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CLEAN AND RENEWABLE AND ENERGY WASTE REDUCTION ACT

Senate Bill 438 (passed by the Senate as S-7)
Sponsor: Sen. John Proos
House Committee: Placed directly on Second Reading
Senate Committee: Energy Policy
Complete to 12-2-16

BRIEF SUMMARY:

The bill will amend the Clean, Renewable, and Efficient Energy Act to:

- Rename the act as the Clean and Renewable and Energy Waste Reduction Act.
- Revise the purpose of the act to focus on promoting the development and use of clean and renewable energy resources and the reduction of energy waste.
- Add as a goal of the act to meet 35 percent of the state's electric needs through a combination of energy waste reduction and renewable energy by 2025.
- Add as a goal of the act "to remove unnecessary burdens on the appropriate use of solid waste as a clean energy source."
- Maintain the 10 percent renewable energy portfolio through 2018, increase the standard to 12.5 percent from 2019 through 2021, and require electric providers to achieve a 15 percent renewable energy portfolio in 2021.
- Change references and provisions pertaining to "energy optimization" to refer instead to "energy waste reduction."
- Replace the "net metering program" with the "distributed generation program."
- Create a voluntary Green Pricing Program under which a customer can choose the amount of electricity to receive from renewable energy.
- Create Part 7 to allow electric and natural gas providers to establish programs by which residential customers may obtain loans for energy projects and make monthly repayments on their utility bills. If recorded with the county register of deeds, the loan would run with the property and new owners would be obligated to repay any outstanding loan balance.
- Increase the financial incentive for providers who exceed the energy waste reduction performance standards.
- Allow load management programs by which a utility could remotely shutdown a customer's energy intensive systems (e.g., HVAC, refrigeration) for a period of time to avoid system overloads.
- Allow fuel manufactured from waste to be a "renewable energy resource." The term will not include pet coke, hazardous waste, coal waste, or scrap tires as fuel meeting the requirements of the definition.
- Eliminate the requirements that electric utilities include itemized charges or savings from renewable energy programs on a customer's monthly bill.
- Allow for the use of pyrolysis technologies in the generation of renewable energy. ("Pyrolysis" is not defined in the bill but generally refers to a high-temperature,

oxygen-free process to make biofuels from a wide range of agricultural, industrial, and municipal solid waste.)

- Revise, eliminate, and add definitions.
- Repeal numerous sections.

DETAILED SUMMARY:

Senate Bill 438 amends the Clean, Renewable, and Efficient Energy Act (MCL 460.1001 et al.). A description, by section, of the more significant changes proposed by the bill follows.

TITLE

The title will be amended to revise the stated purpose of the act as follows:

- Require certain providers of electric service to establish *and recover costs for* renewable energy programs.
- Replace references to *energy optimization programs* with *energy waste reduction programs*.
- Delete, as a purpose, to provide for certain charges on electric and natural gas bills.
- Add *to reduce energy* by state agencies and the public, instead of *to promote energy conservation* by those entities.
- Replace references to *net metering* with *customer generation and net metering*.
- Add, as a purpose, to authorize the establishment of residential energy improvement programs by providers of electric or natural gas service.

PART 1: General Provisions

Section 1: Title and Purpose of Act

The act will be renamed the Clean and Renewable and Energy Waste Reduction Act (currently it is the Clean, Renewable, and Efficient Energy Act). Changes, with highlighting denoting revisions to existing provisions, include:

- Promote the development *and use of clean and renewable energy resources and the reduction of energy waste through programs* that will cost-effectively do all of several listed goals instead of *promoting the development of clean energy, renewable energy, and energy optimization through the implementation of a clean, renewable, and energy efficient standard*.
- Replace references to *energy efficiency* with *energy waste reduction.*
- *Coordinate with federal regulations* to provide improved air quality and other benefits to energy consumers and citizens of the state.
- Add as a goal to remove unnecessary burdens on the appropriate use of solid waste as a clean energy source.
- Add as a goal, that not less than 35 percent of the state's electric needs be met through a combination of energy waste reduction and renewable energy by 2025, if the investments in energy waste reduction and renewable energy are the most reasonable means of meeting an electric utility's energy and capacity needs relative

to other resource options. Both of the following will count toward achievement of this goal:

- (1) All renewable energy (including renewable energy credits purchased or otherwise acquired with or without the associated renewable energy) and any banked renewable credits that counted toward the renewable energy standard on the bill's effective date, and (2) Renewable energy credits granted as a result of any investments made in renewable energy by the utility or a utility customer after the bill's effective date.
- The sum of the annual electricity savings since October 6, 2008, as recognized by the Commission through annual reconciliation proceedings, that resulted from energy waste reduction measures implemented under an energy optimization plan or energy waste reduction plan approved under Section 73.

