

# HOUSE BILL No. 5525

December 4, 2007, Introduced by Reps. Angerer, Mayes, Accavitti, Hopgood, Brown, Hammon, Lemmons, Byrnes, Vagnozzi, Wojno, Kathleen Law, Miller, Gaffney and Hune and referred to the Committee on Energy and Technology.

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, affiliated transmission company, or independent  
5 transmission company.

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

11 (e) "Large customer" means a utility customer at a single,  
12 contiguous field, location, or facility, regardless of the number  
13 of meters at that field, location, or facility, with an electric  
14 billing demand greater than 1-megawatt.

15 (f) "Load management" means measures or programs that decrease  
16 peak electricity demand or shift demand from peak to off-peak  
17 periods.

18 (g) "Natural gas utility" means an investor-owned business  
19 engaged in the sale and distribution of natural gas within this  
20 state whose rates are regulated by the commission.

21 (h) "Utility", except as used in section 15, means an electric  
22 utility or natural gas utility.

23 (i) "Utility system resource cost test" means a standard that  
24 is met if, for an investment in energy efficiency, on a life-cycle  
25 basis the total avoided supply-side costs, including representative  
26 values for electricity and/or natural gas supply, transmission,  
27 distribution, and other associated costs, are greater than the

1 total costs to the utility of administering and delivering the  
2 energy efficiency program, including any costs for incentives paid  
3 to customers.

4 Sec. 5. (1) Within 60 days after the effective date of this  
5 act and biennially thereafter, a utility shall file an energy  
6 efficiency programs plan with the commission. An energy efficiency  
7 programs plan shall do all of the following:

8 (a) Propose a set of energy efficiency programs that include  
9 offerings for each customer class. The commission shall allow  
10 utilities flexibility to tailor the relative amount of effort  
11 devoted to each customer class based on the specific  
12 characteristics of their service territory.

13 (b) Specify necessary funding levels.

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

17 (d) Demonstrate that the utility's energy efficiency programs  
18 will collectively be cost-effective.

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

27 (f) Include a process for obtaining an independent expert

1 evaluation of the actual energy efficiency programs to verify the  
2 incremental energy savings from each energy efficiency program for  
3 purposes of section 7. All such evaluations shall be subject to  
4 public review and commission oversight.

5 (2) Within 120 days of receiving an energy efficiency plan  
6 from a utility, the commission shall approve or reject the plan. If  
7 the commission rejects the plan, the commission shall state the  
8 reasons for the rejection. Within 30 days after the rejection, the  
9 utility shall submit a revised plan that addresses the reasons for  
10 rejection cited by the commission. Within 30 days after receiving  
11 the revised plan, the commission shall approve or reject the  
12 revised plan. If the commission rejects the revised plan, the  
13 commission shall state the reasons for the rejection. The procedure  
14 for revised plans shall be repeated until the commission approves a  
15 revised plan. Rejection of the plan does not affect the  
16 applicability of the requirements of section 7.

17 Sec. 7. (1) An electric utility's energy efficiency programs  
18 shall collectively meet the following minimum energy efficiency  
19 performance standards:

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

23 (b) Annual incremental energy savings in 2010 equivalent to  
24 0.5% of total annual electricity sales in kilowatt hours in 2009.

25 (c) Annual incremental energy savings in 2011 equivalent to  
26 0.75% of total annual electricity sales in kilowatt hours in 2010.

27 (d) Annual incremental energy savings in 2012 and each year

1 thereafter equivalent to 1.0% of total annual electricity sales in  
2 kilowatt hours in the preceding year.

3 (2) A natural gas utility shall meet the following minimum  
4 energy efficiency performance standards using energy efficiency  
5 programs:

6 (a) Biennial incremental energy savings in 2008-2009  
7 equivalent to 0.1% of total annual natural gas sales in therms in  
8 2007.

9 (b) Annual incremental energy savings in 2010 equivalent to  
10 0.25% of total annual natural gas sales in therms in 2009.

11 (c) Annual incremental energy savings in 2011 equivalent to  
12 0.5% of total annual natural gas sales in therms in 2010.

13 (d) Annual incremental energy savings in 2012 and each year  
14 thereafter equivalent to 0.75% of total annual natural gas sales in  
15 therms in the preceding year.

