

SUBSTITUTE FOR
HOUSE BILL NO. 5549

A bill to require providers of retail electric service to establish a renewable energy program; 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. 3. As used in this act:

2 (a) "Biomass" means any organic matter that is not derived
3 from fossil fuels, that can be converted to usable fuel for the
4 production of energy, and that is available on a renewable basis,
5 including, but not limited to, all of the following:

6 (i) Agricultural crops and crop wastes.

7 (ii) Short-rotation energy crops.

8 (iii) Herbaceous plants.

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(iv) Trees and wood, but only if derived from sustainably managed forests or procurement systems, as defined in section 261c of the management and budget act, 1984 PA 431, MCL 18.1261c.

(v) Paper and pulp products.

(vi) Precommercial wood thinning waste, brush, or yard waste.

(vii) Wood wastes and residues from the processing of wood products or paper.

(viii) Animal wastes.

(ix) Wastewater sludge or sewage.

(x) Aquatic plants.

(xi) Food production and processing waste.

[

(xii)] Organic by-products from the production of biofuels.

(b) "Commission" means the Michigan public service commission.

(c) "Customer meter" means an electric meter of a provider's retail customer. Customer meter does 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.

(d) "Electronic waste" means any of the following discarded items:

(i) A computer, including a computer monitor or peripheral.

(ii) A television.

(iii) A telephone.

(iv) A personal digital assistant device.

(v) A radio.

1 (vi) A compact disc or digital video disc or a compact disc or
2 digital video disc player.

3 (vii) Other similar items as determined by the commission.

4 (e) "Incremental costs of compliance" means the net revenue
5 required by a provider to comply with the renewable energy
6 portfolio standard, calculated as provided under section 27(2).

7 (f) "Industrial cogeneration" means the generation of
8 electricity using industrial thermal energy.

9 (g) "Industrial thermal energy" means thermal energy that is a
10 by-product of an industrial or manufacturing process and that would
11 otherwise be wasted. For the purposes of this subdivision,
12 industrial or manufacturing process does not include the generation
13 of electricity.

14 (h) "Provider", subject to sections 7(1) and 9(1), means any
15 of the following:

16 (i) Any person or entity that is regulated by the commission
17 for the purpose of selling electricity to retail customers in this
18 state.

19 (ii) A municipally owned electric utility in this state.

20 (iii) A cooperative electric utility in this state.

21 (iv) An alternative electric supplier licensed in this state.

22 (i) "PURPA" means the public utility regulatory policies act
23 of 1978, Public Law 95-617.

24 (j) "Qualifying cogeneration facility" means that term as
25 defined in 16 USC 824a-3.

26 (k) "Qualifying small power production facility" means that
27 term as defined in 16 USC 824a-3.

1 Sec. 5. As used in this act:

2 (a) "Renewable energy" means electricity generated using a
3 renewable energy system.

4 (b) "Renewable energy contract" means a contract to acquire
5 renewable energy and the associated renewable energy credits from 1
6 or more renewable energy systems.

7 (c) "Renewable energy credit" means a credit certified under
8 this act that represents generated renewable energy.

9 (d) "Renewable energy portfolio" for the years 2012 through
10 2015 means the percentage determined as follows for a given
11 provider and year:

12 (i) Determine the number of renewable energy credits used to
13 comply with this act during that year.

14 (ii) Divide by 1 of the following at the option of the provider
15 as specified in its renewable energy portfolio plan:

16 (A) The number of weather-normalized megawatt hours of
17 electricity sold by the provider during the previous year to retail
18 customers in this state.

19 (B) The average number of megawatt hours of electricity sold
20 by the provider annually during the previous 3 years to retail
21 customers in this state.

22 (iii) Multiply by 100.

23 (e) "Renewable energy portfolio" for the year 2016 and
24 thereafter means the number of renewable energy credits used to
25 comply with this act during that year.

26 (f) "Renewable energy portfolio plan" or "plan" means a plan
27 approved under section 7(3) or 9(3).

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(g) "Renewable energy portfolio standard" means the minimum renewable energy portfolio required to be achieved under section 13.

(h) "Renewable energy resource" means any of the following:

(i) Biomass.

(ii) Solar energy.

(iii) Wind energy.