Definitions

The following definitions will be revised, added, or eliminated:

Section 3:

Eliminated:

"Advanced cleaner energy credit" and "affiliated transmission company".

Revised:

"Carbon dioxide emissions benefits" will also mean that the carbon dioxide emissions per megawatt hour of electricity generated by an integrated pyrolysis combined cycle facility are at least 70 percent less than the average carbon dioxide emissions per megawatt hour of electricity generated from all coal-fired electric generating facilities operating in Michigan on January 1, 2008 (the same level currently specified for an integrated gasification combined cycle facility).

Added:

"Cogeneration facility" will mean a facility that produces both electricity and useful thermal energy, such as heat or steam, in a way that is more efficient than the separate production of those forms of energy.

"Distributed generation program" means the program established by the MPSC under Section 173.

Section 5:

Revised:

The term "electric provider" will no longer be subject to Sections 21, 23, and 25 as those sections will be repealed.

"Energy conservation"—the ban on including the use of advanced cleaner energy systems in the definition is removed.

"Energy efficiency" will include measures using prepay programs.

Section 7:

Eliminated

"Industrial cogeneration facility", "industrial thermal energy", and industrial waste energy."

Revised
"Load management" will include measures or programs to target *behavior* to result in decreased peak electricity demand, rather than targeting *devices* to do so.

"Modified net metering"– *modified net metering customers* will be *modified net metering for distributed generation customers*. In addition, a distribution charge could not be recovered more than once.

Added
"Integrated pyrolysis combined cycle facility" would be defined to mean a pyrolysis facility that uses exhaust heat to generate electricity.

Section 9:
Eliminated
*"*Qualifying small power production facility.*"*

Revised
"Natural gas provider" is revised to refer to investor-owned businesses engaged in the sale and distribution *at retail* of natural gas within the state whose rates are regulated by the MPSC. The exclusion for an alternative gas supplier licensed under Public Act 3 of 1939 will be eliminated.

Added
"Pet coke" would be defined to mean a solid carbonaceous residue produced from a coker after cracking and distillation from petroleum refining operations.

"Pyrolysis facility" would be defined to mean a facility that effects thermochemical decomposition at elevated temperatures without the participation of oxygen, from carbon-based feedstocks including, but not limited to, coal, wood, biomass, industrial waste, or solid waste, but not including pet coke, hazardous waste, coal waste, or scrap tires. The term would include the transmission lines, gas transportation lines and facilities, and associated property and equipment specifically attributable to the facility. It would also include, but not be limited to, an integrated pyrolysis combined cycle facility.

Section 11:
Eliminated
"Renewable energy capacity portfolio" and "renewable energy generator."

Revised
"Renewable energy resource" currently includes municipal solid waste; the bill includes both the biogenic and anthropogenic factions of municipal solid waste. The bill also will include fuel that has been manufactured in whole or significant part from waste, including, but not limited to, municipal solid waste. Fuel that meets the bill's requirements will include, but not be limited to, material listed in federal law under 40 CFR 241.3(b) or 241(a) or for which a non-waste determination is made by the U.S. Environmental

Protection Agency pursuant to 40 CFR 241.3(c). Pet coke, hazardous waste, coal waste, or scrap tires will not be fuel that meets the requirements of this provision.

"Renewable energy system" is defined as a facility using renewable energy resources to generate electricity. An incinerator is not included as a renewable energy system unless it is a municipal solid waste incinerator as defined in Section 11504 of NREPA that was brought into service before the effective date of the act. The bill would delete the highlighted text as well as a list of several examples of incinerators. A renewable energy system would therefore include all municipal solid waste incinerators that meet the NREPA definition.

Section 13:
Revised
"Utility system resources cost test"—regarding electricity, before January 1, 2021, the term will apply to electricity supply, transmission, distribution, and other associated costs.

