

SUBSTITUTE FOR  
HOUSE BILL NO. 5525

A bill to establish an energy efficiency program in this state for electric and natural gas utilities; to promote load management; to prescribe the powers and duties of certain state agencies and officials; and to provide for sanctions.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. This act shall be known and may be cited as the  
2 "energy efficient Michigan act".

3       Sec. 3. As used in this act:

4       (a) "Commission" means the Michigan public service commission  
5 created in section 1 of 1939 PA 3, MCL 460.1.

6       (b) "Cost-effective" means that the program being evaluated  
7 meets the utility system resource cost test.

8       (c) "Electric utility" means a person, partnership,  
9 corporation, association, or other legal entity whose transmission

1 or distribution of electricity the commission regulates under 1909  
2 PA 106, MCL 460.551 to 460.559, or 1939 PA 3, MCL 460.1 to  
3 460.10cc. Electric utility does not include a municipally owned  
4 utility, a cooperative electric utility that has elected to become  
5 member-regulated under the electric cooperative member-regulation  
6 act, an affiliated transmission company, or an independent  
7 transmission company.

8 (d) "Energy efficiency" means a decrease in the consumption of  
9 electricity or natural gas achieved through measures or programs  
10 that target customer behavior, equipment, devices, or materials  
11 without reducing the quality of energy services. Energy efficiency  
12 does not include load management.

13 (e) "Energy efficiency plan" means an energy efficiency plan  
14 under section 5.

15 (f) "Large customer", with respect to a natural gas utility,  
16 means a customer at a single premises with an annual natural gas  
17 billing demand greater than 100,000 decatherms.

18 (g) "Large customer", with respect to an electric utility,  
19 means either of the following:

20 (i) A customer at a single premises with an annual electric  
21 billing demand greater than the following:

22 (A) 5 megawatts, until 3 years after the applicable utility  
23 begins implementation of its energy efficiency plan.

24 (B) 2 megawatts, beginning 3 years after the applicable  
25 utility begins implementation of its energy efficiency plan.

26 (ii) A customer with an aggregate annual electric billing  
27 demand of at least 10 megawatts at all facilities within that

1 electric utility's service territory.

2 (h) "Load management" means measures or programs that decrease  
3 peak electricity demand or shift demand from peak to off-peak  
4 periods.

5 (i) "Natural gas utility" means an investor-owned business  
6 engaged in the sale and distribution of natural gas within this  
7 state whose rates are regulated by the commission.

8 (j) "Premises" means a contiguous site, regardless of the  
9 number of meters at that site. A site that would be contiguous but  
10 for the presence of a street, road, or highway shall be considered  
11 to be contiguous for the purposes of this subdivision.

12 (k) "Utility", except as used in section 17, means an electric  
13 utility or natural gas utility.

14 (l) "Utility system resource cost test" means a standard that  
15 is met if, for an investment in energy efficiency, on a life-cycle  
16 basis the total avoided supply-side costs to the utility, including  
17 representative values for electricity or natural gas supply,  
18 transmission, distribution, and other associated costs to the  
19 utility, are greater than the total costs to the utility of  
20 administering and delivering the energy efficiency program,  
21 including any costs for incentives paid to customers.

22 Sec. 5. (1) Within 60 days after the effective date of this  
23 act, the commission shall issue a temporary order specifying the  
24 procedure for a utility to develop and submit an energy efficiency  
25 plan to meet energy efficiency performance standards set forth in  
26 section 7. Pursuant to the administrative procedures act of 1969,  
27 1969 PA 306, MCL 24.201 to 24.328, the commission shall promulgate

1 rules specifying such a procedure. Within 120 days after the  
2 effective date of this act and biennially thereafter, a utility  
3 shall file an energy efficiency plan with the commission.

4 (2) An energy efficiency plan shall do all of the following:

5 (a) Propose a set of energy efficiency programs that include  
6 offerings for each customer class, including low income  
7 residential. The commission shall allow utilities flexibility to  
8 tailor the relative amount of effort devoted to each customer class  
9 based on the specific characteristics of their service territory.

10 (b) Specify necessary funding levels.

11 (c) Describe how energy efficiency program costs will be  
12 recovered from residential customers by volumetric charges, from  
13 all other metered customers by per-meter charges, and from  
14 unmetered customers by an appropriate charge.

