

INTEGRATED RESOURCE PLANS

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Senate Bill 502 as enacted
Public Act 231 of 2023

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

Sponsor: Sen. Sue Shink

House Committee: Energy, Communications, and Technology

Senate Committee: Energy and Environment

Complete to 2-5-24

SUMMARY:

Senate Bill 502 amends 1939 PA 3, which is the enabling act for the Michigan Public Service Commission (MPSC), largely to revise certain requirements for electric utilities' integrated resource plans (IRPs). An IRP is a multiyear plan describing how a utility will provide reliable and cost-effective service to customers under current market and regulatory conditions as well as under modeled scenarios.¹ The bill also increases amounts committed to the attorney general and consumer advocacy groups for participation in utility cost recovery proceedings and provides requirements concerning MPSC public engagement. The bill is part of a package of energy-related bills that includes Senate Bills 271, 273, 277, and 519 and House Bills 5120 and 5121. Senate Bill 502 makes some technical changes (not described below) to reflect changes made by those bills. The bill will take effect February 13, 2024.

Integrated resource plans

The bill requires an IRP to include all of the following (in addition to other requirements under the act):

- An analysis of how the electric utility's plan complies with all of the following provisions of the Clean and Renewable Energy and Energy Waste Reduction Act:
 - The renewable energy plan requirements and goals of section 28.²
 - The clean energy requirements of section 51.³
 - The energy waste reduction measures in section 77.⁴
 - The energy storage target of section 101.⁵
- The projected long-term forecast of greenhouse gas emissions and other pollutants from power generated or purchased by the electric utility. The electric utility may include details on the broader emissions impact of shifting to electrification of transportation, buildings, and industries.
- If a plan includes the construction of a new natural-gas-fired generation facility, an environmental justice impact analysis that includes a review of the reasonably anticipated environmental justice impacts for the plan and an analysis of whether the

¹ For a description of integrated resource planning (from 2017), see: https://www.michigan.gov/mpsc/-/media/Project/Websites/mpsc/consumer/info/briefs/IRP_Issue_Brief_V2_12-20-17.pdf

² <http://legislature.mi.gov/doc.aspx?mcl-460-1028> (amended by SB 271, <http://legislature.mi.gov/doc.aspx?2023-SB-0271>).

³ Added by Senate Bill 271.

⁴ <http://legislature.mi.gov/doc.aspx?mcl-460-1077> (amended by SB 273, <http://legislature.mi.gov/doc.aspx?2023-SB-0273>).

⁵ Added by Senate Bill 271.

facility complies with the requirements for clean energy systems of the Clean and Renewable Energy and Energy Waste Reduction Act.

- If a plan proposes retiring or retaining one or more fossil fuel peaking plants in an environmental justice community, a review of the reasonably anticipated environmental justice impacts for each generation facility.

The bill requires the MPSC, in reviewing an IRP, to request an advisory opinion from the Department of Environment, Great Lakes, and Energy (EGLE) regarding the following (in addition to topics already required):

- The potential impacts of proposed energy generation resources and of any prudent and feasible alternatives identified by EGLE on whether the IRP makes adequate progress toward achieving the clean energy standard established in the Clean and Renewable Energy and Energy Waste Reduction Act.
- The potential impacts of the IRP and of any prudent and feasible alternatives identified by EGLE on whether the IRP makes adequate progress toward the economywide virtual elimination of greenhouse gas emissions in Michigan by 2050.
- Whether the IRP, in comparison to any prudent and feasible alternatives, makes adequate progress toward the elimination of adverse effects on human health due to power generation in Michigan.
- Whether the IRP, in comparison to any prudent and feasible alternatives, adequately reduces harms to the health, safety, and welfare of individuals in environmental justice communities.

The bill removes a provision that previously required a utility to include in its integrated resource plan details regarding its plan to eliminate energy waste.

The act requires the MPSC to approve an IRP if it makes certain determinations, among which is that the proposed IRP represents the most reasonable and prudent means of meeting the utility's energy and capacity needs. To make that determination, the MPSC is required to consider whether the plan appropriately balances several factors. The bill adds to this requirement the factors of affordability and overall cost-effectiveness in providing utility service. The bill also adds the following to the determinations that, if made by the MPSC, require approval of the IRP:

- The construction and construction maintenance of new or existing capacity resources in Michigan meet all of the following:⁶
 - The construction and construction maintenance use an apprenticeship program registered and certified with the U.S. Secretary of Labor under the federal National Apprenticeship Act.⁷
 - The workers employed for the construction or construction maintenance of the facility are paid a minimum wage standard not less than the wage and fringe benefit rates prevailing in the locality where the work is to be performed as

⁶ These requirements do not apply to an independent power producer supplying power under a contract or agreement entered into in accordance with the federal Public Utility Regulatory Policies Act (PURPA) as of February 13, 2024 (the effective date of the bill). See <https://www.michigan.gov/mpsc/regulatory/electricity/renewable-energy/purpa>

⁷ <https://www.law.cornell.edu/uscode/text/29/chapter-4C>

- determined under 2023 PA 10⁸ or 40 USC 3141 to 3148 (known as the Davis-Bacon Act),⁹ whichever provides the higher wage and fringe benefit rates.
- To the extent allowed by law, the entities performing the construction or construction maintenance work enter into a *project labor agreement* or operate under a collective bargaining agreement for the work to be performed.
 - The plan is consistent with all of the following provisions of the Clean and Renewable Energy and Energy Waste Reduction Act:
 - The renewable energy plan requirements and goals of section 28.
 - The clean energy requirements of section 51.
 - The energy waste reduction measures in section 77.
 - The energy storage target of section 101.
 - The plan promotes environmental quality and public health and reasonably mitigates adverse effects on human health due to power generation, with a priority on mitigating impacts and prioritizing benefits to communities that are disproportionately affected by pollution and other environmental harms.