"Wind energy conversion system" will refer to a *system* that uses one or more wind turbines to generate electricity and has a capacity of 100 kilowatts or more, rather than being a *renewable energy system*.

Part 2: Energy Standards

Subpart A: Renewable Energy

Sections 21, 23, and 23: Proposed renewable energy plan/Repealed
These provisions require all regulated electric providers, alternative energy suppliers (AES) and cooperative electric utilities, and municipally owned electric utilities, respectively, to file a renewable energy plan. All three sections will be repealed.

Section 22
The bill adds Section 22 to specify that renewable energy plans and associated revenue recovery mechanisms filed by an electric provider under former Sections 21 and 23 or in compliance with former Section 25 and in effect on the bill's effective date will remain in effect. Within one year of the bill's effective date, the PSC must review each provider's plan, as a contested case, and approve or reject the plan or amendments to it. The bill provides a process for approval or rejection of amendments to the plan proposed after the review process.

Section 27: Renewable energy capacity portfolio; renewable energy credit portfolio
Repeals the requirement for electric providers to reach a 10 percent renewable energy portfolio by 2015 and maintain it beginning in 2016. These provisions would be replaced by those in Section 28, below.

Section 28: Renewable energy credit portfolio
The bill adds Section 28 to require that electric providers maintain the 10 percent renewable energy portfolio through 2018, increase the standard to 12.5 percent from 2019 through 2021, and in 2021, requires electric providers to achieve a 15 percent renewable energy portfolio, as calculated under the bill. The portfolio can be met either by generating electricity from renewable energy systems or by purchasing or otherwise acquiring

renewable energy credits with or without the associated renewable energy. In addition, the bill allows energy waste reduction credits, on a 1-1 basis, to be substituted for up to 10 percent of renewable energy credits.

Section 29: Renewable energy system location

Section 29 pertains to the location requirements of a renewable energy system that is the source of renewable energy credits; the bill deletes a provision that currently excludes electricity generated from a renewable energy system that is sold by a not for profit entity in Ohio to a municipally owned electric utility in this state from being a source of renewable energy credits.

Section 31: Extensions for 2015 renewable energy standard/Repealed

Section 33: Repealed

Pertains to how an electric provider having one million or more retail customers in this state on January 1, 2008, was to obtain the renewable energy credits to meet the 2015 renewable energy credit standard.

Section 37: Repealed

Pertains to a renewable energy contract without associated renewable energy.

Section 39: Renewable energy credit

Currently, except as provided in Section 35(1) of the act, one renewable energy credit is granted to the owner of a renewable energy system for each megawatt hour of electricity generated from the system, subject to certain conditions. The bill eliminates a provision that does not allow a renewable energy credit for renewable energy generated from a municipal solid waste incinerator to the extent the renewable energy was generated by operating the incinerator in excess of the incinerator's nameplate capacity rating as of January 1, 2008, or, if the incinerator had been expanded, the nameplate capacity rating required to accommodate the expansion, whichever is greater.

The bill revises when a renewable energy credit expires so that it would be understood to expire at the earliest of the following times:

- When used by an electric provider to comply with its renewable standard.
- When substituted for an energy waste reduction credit under Section 77.
- When used by an electric provider whose rates are regulated by the PSC to contribute to achieving at least 35 percent of the state's electric needs being met through a combination of energy waste reduction and renewable energy by 2025.
- Five years (instead of three) after the end of the month in which the renewable energy credit was generated.

A renewable energy credit associated with renewable energy generated within 120 days after the start of a calendar year could no longer be used to satisfy the prior year's renewable energy standard.

Section 41: Trade, sale, or transfer of renewable energy credits

The bill deletes provisions:

- Allowing the same credit to be used to comply with both a federal renewable energy standard and state's standard.

- Prohibiting using the same credit to comply with both the state's standard and another state's standard.
- Requiring an electric provider to verify that a renewable energy credit used to comply with a renewable energy standard is derived from a renewable energy source and that the credit was not previously used, traded, sold, or transferred.

Section 43: Repealed

The provision pertains to a cleaner energy credit generated from an advanced cleaner energy system.