15 (d) Demonstrate that the proposed energy efficiency programs  
16 and funding are sufficient to ensure the achievement of applicable  
17 energy efficiency performance standards under section 7.

18 (e) Demonstrate that the utility's energy efficiency programs,  
19 excluding program offerings to low income residential customers,  
20 will collectively be cost-effective.

21 (f) Include a plan for the practical and effective  
22 administration of the proposed energy efficiency programs. The  
23 commission shall allow utilities flexibility in designing their  
24 energy efficiency programs and administrative approach. A utility's  
25 energy efficiency programs may be administered by the utility,  
26 alone or jointly with other utilities, by a state agency, or by an  
27 appropriate experienced nonprofit organization selected after a

1 competitive bid process.

2 (g) Include a process for obtaining an independent expert  
3 evaluation of the actual energy efficiency programs to verify the  
4 incremental energy savings from each energy efficiency program for  
5 purposes of section 7. All such evaluations shall be subject to  
6 public review and commission oversight.

7 (h) Allow for the coordination of energy efficiency programs  
8 with the energy efficiency programs of other utilities under the  
9 direction of the commission pursuant to subsection (5).

10 (i) Provide funding equal to 1% of the utility's total program  
11 spending each year to partially fund a rebate program under the  
12 general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, for  
13 appliances that meet or exceed energy efficiency guidelines  
14 developed by the United States environmental protection agency and  
15 the United States department of energy. For the purposes of this  
16 act, all utility expenditures under this subdivision shall be  
17 considered reasonable, shall be recovered by the utility, and shall  
18 be considered to save energy cost effectively and in the amount of  
19 1% of the applicable energy efficiency performance standard under  
20 section 7.

21 (3) An energy efficiency plan may provide for the utility to  
22 facilitate third-party loans to customers to finance energy  
23 efficiency measures.

24 (4) Within 120 days of receiving an energy efficiency plan  
25 from a utility and after an opportunity for public comment, the  
26 commission shall approve, approve with changes consented to by the  
27 utility, or reject the plan. If the commission rejects the plan,

1 the commission shall state the reasons for its action. Within 30  
2 days after the commission rejects a plan, the utility shall submit  
3 a revised plan that addresses the reasons for rejection cited by  
4 the commission. Within 30 days after receiving a revised plan and  
5 after an opportunity for public comment, the commission shall  
6 approve, approve with changes consented to by the utility, or  
7 reject the revised plan. If the commission rejects the revised  
8 plan, the commission shall state the reasons for the rejection. The  
9 procedure for rejected plans shall be repeated until a revised plan  
10 is approved or approved with changes consented to by the utility.  
11 The commission's action under this subsection does not affect the  
12 applicability of the requirements of section 7.

13 (5) The commission shall coordinate energy efficiency programs  
14 among consenting utilities to maximize energy savings on a  
15 statewide basis. However, money spent by a utility to comply with  
16 this act shall only be used to fund energy efficiency programs in  
17 that utility's service territory.

18 Sec. 7. (1) Except as provided in section 9, an electric  
19 utility's energy efficiency programs shall collectively meet the  
20 following minimum energy efficiency performance standards:

21 (a) Biennial incremental energy savings in 2008-2009  
22 equivalent to 0.3% of total annual weather-normalized retail  
23 electricity sales in kilowatt hours in 2007.

24 (b) Annual incremental energy savings in 2010 equivalent to  
25 0.5% of total annual weather-normalized retail electricity sales in  
26 kilowatt hours in 2009.

27 (c) Annual incremental energy savings in 2011 equivalent to

1 0.75% of total annual weather-normalized retail electricity sales  
2 in kilowatt hours in 2010.

3 (d) Annual incremental energy savings in 2012 and each year  
4 thereafter equivalent to 1.0% of total annual weather-normalized  
5 retail electricity sales in kilowatt hours in the preceding year.

6 (2) A natural gas utility shall meet the following minimum  
7 energy efficiency performance standards using energy efficiency  
8 programs:

9 (a) Biennial incremental energy savings in 2008-2009  
10 equivalent to 0.1% of total annual weather-normalized retail  
11 natural gas sales in therms in 2007.

