

Legislative Analysis



REVISE THE CLEAN, RENEWABLE, AND EFFICIENT ENERGY ACT

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House Bill 4297 (reported by committee as H-3)

Sponsor: Rep. Aric Nesbitt

Committee: Energy Policy

Complete to 11-30-15

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Briefly, the bill would amend the Clean, Renewable, and Efficient Energy Act to:

- Revise the purpose of the act by eliminating a reference to "energy optimization" and "energy efficiency" and add as one of the goals "to remove unnecessary burdens on the appropriate use of solid waste as a clean energy source."
- Repeal references and provisions pertaining to energy optimization as of January 1, 2019, or January 1, 2020.
- Allow fuel manufactured from municipal solid waste, among other waste sources, to be a "renewable energy resource" and revise the definition of the term. The term would not include fuel derived from pet coke, hazardous waste, coal waste, or scrap tires. The term would still apply to a resource that naturally replenishes over a human time frame and that is ultimately derived from solar power, water power, or wind power.
- Create Part 7 to allow electric and natural gas providers to establish programs by which customers may obtain loans for energy projects and repay the loan monthly on their utility bill. If recorded with the county register of deeds, the loan would run with the property and new owners would be obligated to repay the loan.
- 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 and add several definitions.

Unless otherwise indicated, the provisions would take effect 90 days after the bill is enacted.

DETAILED SUMMARY:

House Bill 4297 would amend the Clean, Renewable, and Efficient Energy Act (MCL 460.1001 et al.). A section-by-section description of the bill follows, with the effective dates of the amendments and repealers listed with each section.

TITLE

The title would be amended to include, as a purpose of the act, to authorize the establishment of energy improvement programs by providers of electric or natural gas service for energy customers.

PART 1: General Provisions

Section 1: Purpose of act

The bill eliminates from the stated purpose of the act references to energy optimization and a clean, efficient standard. Instead, the stated purpose would be "to promote the development of clean energy and renewable energy through the implementation of a renewable energy standard that will cost-effectively do all" of several listed goals. One of the current goals requires the act to encourage private investment in renewable energy *and energy efficiency*; the highlight text would be deleted.

The bill would also add, as a goal of the act, the removal of unnecessary burdens on the appropriate use of solid waste as a clean energy source.

Definitions

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

Section 3:

"*Biomass*" currently includes, among other things, trees and wood, but only if derived from sustainably managed forests or procurement systems, as defined in Section 261e of the Management and Budget Act. The underlined portion would be deleted.

"*Carbon dioxide emissions benefits*" would be revised to include the carbon dioxide emissions per megawatt hour of electricity generated by an integrated pyrolysis combined cycle facility that are 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.

Section 5:

The definition of "electric provider" is defined to mean any person or entity that is regulated by the MPSC for the purpose of selling electricity to retail customers in the state, a municipally-owned utility, or a cooperative electric utility in the state. Under the bill, beginning 180 days after the bill is enacted, neither a municipally-owned nor a cooperative electric utility would apply to the term "electric provider" or "provider" as used in Sections 71-87 of the act. Section 5 will be repealed January 1, 2020.

Section 5a:

This new section, which will take effect January 1, 2020, enacts all the same definitions as currently contained in Section 5 with the exception of terms pertaining to energy optimization. Definitions of "*energy optimization*," "*energy optimization credit*," "*energy optimization plan*" or "*EO plan*," and "*energy optimization standard*" will be eliminated.

Also eliminated will be a provision that energy optimization does not include electric provider infrastructure projects approved for cost recovery by the Michigan Public Service Commission other than as provided in the act.

Section 7:

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

"*Megawatt*," "*megawatt hour*," or "*megawatt hour of electricity*" would be defined to include, unless the context implies otherwise, the steam equivalent of a megawatt or megawatt hour of electricity.

Section 9:

"*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:

"*Renewable energy*" would be revised to mean electricity or steam generated using a renewable energy system.