Section 45: Charges for electric provider's tariffs that permit recovery of incremental costs of compliance

Provisions requiring a regulated electric provider to include in a customer's billing statement certain itemized charges and savings pertaining to the renewable energy program and the energy optimization program, and also the website address at which the PSC annual report is posted, will be eliminated.

Section 47: Cost of service to be recovered for a renewable energy plan

The capital, operating, and maintenance costs of an advanced cleaner energy system, and financing costs attributable to a system, are included as incremental costs of compliance with a renewable energy plan for which an electric provider may recover through its retail electric rates. The bill relocates (from Section 3) *and* revises the definition of "advanced cleaner energy system" to mean the following (highlights denote additions, or deletions as noted):

- A gasification facility.
- A cogeneration facility (instead of *industrial* cogeneration facility).
- A coal-fired electric generating facility if 85 percent or more of the carbon dioxide emissions are captured and permanently geologically sequestered *or used for other commercial or industrial purposes that do not result in release of carbon dioxide to the atmosphere*.
- *A hydroelectric pumped storage facility*.
- An electric generating facility or system that uses technologies not in commercial operation on October 6, 2008, *and that the commission determines has carbon dioxide emissions benefits or will significantly reduce other regulated air emissions*.

Section 49: Renewable cost reconciliation

Deletes references to Section 51, which will be repealed by the bill, and other changes of a technical nature.

Section 51: Repealed

The provision pertains to submission of an annual report by electric providers regarding efforts to comply with renewable energy standards.

Section 53: Repealed

The provision pertains to failure to meet a renewable energy credit standard.

Subpart B: Customer-Requested Renewable Energy

Currently, Subpart B is entitled "Energy Optimization" (this subpart will be renamed as "Subpart C. Energy Waste Reduction" and discussed later).

The bill adds Section 61 to do the following:

- Require electric providers to offer customers the opportunity to participate in a voluntary green pricing program.
- Allow participants to specify, from available options, the amount of electricity attributable to the customer that will be renewable energy.
- Require the PSC to approve green pricing programs offered by regulated providers, including the rates paid for renewable energy.
- Make the customer responsible for any additional costs incurred but also allow the customer to accrue any additional savings from program participation.
- If the electric provider does not fully recover the incremental costs of compliance, apply the following:
    - Exempt a customer receiving at least 50 percent of their average monthly electricity consumption through the program from paying surcharges for incremental costs of compliance; *and*,
    - Require an electric provider to notify a customer who will receive less than 50 percent of their average monthly electricity consumption that the customer will be responsible for the full applicable charges for the incremental costs of compliance and for participation in the green pricing program. The notice must be given before the customer enters into an agreement to participate in the green pricing program.

Subpart C: Energy Waste Reduction

The bill renames "Subpart B. Energy Optimization" as "Subpart C. Energy Waste Reduction." Most references to "energy optimization" will be replaced with "energy waste reduction" in the bill and in the following descriptions.

Section 71: Proposed energy optimization plan

Under the bill, energy optimization plans filed under the act will remain in effect, subject to any amendments, but as *energy waste reduction plans.* Other changes include:

- Adding as a goal of energy waste reduction: *to help the provider's customers reduce energy waste*.
- Revise requirements for an energy waste reduction program to include:
    - When describing how program costs will be recovered, specify whether the charges to recover costs under Section 89(2) will be volumetric or fixed per-meter charges.
    - Ensure that charges collected from a particular customer rate class are spent on energy waste reduction programs *that benefit* that rate class.
    - Allow providers the flexibility to determine the relative amount of effort to be devoted to each customer class based on the specific characteristics of the provider's service territory.

Section 73: PSC approval for energy waste reduction plan

Currently, energy waste reduction plans must be filed with, reviewed by, and approved or rejected by the PSC. The bill adds that for a provider whose rates are regulated by the PSC, the plan will be enforced by the PSC; a provider whose rates are not regulated by the PSC will be enforced as provided in a provision added by the bill (Section 99). A municipally owned electric utility will be allowed to design and administer energy waste reduction plans in a manner consistent with the administrative changes approved in a PSC order dated April 17, 2012 (Case Nos. U-16688 to U-16728 and U-17008).