12 (b) Annual incremental energy savings in 2010 equivalent to  
13 0.25% of total annual weather-normalized retail natural gas sales  
14 in therms in 2009.

15 (c) Annual incremental energy savings in 2011 equivalent to  
16 0.5% of total annual weather-normalized retail natural gas sales in  
17 therms in 2010.

18 (d) Annual incremental energy savings in 2012 and each year  
19 thereafter equivalent to 0.75% of total annual weather-normalized  
20 retail natural gas sales in therms in the preceding year.

21 (3) If a utility's incremental energy savings in the 2008-2009  
22 biennium or any year thereafter exceed the applicable energy  
23 efficiency performance standard in subsection (1) or (2), those  
24 savings may be carried forward and credited to the next year's  
25 standard. However, both of the following apply:

26 (a) The amount of those savings carried forward shall not  
27 exceed 1/3 of the next year's standard.

1           (b) Savings shall not be carried forward if, for its  
2 performance during the same biennium or year, the utility accepts a  
3 financial incentive under section 11(5).

4           (4) Incremental energy savings under subsection (1) or (2) for  
5 the 2008-2009 biennium or any year thereafter shall be determined  
6 for a utility by adding the energy savings expected to be achieved  
7 during a 1-year period by energy efficiency measures installed  
8 during the 2008-2009 biennium or year thereafter under any energy  
9 efficiency programs consistent with the utility's energy efficiency  
10 plan.

11           Sec. 9. (1) This section applies to electric utilities that  
12 meet both of the following requirements:

13           (a) Serve not more than 200,000 customers in this state.

14           (b) Had average electric rates for residential customers using  
15 1,000 kilowatt-hours per month that are less than 75% of the  
16 average electric rates for residential customers using 1,000  
17 kilowatt-hours per month for all electric utilities in this state,  
18 according to the January 1, 2007, "comparison of average rates for  
19 MPSC-regulated electric utilities in Michigan" compiled by the  
20 commission.

21           (2) Beginning 2 years after a utility described in subsection  
22 (1) begins implementation of its energy efficiency plan, the  
23 utility may petition the commission to establish alternative energy  
24 efficiency performance standards. The petition shall identify the  
25 efforts taken by the utility to meet the energy efficiency  
26 performance standards under section 7(1) and demonstrate why the  
27 performance standards cannot reasonably be met with energy



1 efficiency programs that are collectively cost-effective. If the  
2 commission finds that the petition meets the requirements of this  
3 subsection, the commission shall revise the energy efficiency  
4 performance standards in section 7(1) to a level that can  
5 reasonably be met with energy efficiency programs that are  
6 collectively cost-effective.

7       Sec. 11. (1) The commission shall allow a utility that  
8 undertakes approved energy efficiency programs to recover the  
9 actual costs of implementing the programs. However, costs exceeding  
10 the overall funding levels specified in the energy efficiency plan  
11 are not recoverable unless those costs are prudent and reasonable.  
12 Costs shall be recovered from all gas customers and from  
13 residential electric customers by volumetric charges, from all  
14 other metered electric customers by per-meter charges, and from  
15 unmetered electric customers by an appropriate charge, applied to  
16 utility bills. For the electric primary customer rate class  
17 customers of electric utilities and large customers of natural gas  
18 utilities, the cost recovery shall not exceed 1.7% of utility  
19 revenue.

20       (2) Upon petition by a utility and after an opportunity for  
21 public comment, the commission may authorize the utility to  
22 capitalize certain costs of implementing approved energy efficiency  
23 programs. To the extent feasible, charges collected from a  
24 particular customer rate class shall be devoted to energy  
25 efficiency programs and services for that rate class. However, the  
26 established funding level for section 5(2)(i) and low income  
27 residential programs shall be provided from each customer rate

1 class in proportion to that customer rate class's funding of the  
2 utility's total energy efficiency programs. Charges shall be  
3 applied to distribution customers regardless of the source of their  
4 electricity or natural gas supply.

5 (3) A natural gas utility that spends a minimum of 0.5% of  
6 total natural gas revenues, including natural gas commodity costs,  
7 per year on commission approved energy efficiency programs shall be  
8 allowed to implement a symmetrical revenue decoupling true-up  
9 mechanism that adjusts for sales volumes that are above or below  
10 forecasted levels.

