions), both of the following would apply:

-- The provider would have to purchase sufficient renewable energy credits to meet the portfolio standard.
-- The provider could not recover from its ratepayers the cost of purchasing those credits.

Municipal or Cooperative Electric Utility. The Attorney General or any customer of a municipally owned electric utility or a cooperative electric utility that had elected to become member-regulated could commence a civil action for injunctive relief against a municipally owned electric utility or such a cooperative electric utility if it failed to meet the applicable requirements of the proposed Act. The action would have to be brought in the circuit court for the circuit where the provider's principal office was located.

An action would not be filed unless the prospective plaintiff had given the utility 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 receiving this notice, the prospective parties would have to meet and make a good faith attempt to determine whether there was a

credible basis for the action. If both parties agreed that there was a credible basis, the utility would have to take all reasonable steps necessary to comply with the applicable requirements of the Act within 90 days of the meeting.

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

Alternative Electric Supplier. Upon a complaint of an alternative electric supplier's (AES's) customer or the PSC's own motion, the Commission could conduct a contested case to review allegations that the AES had violated the proposed Act, including an order issued or rule promulgated under it. If the PSC found, after notice and hearing, that an AES had violated the Act, the Commission would have to do one or more of the following:

-- Revoke the license of the AES.
-- Issue a cease and desist order.
-- Order the AES to pay a civil fine of at least $5,000 but not more than $50,000 for each violation.

Annual Report to the PSC

House Bill 5548 (H-4) would require each provider, at a time determined by the Commission, to submit to it an annual report providing information about the actions taken by the provider to comply with the renewable energy portfolio standard. By the same time, a municipally owned electric utility would have to submit a copy of the report to its governing body, and a cooperative electric utility would have to submit a copy to its board of directors.

Each annual report would have to include all of the following information:

-- The amount of electricity and renewable energy credits that the provider generated or acquired from renewable energy systems during the reporting period, and the amount of credits the provider acquired, sold, or traded during that period.
-- 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 that total amount that was generated directly from renewable energy.
-- Whether the provider began construction on, acquired, or placed into operation a renewable energy system during the reporting period.
-- Expenditures made in the past year and anticipated future expenditures to comply with the proposed Act.
-- Any other information the PSC determined necessary.

Concurrently with the submission of each report, a municipally owned electric utility would have to submit a summary of the report to its customers with a bill insert and to its governing body. Also, at the time of submitting each report, a cooperative electric utility would have to submit a summary of the report to its members in a periodical issued by an association of rural electric cooperatives and to its board of directors. Each of these utilities would have to make a copy of the report available at its office and post a copy on its website. A report summary would have to indicate that a copy of the report was available at the office or website.

The PSC would have to monitor submitted reports and ensure that actions taken under the proposed Act by providers serving customers in the same distribution territory did not create an unfair competitive advantage for any of those providers.

PSC Report to the Legislature

House Bill 5548 (H-4) would require the PSC, biennially, to submit to the Legislature a report that did all of the following:

-- Summarized data collected from provider reports.
-- Discussed the status of renewable energy in Michigan and the effect of the proposed Act on electricity prices.
-- For each different type of renewable energy sold at retail in this State, specify the difference between the cost of the energy and the cost of electricity generated from conventional sources.
-- Compared the cost effectiveness of the methods of an electric utility with 1.0 million or more retail customers in Michigan as of January 1, 2008, obtaining

renewable energy credits under the options described in the bill.
-- Described the impact of the Act on employment in Michigan.
-- Discussed how the PSC was fulfilling the requirements to monitor reports and ensure that provider actions did not create an unfair competitive advantage.
-- Make any recommendations the PSC had concerning amendments to the Act, including changes in the definition of "renewable energy resource" or "renewable energy system" to reflect environmentally preferable technology.

The PSC would have to consult with appropriate agencies of the Department of Labor and Economic Growth in developing information regarding the impact of the Act on employment.

Confidentiality

Under House Bill 5548 (H-4), a person could confidentially file commercially or financially sensitive information or trade secrets with the PSC under sections of the bill requiring renewable energy portfolio plans, or with a third party contractor under the section requiring a renewable energy credit certification and tracking program. To be filed confidentially, the information would have to be accompanied by an affidavit that set forth both the reasons for the confidentiality and a public synopsis of the information.