Further, the bill requires the PSC to review an approved plan every two years. For a provider whose rates are regulated, the PSC will conduct a contested case hearing and either approve the plan (with any changes consented to by the provider) or reject the plan and any proposed amendments. A provider proposing to amend its plan other than during the biennial review process must file the amendment; the PSC will have 90 days in which to conduct a hearing and approve or reject the plan and any proposed amendments. The reasons for a rejection of a plan or amendment must be explained in writing by the PSC.

After December 31, 2020, Section 73 will only apply to an electric provider whose rates are regulated by the PSC.

Section 75: Exceeding standard for an energy waste reduction plan

Currently, the act provides a financial incentive for a provider whose rates are regulated by the PSC for exceeding the energy optimization performance standard. The bill retains the incentive, but applies it to an energy waste reduction performance standard and revises the allowable incentive. Under the bill, the total amount of a financial incentive could not exceed the lesser of the following amounts:

- 20 percent (reduced from 25 percent) of the net cost reductions experienced by the provider's customers as a result of implementation of the energy *optimization* plan. (This presumable means to refer to an energy waste reduction plan.)
- 25 percent (increased from 15 percent) of the provider's actual energy waste reduction program expenditures for the year.

Section 77: Energy savings

Section 77 pertains to the minimum energy savings of a provider's energy optimization program (energy waste reduction program). Under the bill, and subject to Section 97, the annual incremental energy savings *through 2020* must be equivalent to 1 percent of the total annual retail electricity sales in megawatt hours in the preceding year.

Other changes include extending beyond the act's 2015 sunset the requirement that a natural gas provider's energy waste reduction program achieve annual incremental energy savings each year equivalent to 0.75 percent of total annual retail natural gas sales in decatherms or equivalent MCFs in the preceding year.

The savings expected to be achieved will be determined using a savings database or other savings measurement approach as determined reasonable by the PSC. Further, the bill retains the 10 percent cap on using renewable energy credits, load management that reduces overall energy usage, or a combination to meet the energy waste reduction standard. Substitutions for energy waste reduction credits will be made at the rate of *one renewable*

energy credit per energy waste reduction credit. The bill also updates numerous terms and deletes obsolete language, including references to advanced cleaner energy credits, as Section 43 will be repealed.

Section 78

The bill adds Section 78 to do the following:

- For providers whose rates are regulated by the PSC, require by January 1, 2021, and every two years after that, that they file an energy waste reduction plan amendment detailing the amount of energy waste reduction it proposes to achieve for the succeeding two-year period. A level higher or lower than what is in the current plan could be approved if the PSC determines that level to the most reasonable and prudent.
- Allow the electric provider or a natural gas provider to petition for an alternative energy waste reduction level if the provider cannot achieve the approved level over a two-year period in a cost-effective manner. For regulated electric providers, a contested case hearing will be held to make the determination; for natural gas providers, the PSC will make the determination whether to revise the level.

Section 79: Repealed

The provision pertains to the location of advanced cleaner energy systems used as a source of advanced cleaner energy credits.

Section 81: Repealed January 1, 2021

This provision pertains to alternative energy waste reduction standards for certain electric providers who cannot reasonably meet the energy waste reduction standards with programs that are collectively cost-effective.

Section 85: Energy waste reduction certification and tracking program

The bill requires one energy waste reduction credit to be granted to an electric provider for each megawatt hour of annual incremental energy savings achieved through energy waste reduction.

Section 89: Recovery of costs

Currently, the PSC allows a gas or electric provider whose rates are regulated by the commission to recover the actual costs of implementing its approved energy optimization plan; the bill will apply the provisions to energy waste reduction plans. Under the bill, costs will be recovered from all customers by volumetric charges or fixed, per-meter charges as specified in the energy waste reduction plan. Fixed-per meter charges could vary by rate class. Charges could be itemized on utility bills but not on or after January 1, 2021.

The act currently allows a natural gas provider under certain circumstances to implement a decoupling true-up mechanism to adjust for sales that are above or below the projected levels used to determine the revenue requirement authorized in the natural gas provider's most recent rate case. The bill specifies that a natural gas provider that implements revenue decoupling under Section 6a of Public Act 3 of 1939 (amended by Senate Bill 437) cannot also implement revenue decoupling under this provision.

Existing caps on the cost recovery for certain customer classes of electric providers and natural gas providers would be eliminated, as will a provision placing a cap of two percent of total utility retail sales revenues for 2012 and thereafter that may be spent to comply with the energy optimization performance standard.