16 (3) If a utility's annual incremental energy savings in the  
17 2008-2009 biennium or any year thereafter exceed the applicable  
18 energy efficiency performance standard in subsection (1) or (2),  
19 those savings may be carried forward and credited to the next  
20 year's standard. However, both of the following apply:

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

23 (b) Savings shall not be carried forward if, for its  
24 performance during the same biennium or year, the utility accepts a  
25 financial incentive under section 9(3).

26 (4) Incremental energy savings under subsection (1) or (2) for  
27 the 2008-2009 biennium or any year thereafter shall be determined

1 for a utility by adding the energy savings expected to be achieved  
2 during a 1-year period by energy efficiency measures installed  
3 during the 2008-2009 biennium or year thereafter under any of the  
4 energy efficiency programs consistent with the utility's energy  
5 efficiency program plan. The amount of energy savings achieved or  
6 expected to be achieved by each individual energy efficiency  
7 program shall be determined under the independent expert evaluation  
8 process provided for under section 5(1)(f).

9       Sec. 9. (1) The commission shall allow a utility that  
10 undertakes an approved energy efficiency program to recover the  
11 actual, reasonable costs of implementing the program. This cost  
12 recovery shall be accomplished through a tariff rider or other  
13 appropriate volumetric charge applied to distribution company  
14 rates. To the extent feasible, charges collected from a particular  
15 customer sector shall be devoted to energy efficiency programs and  
16 services for that sector. Charges shall be applied to distribution  
17 customers regardless of the source of their electricity or natural  
18 gas supply.

19       (2) A utility that spends a minimum of 0.5% of total revenues,  
20 including electricity or natural gas commodity costs, per year on  
21 commission approved energy efficiency programs shall be allowed to  
22 adopt a symmetrical revenue decoupling true-up mechanism that  
23 adjusts for sales volumes that are above or below forecasted  
24 levels. A utility shall not spend more than 2.0% of total revenues,  
25 including electricity or natural gas commodity costs, in any year  
26 on energy efficiency programs without specific approval from the  
27 commission.

1           (3) If a utility meets or exceeds the energy performance  
2 standards in section 7 during the 2008-2009 biennium or any year  
3 thereafter, as documented through commission-approved program  
4 evaluation, the commission upon application and after a hearing may  
5 allow the utility to receive a financial incentive for that  
6 performance. Any financial incentive shall not exceed 15% of the  
7 utility's actual energy efficiency program expenditures for that  
8 year. If approved, a financial incentive shall be added to the  
9 total energy efficiency program costs to be recovered by the  
10 utility. A financial incentive is subject to the requirement that  
11 the utility's energy efficiency programs collectively be cost-  
12 effective.

13           Sec. 11. (1) Sections 5, 7, and 9 do not apply to a utility  
14 that transfers the following minimum amount of money each year to  
15 an independent energy efficiency program administrator selected by  
16 the commission:

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

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

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

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

22           (2) Funds received from a utility by the energy efficiency  
23 program administrator under subsection (1) shall be used to  
24 administer energy efficiency programs for the utility. Funds  
25 unspent in any given year shall be carried forward to be spent in  
26 the subsequent year.

27           (3) The commission shall allow a utility that complies with

1 subsection (1) to recover the amount of money transferred. This  
2 cost recovery shall be accomplished through a tariff rider or other  
3 appropriate volumetric charge applied to distribution company  
4 rates. Such a charge shall be applied to all distribution  
5 customers, regardless of the source of their electricity or natural  
6 gas supply.

7 (4) The commission shall select through competitive bid a  
8 qualified nonprofit organization to administer energy efficiency  
9 programs under this section.

10 Sec. 13. (1) The commission shall monitor utility performance  
11 to ensure compliance with the requirements of this act.

12 (2) If a utility violates this act, the commission shall  
13 investigate the reasons for the violation. If the commission  
14 determines that the violation is a result of a lack of good faith  
15 effort by the utility, the commission shall implement regulatory  
16 sanctions for the utility. Such sanctions may include a reduction  
17 in authorized rate of return.

18 (3) If a utility fails to meet the applicable energy  
19 efficiency performance standard under section 7 in any particular  
20 year, the utility shall achieve additional energy savings, equal to  
21 the shortfall, within the following 2 years, and the additional  
22 energy savings shall be added to the energy efficiency performance  
23 standards that apply in those years.

24 Sec. 15. (1) A municipally owned utility shall comply with the  
25 requirements of section 5(1). The commission may recommend changes  
26 to the municipally owned utility's energy efficiency programs plan.