The definition of "renewable energy resources" would be revised. Currently, the term means a resource that naturally replenishes over a human, not a geological, time frame and that is ultimately derived from solar power, water power, or wind power. Renewable energy resource does not include petroleum, nuclear, natural gas, or coal. A renewable energy resource comes from the sun or from thermal inertia of the earth and minimizes the output of toxic material in the conversion of the energy and includes, but is not limited to, all of the following listed sources (new provisions are underlined):

- Biomass.
- Solar and solar thermal energy.
- Wind energy.
- Kinetic energy of moving water, including waves, tides, or currents or water released through a dam.
- Geothermal energy.
- Thermal energy produced from a geothermal heat pump.
- Any of the following cleaner energy resources:
 - Municipal solid waste.
 - Landfill gas produced by municipal solid waste.

- Fuel that has been manufactured in whole or significant part from waste, including, but not limited to, municipal solid waste. Fuel that meets the requirements would include, but not be limited to, material listed 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 are not fuel that meets the requirements of this provision.

"*Renewable energy system*" is defined as a facility using renewable energy resources to generate electricity; the term would be revised to include steam, as well. Currently, a hydroelectric facility that uses a dam constructed after the October 6, 2008, effective date of the Clean, Renewable, and Efficient Energy Act is not included as a "renewable energy system" unless it is a repair or replacement of a dam that was in existence on the act's effective date. The bill would delete this provision, thus allowing a hydroelectric facility to constitute a renewable energy system.

Similarly, 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 Clean, Renewable, and Efficient Energy 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:

The definition for "*utility system resources cost test*" would be eliminated effective January 1, 2020.

Part 2: Energy Standards

Subpart A: Renewable Energy

Section 21: Proposed renewable energy plan

The bill makes several changes of a technical nature that take effect January 1, 2019.

Section 27: Substitution of energy optimization credits

The bill would require that, when an energy optimization credit is substituted for a renewable energy credit, the energy optimization credit expires. The Michigan Public Service Commission would have to ensure that each energy optimization credit substituted for a renewable energy credit was properly accounted for. Any energy optimization credits outstanding on January 1, 2017, would expire on that date. The amendment takes effect January 1, 2019.

Section 29: Renewable energy system location

Section 29, which pertains to the location requirements of a renewable energy system that is the source of renewable energy credits, will be repealed 90 days after the bill takes effect.

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 would eliminate 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.

Currently, if a renewable energy system uses both a renewable energy resource and a nonrenewable one to generate electricity, the number of renewable energy credits granted is based on the percentage of the electricity generated from the renewable energy resource. The bill would include the generation of steam, in addition to electricity, when calculating the number of renewable energy credits to grant.

Further, provisions granting Michigan Incentive Renewable Energy Credits for electricity generated from a renewable energy system constructed using Michigan-made equipment or using a Michigan-based workforce would be eliminated.

Section 43: Advanced cleaner energy credit

The bill eliminates a reference to an energy optimization credit under Section 77 (which will be repealed January 1, 2019). The amendment takes effect January 1, 2019.

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

A provision requiring a regulated utility to include in a customer's billing statement certain charges and savings pertaining to the energy optimization program would be eliminated. The amendment takes effect January 1, 2020.

Subpart B: Energy Optimization

Section 77: Energy savings

Section 77 pertains to the minimum energy savings of a provider's energy optimization program. Currently, for the years 2012-2015 and, subject to Section 97, each year thereafter, the annual incremental energy savings must be equivalent to 1 percent of the total annual retail electricity sales in megawatt hours in the preceding year. The bill adds that for a municipally-owned or cooperative electric utility, the 1 percent energy optimization standard must be prorated for the partial final calendar year of the energy optimization program under the act. The energy optimization program for an affected utility ends 180 days after the bill takes effect. Further, the minimum energy savings requirement would not apply to an electric provider for which an integrated resource plan that includes energy optimization requirements has been approved under Section 6t of Public Act 3 of 1939.

The bill would also subject the minimum energy optimization standards using energy efficiency programs by a natural gas provider to the sales revenue expenditure limits in Section 89.

Section 77 will be repealed effective January 1, 2019.

Sections 71-75, 79-83: Energy optimization plans and credits, location of advanced cleaner energy systems

Sections 71-83 will be repealed effective January 1, 2019.

Sections 85 and 87: EO credit not transferable; EO certification and tracking program

Sections 85 and 87 will be repealed January 1, 2020.