Section 91: Payment to an independent energy waste reduction program administrator

The act requires an alternative compliance payment received from a provider by the energy waste reduction program administrator to be used to administer energy efficiency programs for the provider. The bill eliminates a provision allowing money unspent in a year to be carried forward to be spent in the subsequent year.

The act allows a provider to recover an alternative compliance payment made to an independent energy optimization program administrator. Under the bill, providers could recover costs for an alternative compliance payment made to an independent energy waste reduction program administrator from all customers by volumetric charges or fixed, per-meter charges. Fixed-per meter charges could vary by rate class. Charges could be itemized on utility bills but not on or after January 1, 2021.

Section 95: PSC duties

As one of its duties the PSC commission is to promote load management in appropriate circumstances. The bill includes the expansion of existing programs, and the establishment of new load management programs in which an electric provider could manage the operation of energy consuming devices and remotely shut down air conditioning or other energy intensive systems of participating consumers, demand response programs that use time of day pricing and dynamic rate pricing, and similar programs—for utility customers that have advanced metering infrastructure.

Participation by providers or enrollment by customers in such programs will be voluntary.

However, electric providers whose rates are regulated by the PSC, and whose rates include the cost of advanced metering infrastructure, must offer commission-approved demand response programs. The programs could provide incentives for customer participation and must include customer protection provisions as required by the PSC. As a condition of participation, a customer must agree to remain in the program for at least one year.

The above provision could not be construed to prevent an electric utility from recovering the full cost associated with providing electric service and load management programs or installing metering and retrieving metering data necessary to properly, accurately, and efficiently bill for the utility's services without manual intervention or manual calculation.

The bill deletes obsolete reporting requirements and also deletes some duties of the PSC regarding promoting energy efficiency and energy conservation.

Section 97: Compliance with energy waste reduction standards; reports

The act authorizes the PSC to suspend a provider's energy waste reduction program if it has not been cost-effective; under the bill, this provision will not apply to an electric provider on or after January 1, 2021.

Currently, a report evaluating and determining whether Subpart C has been cost-effective and that contains recommendations to the Legislature must be combined with any concurrent report required under Section 51. Section 51 will be repealed; the bill, therefore,

allows the report required under Section 97 to be combined with the annual report required under Section 5a of Public Act 3 of 1939 (summarizes the activities of the commission and is submitted to the governor and the legislature annually on or before the first Monday of March). Numerous obsolete provisions will also be eliminated.

Section 99

The bill adds Section 99 to allow the attorney general or any customer of a municipally owned electric utility or a cooperative electric utility to commence a civil action for injunctive relief against the utility if it fails to meet the applicable requirements of Subpart C regarding energy waste reduction. Actions would be filed in the circuit court in the circuit in which the utility's principal office is located. A written notice of the intent to sue will have to be provided at least 60 days prior to filing. Within 30 days of receipt of the notice by the utility, the parties must meet and make a good faith attempt to determine if a credible basis for the action exists. If so, the utility will have to take all reasonable and prudent steps necessary to comply with the applicable requirements of Subpart C; if not, the attorney general or customer may proceed to file the suit.

Subpart D. Miscellaneous

The bill renames Subpart C as Subpart D. Currently, Section 113 specifies that electricity or natural gas used in the installation, operation, or testing of any pollution control equipment is exempt from the requirements of, and calculations of compliance required under Part 2. Under the bill, the exemption will no longer apply to electricity used for this purpose as of January 1, 2021.

PART 5: Wind Resource Zone

Section 155, which pertains to an annual report regarding wind energy resource zones, will be repealed.

PART 5: Distributed Generation

Part 5, entitled "Net Metering," will be renamed "Distributed Generation." [Under the current net metering program, as explained by the PSC, customers can develop on-site renewable energy electric generation projects to meet some or all of their electric energy needs and reduce their electric bills. Customers may install an on-site renewable energy electric generation project, such as a wind turbine or solar photovoltaic panels. The program is available to customers of PSC rate-regulated utilities and cooperatives, and alternative electric suppliers (AESs).

Section 173

The bill revises current provisions pertaining to establishment of a statewide net metering program to instead apply to a *distributed generation program.* The PSC, within 90 days of the bill's effective date, will be required to establish a *distributed generation program*; the PSC will be authorized to promulgate rules as necessary to implement it. The program will apply to electric utilities whose rates are regulated by the PSC and to alternative electric suppliers (AES) in the state.