11 (4) A natural gas utility or an electric utility shall not  
12 spend more than the following percentage of total utility sales  
13 revenues, including electricity or natural gas commodity costs, in  
14 any year on energy efficiency programs without specific approval  
15 from the commission:

16 (a) In 2009, 0.75% of total utility sales revenues for 2007.

17 (b) In 2010, 1.0% of total utility sales revenues for 2008.

18 (c) In 2011, 1.5% of total utility sales revenues for 2009.

19 (d) In 2012 and each year thereafter, 2.0% of total utility  
20 sales revenues for the preceding year.

21 (5) If a utility exceeds the energy performance standards  
22 under section 7 or alternative standards under section 9(2) during  
23 the 2008-2009 biennium or any year thereafter, as documented  
24 through a commission-approved program evaluation, the commission  
25 upon application and after a hearing may allow the utility to  
26 receive a financial incentive for that performance. The incentive  
27 mechanism shall be proposed in the utility's energy efficiency plan

1 and may include a methodology whereby the utility incentive is  
2 calculated as a percentage of the net savings customers receive  
3 from the energy efficiency programs. As a general principle, the  
4 highest incentives should be associated with success that  
5 demonstrates extraordinary benefits to customers. Any financial  
6 incentive under this subsection shall be in an amount up to 15% of  
7 the utility's actual energy efficiency program expenditures for  
8 that year.

9 (6) If a utility implements an energy efficiency plan using  
10 products or services of companies headquartered in this state, as  
11 documented through a commission-approved program evaluation, the  
12 commission, upon application and after a hearing, may allow the  
13 utility to receive a financial incentive. The financial incentive  
14 under this subsection shall be in an amount up to 2% of the  
15 utility's actual energy efficiency program expenditures for that  
16 year.

17 (7) If approved, a financial incentive shall be added to the  
18 total energy efficiency program costs to be recovered by the  
19 utility. A financial incentive is subject to the requirement that  
20 the utility's energy efficiency programs, excluding program  
21 offerings to low income residential customers, collectively be  
22 cost-effective.

23 Sec. 13. (1) Sections 5 to 11 do not apply to a utility that  
24 pays the following minimum percentage of total utility sales  
25 revenues, including electricity or natural gas commodity costs,  
26 each year to an independent energy efficiency program administrator  
27 selected by the commission:

1 (a) In 2009, 0.75% of total utility sales revenues for 2007.

2 (b) In 2010, 1.0% of total utility sales revenues for 2008.

3 (c) In 2011, 1.5% of total utility sales revenues for 2009.

4 (d) In 2012 and each year thereafter, 2.0% of total utility  
5 sales revenues for the preceding year.

6 (2) Money received from a utility by the energy efficiency  
7 program administrator under subsection (1) shall be used to  
8 administer energy efficiency programs for the utility. Money  
9 unspent in any given year shall be carried forward to be spent in  
10 the subsequent year.

11 (3) The commission shall allow a utility that complies with  
12 subsection (1) to recover the amount of money transferred. This  
13 cost shall be recovered from residential customers by volumetric  
14 charges, from all other metered customers by per-meter charges, and  
15 from unmetered customers by an appropriate charge, applied to  
16 utility bills.

17 (4) Money paid by a utility to the energy efficiency program  
18 administrator under subsection (1) shall only be used to fund  
19 energy efficiency programs in that utility's service territory. To  
20 the extent feasible, charges collected from a particular customer  
21 rate class and paid to the energy efficiency program administrator  
22 under subsection (1) shall be devoted to energy efficiency programs  
23 and services for that rate class.

24 (5) Money paid to the energy efficiency program administrator  
25 and not spent by the administrator that year shall remain available  
26 for expenditure the following year, subject to the requirements of  
27 subsection (4).

1           (6) The commission shall select a qualified nonprofit  
2 organization to serve as energy efficiency program administrator  
3 under this section, through a competitive bid process.

4           (7) The commission shall arrange for a biennial independent  
5 audit of the energy efficiency program administrator.

6           Sec. 15. (1) The commission shall monitor utility performance  
7 to ensure compliance with the requirements of this act.