Information filed confidentially would be exempt from the Freedom of Information Act, except under the terms of a mandatory protective order. If information were disclosed under such an order, the PSC could use the information for the purpose for which it was required, but it would remain confidential.

There would be a rebuttable presumption that any information filed confidentially would be commercially or financially sensitive information or trade secrets entitled to protection.

Other Provisions

House Bill 5549 (H-3) specifies that the proposed Act would not provide the PSC with new authority with respect to municipally owned electric utilities except to the extent explicitly provided in the Act.

Under both bills, the Act would be severable as provided in MCL 8.5 (that is, if any provision, section, subsection, sentence, clause, phrase, or word of the Act or its application to any person or circumstance were found to be invalid, illegal, unenforceable, or unconstitutional, it would be declared to be severable and the balance of the legislation would remain effective and functional notwithstanding the invalidity, illegality, unenforceability, or unconstitutionality).

Tie-Bars

House Bill 5383 (H-1) would create the "Electric Cooperative Member-Regulation Act" to allow the board of directors of a cooperative electric utility to elect member-regulation for rates, charges, accounting standards, billing practices, and terms and conditions of service.

House Bill 5524 (H-3) would amend Public Act 3 of 1939, the PSC law, to do the following:

-- Revise utility rate procedures.
-- Establish a certificate of necessity process for electric utilities.
-- Modify the electricity choice program.
-- For electric utilities with 1.0 million or more customers, require the PSC to adopt electric rates equal to the cost of providing service to each customer class.
-- Require PSC approval for a merger with a jurisdictional regulated utility or the sale of such a utility's assets.
-- Require the PSC, upon request of a gas utility, to establish load retention transportation rate schedules or approve gas transportation contracts.
-- Appropriate $1.0 million in fiscal year 2007-08, from assessments against public utilities, for the PSC to hire 25 full-time equated employees to implement the bill's amendments.

House Bill 5525 (H-6) would create the "Energy Efficient Michigan Act" to establish energy efficiency performance standards consisting of annual or biennial incremental energy savings; and require electric and natural gas utilities to develop energy efficiency programs that would meet the standards.

House Bills 5972 (H-1), 5973 (H-1), 5974 (H-1), 5975 (H-1), and 5976 (H-1) would amend the Michigan Business Tax (MBT) Act to allow a manufacturer of polycrystalline silicon for solar cells and semiconductor chips, that would construct and operate a new or expanded facility in Michigan, to claim an MBT credit for certain energy consumption costs, under an agreement with the Michigan Economic Growth Authority (MEGA). House Bill 5970 (H-1) would amend the MEGA Act to allow the Authority to determine the eligibility of, and issue certificates to, taxpayers for the proposed credit, as well as for credits available to an anchor company under Public Acts 88 and 92 of 2008.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would increase the responsibilities of the Public Service Commission. Additional staff would be required to implement the new programs that the bills would establish. The Public Service Commission has estimated that implementing the renewable energy plan pursuant to the bills would require an additional 7.0 full-time equivalent employees (FTEs). It is estimated that these positions would cost approximately $672,000 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 bills are tie-barred to House Bill 5524. House Bill 5524 (H-3) would provide the PSC with an additional 25.0 FTEs and a supplemental appropriation of $1.0 million in FY 2007-08 from public utility assessments. The estimated 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 million annually.

In addition, House Bills 5548 (H-4) and 5549 (H-3) would authorize the PSC to order the payment of civil fines ranging from $5,000 to $50,000 for each violation of the proposed Renewable Energy Portfolio Act. The amount of the fine revenue would depend on the number of violations and the size of the fines levied. The revenue from the fines would be deposited into the General Fund.

Under the bills, municipally owned utilities would be subject to PSC regulation regarding renewable energy programs. Municipally owned utilities would incur an unknown amount of additional costs to comply with these requirements.

Fiscal Analyst: Elizabeth Pratt
Maria Tyszkiewicz

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