(iv) Kinetic energy of moving water, including all of the following:

(A) Waves, tides, or currents.

(B) Water released through a dam.

(C) Water released from a pumped storage facility to the extent that the water was pumped into the storage facility using renewable energy.

(v) Hydrogen synthesis gas produced from the plasma gasification of industrial by-products or electronic waste.

(vi) Geothermal energy.

(vii) Industrial thermal energy.

[(viii) Municipal solid waste, including, but not limited to, landfilled municipal solid waste that produces landfill gas.]

(i) "Renewable energy system" means a facility, electricity generation system, or integrated set of electricity generation systems that use 1 or more renewable energy resources to generate electricity. Renewable energy system does not include any of the following:

(i) A hydroelectric facility that uses a dam constructed after the effective date of this act unless the dam is a repair or replacement of a dam in existence on the effective date of this act.

1 (ii) An incinerator unless the incinerator is a municipal solid
2 waste incinerator as defined in section 11504 of the natural
3 resources and environmental protection act, 1994 PA 451, MCL
4 324.11504, and was brought into service before the effective date
5 of this act.

6 (j) "Renewable energy generator" means a person that, together
7 with its affiliates, has constructed or has owned and operated 1 or
8 more renewable energy systems with combined gross generating
9 capacity of at least 10 megawatts.

10 (k) "Revenue recovery mechanism" means the mechanism for
11 recovery of incremental costs of compliance established under
12 section 7(4).

13 Sec. 15. (1) Upon petition by a provider, the commission may
14 for good cause grant 2 extensions of renewable energy portfolio
15 standard deadlines under section 13. Each extension shall be for up
16 to 1 year. Good cause includes, but is not limited to, the
17 provider's inability, as determined by the commission, to meet the
18 renewable energy portfolio standard because of a renewable energy
19 system feasibility limitation including, but not limited to, any of
20 the following:

21 (a) Renewable energy system site requirements, zoning, siting,
22 land use issues, permits, including environmental permits, any
23 certificate of need process under section 6r of 1939 PA 3, MCL
24 460.6r, or any other necessary governmental approvals that
25 effectively limit availability of renewable energy systems,
26 including, if the provider has exercised reasonable diligence in
27 securing the necessary governmental approvals. For purposes of this

1 subdivision, "reasonable diligence" includes, but is not limited
2 to, submitting timely applications for the necessary governmental
3 approvals and making good faith efforts to ensure that the
4 applications are administratively complete and technically
5 sufficient.

6 (b) Equipment cost or availability issues including, but not
7 limited to, electrical equipment or renewable energy system
8 component shortages or costs that effectively limit availability of
9 renewable energy systems.

10 (c) Cost, availability, or time requirements for electric
11 transmission and interconnection.

12 (d) Projected or actual unfavorable electric system
13 reliability or operational impacts.

14 (e) Labor shortages that effectively limit availability of
15 renewable energy systems.

16 (2) If 2 extensions of the 2015 renewable energy portfolio
17 standard deadline have been granted under subsection (1), upon
18 subsequent petition by a provider at least 6 months before the
19 expiration of the second extended deadline, the provider shall be
20 considered to be in compliance with this act at a renewable energy
21 portfolio determined by the commission to be attainable by that
22 provider.

23 (3) Any provider that makes a good faith effort to spend the
24 full amount of incremental costs of compliance as outlined in its
25 approved renewable energy portfolio plan, revised, subject to
26 extensions under this section or revisions under section 29, shall
27 be considered to be in compliance with this act.

1 Sec. 25. (1) A provider is not required to comply with the
2 renewable portfolio standard to the extent that, as determined by
3 the commission, recovery under section 27 of the incremental cost
4 of compliance with the renewable energy portfolio standard pursuant
5 to the renewable energy portfolio plan, as calculated over 20 years
6 beginning when the plan is approved by the commission, subject to
7 annual revision, will have a retail rate impact that exceeds any of
8 the following:

9 (a) \$3.00 per month per residential customer meter.

10 (b) \$16.58 per month per commercial secondary customer meter.

11 (c) \$187.50 per month per commercial primary or industrial
12 customer meter.

13 (2) For a provider whose rates are regulated by the
14 commission, the commission shall determine the appropriate charges
15 for the provider's tariffs that permit recovery of the incremental
16 cost of compliance subject to the limits set forth in subsection
17 (1).