8           (2) If a utility violates this act, the commission shall  
9 investigate the reasons for the violation. If the commission  
10 determines that the violation is a result of a lack of good faith  
11 effort by the utility, the commission shall impose regulatory  
12 sanctions on the utility. Such sanctions may include a reduction in  
13 the authorized rate of return.

14           (3) If a utility fails to meet the applicable energy  
15 efficiency performance standard under section 7 or 9, as  
16 applicable, in any particular year, the utility shall achieve  
17 additional energy savings, equal to the shortfall, within the  
18 following 2 years, and the additional energy savings shall be added  
19 to the energy efficiency performance standards that apply in those  
20 years. However, upon petition of the utility, the commission shall  
21 waive or reduce the requirement to achieve additional energy  
22 savings under this subsection if the commission determines that the  
23 performance standards could not reasonably be met with energy  
24 efficiency programs that are collectively cost-effective.

25           Sec. 17. (1) A municipally owned utility or a cooperative  
26 electric utility that has elected to become member-regulated under  
27 the electric cooperative member-regulation act shall comply with

1 the requirements of section 5(1). The commission may recommend  
2 changes to the energy efficiency plan of the municipally owned  
3 utility or the cooperative electric utility that has elected to  
4 become member-regulated under the electric cooperative member-  
5 regulation act.

6 (2) A municipally owned utility or a cooperative electric  
7 utility that has elected to become member-regulated under the  
8 electric cooperative member-regulation act shall comply with the  
9 requirements of at least 1 of the following:

10 (a) Section 7 or, if applicable, section 15(3).

11 (b) Section 13.

12 (3) The attorney general or any customer of a municipally  
13 owned utility or member of a cooperative electric utility that has  
14 elected to become member-regulated under the electric cooperative  
15 member-regulation act may commence a civil action for injunctive  
16 relief against the municipally owned utility or cooperative  
17 electric utility, respectively, if it fails to meet the  
18 requirements of subsection (2).

19 (4) An action under subsection (3) shall be commenced in the  
20 circuit court for the circuit in which the alleged violation  
21 occurred. An action shall not be filed under subsection (3) unless  
22 the plaintiff has given the governing body of the prospective  
23 defendant and the commission at least 60 days' written notice of  
24 the plaintiff's intent to sue, the basis for the suit, and the  
25 relief sought. Within 30 days after the governing body of the  
26 prospective defendant receives written notice of the plaintiff's  
27 intent to sue, the governing body and the plaintiff shall meet and

1 make a good faith attempt to determine if a credible basis for such  
2 action exists. If both parties agree that a basis for the action is  
3 credible, the municipally owned utility or cooperative electric  
4 utility that has elected to become member-regulated under the  
5 electric cooperative member-regulation act must take all reasonable  
6 steps necessary to comply with applicable requirements of this act  
7 within 90 days of the meeting.

8 (5) In issuing a final order in an action brought under  
9 subsection (3), the court may award costs of litigation, including  
10 reasonable attorney and expert witness fees, to the prevailing or  
11 substantially prevailing party.

12 (6) By 1 year after the effective date of this act, and every  
13 2 years thereafter, a municipally owned utility or cooperative  
14 electric utility that has elected to become member-regulated under  
15 the electric cooperative member-regulation act shall report to its  
16 customers or members, the commission, and the governing body of the  
17 municipality or cooperative electric utility the expenditures of  
18 the municipally owned utility or cooperative electric utility on  
19 energy efficiency programs during the preceding calendar year,  
20 details of each program, and the overall effectiveness of each  
21 program.

22 Sec. 19. (1) A large customer may submit to the commission a  
23 plan for a self-directed energy efficiency program. If the large  
24 customer plan meets the requirements of this section, the  
25 commission shall approve the large customer plan. After the plan is  
26 approved, the large customer is exempt from charges the large  
27 customer would otherwise incur under section 11 or 13 as long as

1 the plan's goals are achieved, the plan has not expired and is  
2 still being implemented, or the plan has been succeeded by a new  
3 approved plan.

4 (2) All of the following apply to a large customer plan:

5 (a) The plan shall be an annual or multiyear plan for an  
6 ongoing energy efficiency program.