Section 89: Recovery of costs

Section 89 will be repealed January 1, 2020. Currently, the MPSC 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 would apply the provision to costs incurred *before January 1, 2019*. Further, the MPSC would have to allow a cooperative electric utility whose rates are regulated to recover such costs only if incurred before 180 days after the bill's effective date. Existing caps on the cost recovery for certain customer classes of electric providers and natural gas providers would be limited to the period for which costs are being recovered.

In addition, the act currently places 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; the bill applies the cap only through 2018. However, the bill specifies that for a municipally-owned or a cooperative electric utility, the 2 percent spending cap would be prorated for the partial final calendar year of its energy optimization program.

Section 91: Payment to an independent energy optimization program administrator

Similarly to the above, the cap in place for 2012 and thereafter would be in place through 2018 instead. For a municipally-owned or a cooperative electric utility, the two percent spending cap would be prorated for the partial final calendar year of its energy optimization program.

The provision would take effect 90 days after the bill's effective date; Section 91 will be repealed January 1, 2020.

Section 93: Self-directed energy optimization plan

The exemption from certain costs for electric customers who file and implement a self-directed energy optimization plan would only apply to plans filed and implemented through *December 31, 2018*. However, to be exempt from those charges, the customer of a municipally-owned electric or cooperative utility must implement its self-directed energy optimization plan until 180 days after the bill's effective date. Section 93 is repealed January 1, 2019.

Section 95: MPSC duties

The provision allowing a provider whose rates are regulated by the MPSC to recover reasonable and prudent costs for load management undertaken under an energy optimization plan through base rates would be revised to apply only to load management undertaken before *January 1, 2019*. However, the MPSC may allow a cooperative electric utility whose rates are regulated to recover costs for load management undertaken before 180 days after the bill's effective date.

Further, following an integrated resource plan proceeding, and as part of a rate-making process, the act does not limit the MPSC from allowing a provider whose rates are regulated by the commission to recover for additional prudent energy efficiency and energy conservation measures not included in the provider's energy optimization plan if the provider has met the requirements of the energy optimization program. The bill eliminates the underlined portion.

Section 97: Compliance with energy optimization standards; reports

The section will be repealed January 1, 2020.

PART 7: Customer Energy Improvements

The bill adds Part 7, which allows providers to establish a program for their customers by which a property owner could finance or refinance qualifying energy projects and pay for the improvements through installment payments added to the customer's monthly utility bill. The new Part 7 takes effect 90 days after the bill's enactment.

Section 201: Definitions

"Clean energy resource" would mean an electric generation technology that meets all current state and federal air emissions regulations or qualifies under U.S. Environmental Protection Agency regulations as being carbon neutral. The term includes, but is not limited to, a fossil fuel generation technology in which at least 85 percent of the carbon dioxide emissions are captured and permanently sequestered or used for other commercial or industrial purposes that do not result in the release of carbon dioxide into the atmosphere.

Other defined terms include "clean energy system," "customer energy projects program," "energy audit," "energy project," "record owner," and "energy waste reduction improvement."

Section 203: Financing of energy projects

The bill allows a provider to establish a 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, energy audit costs, permit and inspection fees, application and administrative fees, bank fees, and other fees incurred by the property owner for the installation on a specific or pro rata basis, as determined by the provider.

Section 205: MPSC approval of customer energy projects program

The bill requires a customer energy projects program to be established and implemented pursuant to a plan approved by the MPSC. Providers seeking to establish a program must file a proposed plan with the MPSC 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 the customer any fees owed and the customer's 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 MPSC to approve it, and if a plan is rejected the MPSC must explain in writing the reasons for the determination. The MPSC would have to review an approved plan every four years after the initial approval.

Section 207: Baseline energy audit; shut off for nonpayment

Before an energy project is undertaken, a baseline 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 customer 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 the improvements. If a nonprofit corporation makes loans to owners to be repaid under a customer energy projects program, interest would 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 MPSC would have to promulgate rules to implement Part 7 within one year after Section 211's effective date. Every five years thereafter, the MPSC must submit to the standing committees of the Senate and House of Representatives with primary responsibility for energy issues a report on the implementation of Part 7 and any recommendations for legislation to amend it. The report may be combined with the annual report required under Section 5a of Public Act 3 of 1939, the MPSC enabling act.