An electric customer of any class may participate in the distributed generation program, but each participant will be limited to generation capacity designed to meet up to 100

percent of the customer's electricity consumption *for the previous 12 months* (an increase from the current limitation based on the customer's electric needs).

Currently, a utility must make the program available until it reaches 1% of its in-state peak load for the preceding calendar year. Under the bill, the limit would apply to 1% of its *average* in-state peak load for the preceding *five years* (instead of the preceding year).

The 1% limit is allocated as follows: (a) no more than one-half of the 1% limit for customers with a system capable of generating 20 kilowatts or less; (b) no more than one-quarter for customers with a system capable of generating more than 20 kilowatts but not more than 150 kilowatts; and (c) no more than one-quarter for customers with a system capable of generating more than 150 kilowatts.

The bill retains that allocation, but specifies that the first two allocations pertain to customers with an *eligible electric generator* capable of generating 20 kilowatts or less or more than 20 kilowatts but no more than 150 kilowatts, respectively. The remaining portion is revised to apply to customers with a *methane digester* capable of generating more than 150 kilowatts.

Currently, the act allows an electric utility to study, confirm, and ensure that an eligible electric generator installation at the customer's sits meets the IEEE 1527 anti-islanding requirements. The bill will also allow an installation meeting any applicable successor anti-islanding requirements determined by the PSC to be reasonable and consistent with safety requirements. If necessary to promote reliability or safety, the PSC could promulgate rules requiring the use of inverters that perform specific automated grid-balancing functions to integrate distributed generation onto the electric grid. Inverters that interconnect distributed generation resources could be owned and operated by electric utilities.

Section 175: Application fee

The bill reduces the application fee for processing an application for participating in the distributed generation program to not more than $50 (instead of a fee not to exceed $100 for the net metering program). The bill eliminates a provision limiting payment of interconnection costs to only a customer with a system capable of generating more than 20 kilowatts (thus, all customers will now pay interconnection costs) and also eliminates a provision requiring a customer capable of generating more than 150 kilowatts to pay standby costs.

Section 177: Customer's energy use in billing period; use of electric meters; credit

The bill specifies that the grid usage charge established under Senate Bill 437 in Section 6a cannot be reduced by any credit or other ratemaking mechanism for distributed generation under Section 177.

Section 183

This new provision will allow a customer who is participating in a net metering program before the effective date of Section 183 to elect to continue to receive service under the terms and conditions of that program for up to 10 years from the date of enrollment. This does not apply to an increase in the generation capacity of the customer's eligible electric generator beyond the capacity on the section's effective date.

(Note: Though the bill does not specify to which program—net metering or distributed generation—the phrase "for up to 10 years from the date of enrollment" refers, it could be interpreted that the phrase is referring to enrollment in the current net metering program. This would mean that a customer currently participating in the net metering program could participate under that program's terms and conditions for up to 10 years since enrolling. Depending on when a customer enrolled, this may mean there could be only a few years of participation left. It is not clear if the customer would then have to apply for enrollment in the distributed generation program created under the bill, and if so, would then be considered a "new customer" for purposes of being responsible for the new grid charge established under Senate Bill 437[1].)

Section 185

The bill adds Section 185 to specify that, notwithstanding any other provision of the act, the act does not limit or restrict an industrial customer's ability to build, own, operate, or have a third party build, own, and operate one or more self-generation or cogeneration facilities.

PART 7: Residential Energy Improvements

The bill adds Part 7, which allows a provider whose rates are regulated by the PSC to establish a residential energy projects program for their customers under which a property owner could finance or refinance a qualifying energy project on the customer's property from a commercial lender and pay for the improvements through itemized charges on the provider's utility bill for the property. Repayment of the project would attach to the property; thus, if the property were sold before the project is paid off, the new owner would be responsible for the balance of the project repayment.

Section 201: Definitions

"Energy project" means the installation or modification of an energy waste reduction improvement or the acquisition, installation, or improvement or a renewable energy system.

"Energy waste reduction improvement" means equipment, devices, or materials intended to decrease energy consumption and includes a nonexclusive list such as insulation, storm doors and windows, energy recovery systems, and measures to reduce the usage of water or increase the efficiency of water usage.