7 (b) If the large customer wishes, the plan may document that  
8 the company achieved over the previous years the equivalent of the  
9 energy efficiency goals in this act. The plan shall use the  
10 definition of energy efficiency as set forth in this act. Energy  
11 efficiency shall be calculated based on weather-normalized retail  
12 sales.

13 (c) The plan shall apply to all premises owned by the customer  
14 and its subsidiaries in the relevant utility's service territory.

15 (3) All owned premises in the large customer plan shall be  
16 grouped by the serving utility.

17 (4) If the aggregate energy efficiency reductions of the plan  
18 meet or exceed the goals of this act, then all premises covered by  
19 the plan shall be exempt from the energy efficiency program  
20 charges.

21 (5) A large customer shall submit to the commission every 2  
22 years verification of the completion of the large customer plan and  
23 sufficient information to determine if the plan's annual goals have  
24 been achieved. Along with submission of the verification, the large  
25 customer shall also submit an updated plan that outlines how the  
26 large customer intends to continue to meet the goals of this act.

27 (6) If the commission determines after providing an



1 opportunity for an evidentiary hearing that a large customer failed  
2 to complete an energy efficiency project for which it obtained  
3 commission approval, the large customer shall pay the relevant  
4 utility the amount of any charges from which it was exempted for  
5 that project under subsection (1), prorated to reflect any energy  
6 savings that were achieved by that project. The utility shall use  
7 the payment for the utility's energy efficiency programs under this  
8 act.

9 (7) A facility of a large customer that is included in its  
10 plan is prohibited from participating in the relevant utility's  
11 energy efficiency program.

12 (8) Upon request of the large customer, all submissions to the  
13 commission by the customer are confidential and exempt from  
14 disclosure under the freedom of information act, 1976 PA 442, MCL  
15 15.231 to 15.246.

16 (9) A large customer plan shall be submitted by a  
17 knowledgeable official of the large customer along with an  
18 affidavit that the information in the plan is true and correct to  
19 the best of the official's knowledge and belief.

20 (10) A large customer's projected energy savings under a  
21 commission-approved energy efficiency project or plan under this  
22 section shall count as the relevant utility's incremental energy  
23 savings under section 7 or 9, as applicable.

24 (11) A large customer shall pay to the commission costs  
25 incurred by the commission under this section in conjunction with a  
26 proposed energy efficiency plan of the large customer.

27 (12) As used in this section, "large customer plan" or "plan"

1 means a large customer's plan for a self-directed energy efficiency  
2 program under subsection (1).

3 Sec. 21. The commission shall promote load management in  
4 appropriate circumstances, including allowing rate recovery for  
5 prudent load management expenditures.

6 Sec. 23. (1) A utility shall annually submit to its customers  
7 in their bills a statement specifying the reduction in electricity  
8 or natural gas usage in this state attributable to this act during  
9 the previous year. The statement shall also encourage each customer  
10 to compare the customer's energy usage during the current and  
11 preceding year. The statement shall indicate that it is being made  
12 to comply with the requirements of this act. A cooperative electric  
13 utility required to submit a statement to its members under this  
14 subsection shall submit the statement in a periodical issued by an  
15 association of rural electric cooperatives.

16 (2) By 1 year after the effective date of this act, and every  
17 2 years thereafter, the commission shall report to the legislature  
18 on the progress and results from the implementation of the energy  
19 efficiency programs required to be implemented by utilities under  
20 this act, including the net benefit to customers. The commission  
21 shall make copies of the report available for distribution to the  
22 public. The department of labor and economic growth shall post the  
23 report on its website.

24 (3) By March 31 of every odd-numbered year, beginning in 2009,  
25 the commission shall submit to the legislature a report that  
26 evaluates this act and makes any recommendations the commission may  
27 have for amendments to this act.

1       Enacting section 1. This act does not take effect unless all  
2 of the following bills of the 94th Legislature are enacted into  
3 law:

- 4       (a) House Bill No. 5383.
- 5       (b) House Bill No. 5524.
- 6       (c) House Bill No. 5548.
- 7       (d) House Bill No. 5549.
- 8       (e) House Bill No. 5972.
- 9       (f) House Bill No. 5973.
- 10      (g) House Bill No. 5974.
- 11      (h) House Bill No. 5975.
- 12      (i) House Bill No. 5976.
- 13      (j) House Bill No. 5977.