FISCAL IMPACT:

House Bill 4297 (H-3), as reported from committee, would likely engender an overall reduction in expenditures made by the Public Service Commission (PSC) to the extent that the PSC would no longer hold biennial proceedings to consider energy optimization plans filed by cooperatively- and municipally- and, beginning in 2019, investor-owned electric and natural gas utilities and, beginning in 2020, would no longer hold annual proceedings to consider cost recovery surcharges associated with energy optimization programs implemented by rate-regulated utilities.¹ The most recent annual report provided by the PSC concerning energy optimization programs indicated that 65 utilities (14 investor-owned, 10 cooperatives, and 41 municipal) filed biennial energy optimization plans during 2013. According to the PSC, it expends between \$700,000 and \$800,000 annually and employs approximately 5.0 full-time equated staff to administer and adjudicate statutory and regulatory requirements pertaining to energy optimization plans and programs.²

The bill would also reduce expenditures by an indeterminate amount for municipally-owned electric utilities that, under current law, are required to file biennial energy optimization plans with the PSC and implement (or contract for the implementation of) energy optimization programs. According to information submitted by utilities, expenditures made by municipally-owned electric utilities to implement energy optimization programs totaled \$9.85 million in 2013 and the average energy optimization surcharge on residential customers was \$0.84 per month and \$0.00186 per kilowatt-hour.³

Finally, the bill would create indeterminate, yet likely nominal, administrative costs for the PSC to the extent that the PSC would initially, and quadrennially thereafter, evaluate and approve or reject proposed Customer Energy Project Plans submitted by providers of electrical and natural gas service.

POSITIONS:

Support

The following entities testified or submitted testimony in *support* of, or otherwise indicated *support* for, various versions of the bill:

Michigan Chapter National Electrical Contractors Association

¹ Section 2 of the Costs of Regulating Public Utilities act of 1972 stipulates that LARA "shall ascertain the amount of the appropriation attributable to the regulation of public utilities...[which] shall be assessed against the public utilities" according to a statutory formula. Consequently, irrespective of the short-term and long-run fiscal impacts of HB 4297 (H-3), LARA would assess all privately-owned public utilities the amounts sufficient to administer the PSC's regulatory responsibilities. The average annual amount assessed between FY 2011-12 and FY 2013-14 was \$25.8 million.

² However, due to a lack of sufficient accounting detail coded within the state's accounting information network, HFA is unable to verify these amounts.

³ The PSC estimates that for every \$1.00 in aggregate expenditures for energy optimization programs implemented by all utilities, customers will realize cost-of-service benefits of \$3.75 in lifecycle savings, such as "avoided capital and operations costs associated with incremental utility generation or purchased power and additional indirect environmental and health benefits."

Michigan Electric Cooperative Association
DTE Energy
ITC
Consumers Energy
Grand Rapids Area Chamber of Commerce
Michigan Chemistry Council
Greenwood Fuels
Michigan Electric and Gas Association
Sol Electrica Renewable Energy Inc.

Neutral

The following entities testified in or submitted testimony for, or otherwise indicated, a neutral position on various versions of the bill:

The Michigan Energy Efficiency Contractors Association
Michigan Biomass
Michigan Independent Hydroelectric Owners

Oppose

The following entities testified or submitted testimony in opposition to, or otherwise indicated opposition to, various versions of the bill:

Michigan Energy Innovation Business Council
Michigan Conservative Energy Forum
Union of Concerned Scientists
Michigan Association of Timberman
Sierra Club
Michigan Association of Non-public schools
Michigan Forest Product Council
Michigan Environmental Council
American Council for an Energy Efficient Economy
Ecology Center
Great Lakes Renewable Energy Association
Michigan League of Conservation Voters
Michigan Air Michigan Health
Dr. Energy Saver
League of Women Voters
Michigan Energy Efficiency Contractors Association
Michigan Community Action
Midwest Energy Efficiency Alliance (recommends retention of the energy optimization program)
Whirlpool Corporation
Environmental Entrepreneurs
Michigan Agri-Business Association
Michigan Milk Producers Association
Noble American Energy Solutions

General Motors

The following did not indicate a position, but stated support for continuance of an energy optimization program and/or renewable energy standards:

West Michigan Environmental Action Council

Christian Coalition of Michigan

NRDC

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Paul B.A. Holland

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.