"Home energy audit" is defined to mean an evaluation of the energy performance of a residential structure that meets certain listed requirements which include a baseline energy model and cost-benefit analysis for recommended energy waste reduction improvements.

"Record owner" means the person or persons possessed of the most recent fee title or land contract vendee's interest in property as shown by the records of the county register of deeds.

"Residential energy projects program" means the program described in Section 203.

[1] http://www.legislature.mi.gov/documents/2015-2016/billanalysis/House/pdf/2015-HLA-0437-77408248.pdf

"Property" means privately owned residential real property.

Section 203: Financing of residential energy projects

The bill allows a provider to establish a residential energy projects program under which a property owner may obtain financing or refinancing of an energy project on the property from a commercial lender or other legal entity, including an independent subsidiary of the provider. The loan would be repaid through itemized charges on the provider's utility bill for that property. The itemized charges could cover the cost of materials and labor, home energy audit costs, permit and inspection fees, application and administrative fees, bank fees, and other fees incurred by the record owner for the installation on a specific or pro rata basis, as determined by the provider.

Section 205: PSC approval of residential energy projects program

The bill requires a residential energy projects program to be established and implemented under a plan approved by the PSC. Providers seeking to establish a program must file a proposed plan with the commission and include information as required by the bill, such as the estimated costs of administration of the program, whether the program will be administered by a third party, eligibility requirements for a property owner to participate, and provisions for billing customers any fees owed and the monthly installment payments as a per-meter charge on the bill for electric or natural gas services. A plan would have to be reasonable and prudent for the PSC to approve it. If a plan is rejected the commission must explain in writing the reasons for the determination. The PSC must review an approved plan every four years after the initial approval.

Section 207: Baseline home energy audit; shut off for nonpayment

Before an energy project under a program is undertaken, a baseline home energy audit must be conducted. Upon completion of the project, the provider must obtain verification that the energy project was properly installed and is operating as intended.

Electric or natural gas service could be shut off for nonpayment of the per-meter charge described in Section 205 in the same manner and under the same procedures used to enforce nonpayment of the provider's other charges for electric or natural gas service. If notice of a loan under the program is recorded with the county register of deeds, the obligation to repay the per-meter charge will run with the land and be binding on future customers contracting for electric or natural gas service, as applicable, to the property.

Section 209: Term of repayment

The term of a loan paid through a residential energy projects program could not exceed the anticipated useful life of the energy project or 180 months, whichever is less. The loan must be repaid in monthly installments.

A lender must comply with all state and federal laws applicable to the extension of credit for home improvements. If a nonprofit corporation makes loans to property owners to be repaid under a residential energy projects program, interest will be charged on the unpaid balance at a rate of not more than the adjusted prime rate as determined under Section 23 of the Revenue Act, plus four percent.

Section 211: Rule promulgation

The PSC would have to promulgate rules to implement Part 7 within one year after the effective date of Section 211. Every five years thereafter, the PSC must submit a report on the implementation of Part 7, and any recommendations for legislation to amend it, to the standing committees of the state Senate and House of Representatives with primary responsibility for energy issues. The report may be combined with the annual report required under Section 5a of Public Act 3 of 1939, the PSC enabling act.

Further, the act would not limit a provider's right to propose a program with elements that differ from those required in the bill or the PSC's authority to approve such a program as reasonable and prudent.

Senate Bill 438 is tie-barred to Senate Bill 437, meaning it cannot take effect unless SB 437 is also enacted, and, except as otherwise provided, will take effect 90 days after enactment.

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FISCAL IMPACT:

Senate Bill 438 (S-7) would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs. The bill would create additional responsibilities for the Public Service Commission and the Attorney General, which would increase administrative costs for the departments. Activities that the PSC would undertake according to the bill would include reviewing natural gas providers' energy waste reduction plans, promulgation of rules for the implementation of a distributed generation program, and the review of residential energy project program plans. The Attorney General would be responsible for the review of additional cases as well as enforcement of new provisions in the bill. Since the activities of the PSC are funded mainly through public utility assessments, increases in expenditures by the department for the PSC could be offset by increases in these assessments. The bill would not have a fiscal impact on local units of government.

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