27 (2) A municipally owned utility shall comply with the

1 requirements of section 7. Section 13(3) applies to a municipally  
2 owned utility that fails to meet the applicable energy efficiency  
3 program standard under section 7 in any particular year.

4 (3) Any person adversely affected may commence a civil action  
5 for injunctive relief against a municipally owned utility that  
6 fails to meet the requirements of section 7 or, if applicable,  
7 section 13(3). The action shall be commenced in the circuit court  
8 for the circuit in which the alleged violation occurred. An action  
9 shall not be filed under this subsection unless the plaintiff has  
10 given the proposed defendant and the commission at least 60 days'  
11 written notice of the plaintiff's intent to sue, the basis for the  
12 suit, and the relief sought. In issuing a final order in an action  
13 brought under this subsection, the court may award costs of  
14 litigation, including reasonable attorney and expert witness fees,  
15 to the prevailing or substantially prevailing party.

16 (4) By 1 year after the effective date of this act, and every  
17 2 years thereafter, a municipally owned utility shall report to its  
18 customers, the commission, and the governing body of the  
19 municipality the municipally owned utility's expenditures on energy  
20 efficiency programs during the preceding calendar year, details of  
21 each program, and the overall effectiveness of each program.

22 Sec. 17. (1) A large customer may submit to the commission a  
23 description of a proposed energy efficiency project, including  
24 anticipated project expenditures and an estimate of the annual  
25 megawatts and megawatt hours or decatherms of energy savings that  
26 will result from the project, along with supporting documentation.  
27 The large customer shall submit a copy of these materials to the

1 relevant utility.

2 (2) The commission shall approve or disapprove the proposed  
3 energy efficiency project if the project will provide new  
4 electricity or natural gas savings with a simple payback period of  
5 more than 1 year but less than 8 years. Otherwise, the commission  
6 shall disapprove the project. The payback period shall be  
7 calculated by dividing energy efficiency project costs by annual  
8 energy cost savings.

9 (3) Upon completing an approved energy efficiency project, a  
10 large customer shall submit to the relevant utility and the  
11 commission verification of the installation and an update of the  
12 information provided under subsection (1). The large customer's  
13 energy savings shall be included in the calculation of the  
14 utility's incremental energy savings under section 7.

15 (4) A large customer that has completed an energy efficiency  
16 project may deduct the amount of actual project expenditures, up to  
17 the amount verified by the commission under subsection (3), from  
18 the relevant utility's energy efficiency program charges that the  
19 large customer would otherwise incur under section 9 or 11 in the  
20 year in which the energy efficiency project was completed. A large  
21 customer's total annual deductions under this subsection shall not  
22 exceed 90% of such charges.

23 (5) The commission may develop additional procedures to  
24 accomplish the objectives of this section in an efficient and  
25 effective manner.

26 (6) As used in this section, "relevant utility" means the  
27 utility providing the service the demand for which will be affected

1 by the energy efficiency project.

2       Sec. 19. The commission shall promote load management in  
3 appropriate circumstances, including allowing rate recovery for  
4 prudent load management expenditures.

5       Sec. 21. By 1 year after the effective date of this act, and  
6 every 2 years thereafter, the commission shall report to the  
7 legislature on the progress and results from the implementation of  
8 the energy efficiency programs required to be implemented by  
9 utilities under this act. The commission shall make copies of the  
10 report available for distribution to the public. The department of  
11 labor and economic growth shall post the report on its website.

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

15       (a) Senate Bill No.\_\_\_\_ or House Bill No. 5524 (request no.  
16 02552'07 \*).

17       (b) Senate Bill No.\_\_\_\_ or House Bill No. 5521 (request no.  
18 04883'07 \*).

19       (c) Senate Bill No.\_\_\_\_ or House Bill No. 5522 (request no.  
20 04884'07 \*).

21       (d) Senate Bill No.\_\_\_\_ or House Bill No. 5520 (request no.  
22 04885'07 \*).

23       (e) Senate Bill No.\_\_\_\_ or House Bill No. 5523 (request no.  
24 05023'07 \*).

25       (f) Senate Bill No.\_\_\_\_ or House Bill No.\_\_\_\_ (request no.  
26 05570'07).

27       (g) Senate Bill No.\_\_\_\_ or House Bill No.\_\_\_\_ (request no.

1 05919'07).

2 (h) House Bill No. 5383.

3 (i) House Bill No. 5384.