18 Sec. 27. (1) Notwithstanding any other provision of law, the
19 commission shall consider all actual costs reasonably and prudently
20 incurred in good faith to implement a commission-approved renewable
21 energy portfolio plan by a provider whose rates are regulated by
22 the commission to be a cost of service to be recovered by the
23 provider, whether or not those costs are incremental costs of
24 compliance. Notwithstanding any other provision of law, a provider
25 whose rates are regulated by the commission shall recover through
26 its retail electric rates all of the provider's incremental costs
27 of compliance during the 20-year period described in section 7(2)

1 and all reasonable and prudent ongoing costs of compliance during
2 and after that period. The recovery shall include, but is not
3 limited to, the provider's authorized rate of return on equity,
4 which shall remain fixed at the rate of return and debt to equity
5 ratio that was in effect in a provider's base rates when the
6 provider's renewable energy portfolio plan was approved. However,
7 the costs of purchasing renewable energy credits under section
8 31(1) are not a recoverable cost of service.

9 (2) Incremental costs of compliance shall be calculated as
10 follows:

11 (a) Determine the sum of the following costs to the extent
12 those costs are reasonable and prudent and not already approved for
13 recovery in electric rates as of the effective date of this act:

14 (i) Capital, operating, and maintenance costs of renewable
15 energy systems, including property taxes, insurance, and return on
16 equity associated with a provider's renewable energy systems,
17 including the provider's renewable energy portfolio initially
18 established to achieve compliance with the renewable energy
19 portfolio standard and any additional renewable energy systems that
20 are built or acquired by the provider to maintain compliance with
21 the renewable energy portfolio standard during the 20-year period
22 beginning when the provider's plan is approved by the commission.

23 (ii) Financing costs attributable to capital, operating, and
24 maintenance costs of capital facilities associated with renewable
25 energy systems.

26 (iii) Interconnection and substation costs associated with
27 renewable energy systems.

1 (iv) Except to the extent the costs are allocated under a
2 different subparagraph, all of the following:

3 (A) The costs of renewable energy credits purchased under this
4 act other than those purchased under section 31(1).

5 (B) The costs of contracts described in section 17(2).

6 (v) Expenses incurred as a result of state or federal
7 governmental actions related to renewable energy systems including,
8 but not limited to, changes in tax or other law.

9 (vi) Any additional provider costs considered relevant by the
10 commission.

11 (b) Subtract from the sum of costs not already included in
12 electric rates determined under subdivision (a) the sum of the
13 following revenues:

14 (i) Revenue derived from the sale of environmental attributes
15 associated with the generation of renewable energy. Such revenue
16 shall not be considered in determining power supply cost recovery
17 factors under section 6j of 1939 PA 3, MCL 460.6j.

18 (ii) Interest on regulatory liabilities as provided in section
19 27(4).

20 (iii) Tax credits specifically designed to promote renewable
21 energy.

22 (iv) Revenue derived from the provision of energy from
23 renewable energy systems to retail electric customers subject to a
24 power supply cost recovery clause under section 6j of 1939 PA 3,
25 MCL 460.6j, of a provider whose retail electric rates are regulated
26 by the commission. Beginning in 2008, after providing an
27 opportunity for a contested case hearing for a provider whose rates

1 are regulated by the commission, the commission shall annually
2 establish a price per megawatt hour. In addition, a provider whose
3 retail electric rates are regulated by the commission may at any
4 time petition the commission to revise the price. In setting the
5 price per megawatt hour under this subparagraph, the commission
6 shall consider factors including, but not limited to, projected
7 capacity, energy, maintenance, and operating costs; information
8 filed under section 6j of 1939 PA 3, MCL 460.6j; and information
9 from wholesale markets, including, but not limited to, locational
10 marginal pricing. This price shall be multiplied by the number of
11 megawatt hours of renewable energy. The resulting value shall be
12 considered a booked cost of purchased and net interchanged power
13 transactions under section 6j of 1939 PA 3, MCL 460.6j. For energy
14 purchased by such a provider under a renewable energy agreement,
15 the price shall be the lower of the amount established by the
16 commission or the actual price paid and shall be multiplied by the
17 number of megawatt hours of renewable energy purchased. The
18 resulting value shall be considered a booked cost of purchased and
19 net interchanged power under section 6j of 1939 PA 3, MCL 460.6j.

20 (v) Revenue from wholesale energy sales from a renewable
21 energy system. Such revenue shall not be considered in determining
22 power supply cost recovery factors under section 6j of 1939 PA 3,
23 MCL 460.6j.

24 (vi) Any additional provider revenue considered relevant by the
25 commission.

26 (3) The commission shall authorize a provider whose rates are
27 regulated by the commission to spend in any given month more to

1 comply with this act and implement an approved renewable energy
2 portfolio plan than the revenue actually generated by the revenue
3 recovery mechanism. A provider whose rates are regulated by the
4 commission shall recover its commission approved pre-tax rate of
5 return on regulatory assets during the appropriate period. A
6 provider whose rates are regulated by the commission shall record
7 interest on regulatory liabilities at the average short-term
8 borrowing rate available to the provider during the appropriate
9 period. Any regulatory assets or liabilities resulting from the
10 recovery of renewable energy through the power supply cost recovery
11 clause under section 6j of 1939 PA 3, MCL 460.6j, shall continue to
12 be reconciled under that section.

13 (4) If a provider's incremental costs of compliance in any
14 given month during the 20-year period described in section 7(2) are
15 in excess of the revenue recovery mechanism as adjusted under
16 section 29 and in excess of the balance of any accumulated reserve
17 funds, subject to the minimum balance established under section
18 7(5), the provider shall immediately notify the commission. The
19 commission shall promptly commence a contested case hearing
20 pursuant to the administrative procedures act of 1969, 1969 PA 306,
21 MCL 24.201 to 24.328, and modify the revenue recovery mechanism so
22 that the minimum balance is restored. However, if the commission
23 determines that recovery of the incremental costs of compliance
24 would otherwise exceed the maximum retail rate impacts specified
25 under section 25, it shall set the revenue recovery mechanism for
26 that provider to correspond to the maximum retail rate impacts.
27 Excess costs shall be accrued and deferred for recovery. Not later

1 than the expiration of the 20-year period described in section
2 7(3), for a provider whose rates are regulated by the commission,
3 the commission shall determine the amount of deferred costs to be
4 recovered under section 7 and the recovery period, which shall not
5 exceed 5 years and shall not commence until after the expiration of
6 the 20-year period described in section 7(3). The recovery shall be
7 proportional to the retail rate impacts set forth in section 25 for
8 each customer class. However, if the retail rate impact is below
9 the limits set forth in section 25, the recovery shall begin
10 immediately but, until the expiration of the 20-year period
11 described in section 7(3), shall occur only to the extent allowed
12 by the limits of section 25.

13 (5) If, at the expiration of the 20-year period described in
14 section 7(3), a provider whose rates are regulated by the
15 commission has a regulatory liability, the refund to customer
16 classes shall be proportional to the amounts paid by those customer
17 classes under the revenue recovery mechanism.

18 (6) After achieving compliance with the renewable energy
19 portfolio standard for 2015, the actual costs reasonably and
20 prudently incurred to continue to comply with this act both during
21 and after the conclusion of the 20-year period described in section
22 7(3) shall be considered costs of service. The commission shall
23 determine a mechanism for a provider whose rates are regulated by
24 the commission to recover these costs in its retail electric rates.
25 Remaining and future regulatory assets shall be recovered
26 consistent with subsections (3) and (4) and section 29.

27 Sec. 39. This act does not provide the commission with new

1 authority with respect to municipally owned electric utilities
2 except to the extent explicitly provided in this act.

3 Enacting section 1. As provided in section 5 of 1846 RS 1, MCL
4 8.5, this act is severable.

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

- 8 (a) House Bill No. 5383.
- 9 (b) House Bill No. 5524.
- 10 (c) House Bill No. 5525.
- 11 (d) House Bill No. 5548.
- 12 (e) House Bill No. 5972.
- 13 (f) House Bill No. 5973.
- 14 (g) House Bill No. 5974.
- 15 (h) House Bill No. 5975.
- 16 (i) House Bill No. 5976.
- 17 (j) House Bill No. 5977.