Project labor agreement means a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and does all of the following:

- Binds all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents.
- Allows all contractors and subcontractors on the construction project to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements.
- Contains guarantees against strikes, lockouts, and similar job disruptions.
- Sets forth the effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement.
- Provides other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health.
- Complies with all state and federal laws, rules, and regulations.

The bill also adds energy storage facilities to provisions referencing electric generation facilities in IRP provisions.

Required financial incentive approval

Currently, in considering an IRP, the MPSC must consider, and *may* authorize, a financial incentive for a utility for power purchase agreements that a utility entered into with an entity that is not affiliated with that utility. The financial incentive cannot exceed the utility's weighted average cost of capital.

⁸ <http://legislature.mi.gov/doc.aspx?mcl-Act-10-of-2023>

⁹ <https://www.law.cornell.edu/uscode/text/40/subtitle-II/part-A/chapter-31/subchapter-IV>

Under the bill, the MPSC *must* authorize a financial incentive for an electric provider whose rates the MPSC regulates¹⁰ that enters into a power purchase agreement for renewable energy resources or a third-party contract for energy storage systems or clean energy systems with an entity that is not affiliated with that utility. The financial incentive is calculated as the product of contract payments in that year multiplied by the electric provider’s *pretax weighted average cost of permanent capital* consisting of long-term debt obligations and equity of the electric provider’s total capital structure as determined by the MPSC’s final order in the electric provider’s most recent general rate case. The *pretax weighted average cost of permanent capital* used in the calculation must not be fixed throughout the entire contract term at the pretax weighted average cost of capital¹¹ applicable in the first year and must be updated based on the MPSC’s final order in each succeeding general rate case for the electric provider.

The above provisions apply to all contracts entered into after June 30, 2024.

Process to establish modeling scenarios and assumptions

The act requires the MPSC to commence a proceeding to do such things (in consultation with the Department of Environment, Great Lakes, and Energy) as assess the potential for energy waste reduction and establish modeling scenarios and assumptions for utilities to include in their integrated resource plans. Under previous law, this proceeding was held every five years, beginning in August 2017. (It was last conducted in 2022.) The bill changes this to require the process to be conducted every four years, beginning in August 2025. In developing the IRP modeling scenarios and assumptions, the bill additionally requires consideration of projected load impact due to electrification, on the need for additional generation capacity and the projected costs of different types of technologies used for electric generation. The bill also requires the MPSC to do both of the following as part of the proceeding:

- Conduct an assessment of the potential for electrification of transportation, buildings, and industries consistent with economywide elimination of greenhouse gas emissions in Michigan, based on what is economically and technically feasible, as well as what is reasonably achievable.
- Identify environmental justice communities.

Utility Consumer Representation Fund

The bill increases the amounts that certain energy utilities (electric and gas companies regulated by the MPSC) that have applied to initiate an energy cost recovery proceeding must remit to the Utility Consumer Representation Fund. These amounts are operating expenses that can be charged to the utility’s customers.

Under the bill, each such energy utility serving at least 100,000 customers is liable for a proportional share of a \$1.8 million assessment that is allocated to the attorney general for participation in administrative and judicial proceedings in various utility cases. Each such energy utility serving at least 100,000 *residential* customers is liable for a proportional share

¹⁰ The term “electric provider” is not defined in the bill or the act. Municipally owned electric utilities are generally not subject to MPSC regulation, and the MPSC also does not regulate the retail rates of electric cooperatives whose rates are member-regulated. As a point of reference, if a distinction is being drawn, the section amended here otherwise generally refers to “electric utilities,” which the act defines as entities whose transmission or distribution of electricity the MPSC regulates under this act or 1909 PA 106, but not including a municipal utility, affiliated transmission company, or independent transmission company.

¹¹ Note that the reference here is not to “pretax weighted average cost of *permanent* capital.”

of a \$2.0 million assessment that is used to support the Utility Consumer Participation Board and application-based grants for groups that advocate on behalf of residential consumers.¹²

Among other things, the act requires that proposals for the grants described above must serve the interests of residential utility consumers. The bill adds that the interest of residential consumers includes such things as the following:

- Considerations of utility service in Michigan.
- The reduction of greenhouse gas emissions from the utility sector.
- The protection of the following:
 - Public health.
 - Equitable access to energy efficiency.
 - Weatherization.
 - Efficient electrification measures, programs, and services.
 - Clean energy technologies.

The bill requires the Utility Consumer Participation Board to encourage grant-making to nonprofits representing environmental justice communities and communities with the highest energy burdens.

The bill also allows money in the Utility Consumer Representation Fund to be used for participation in administrative and judicial proceedings under sections 6w and 10i of the act¹³ and under the Clean and Renewable Energy and Energy Waste Reduction Act,¹⁴ in addition to uses already allowed under the act.

Public engagement requirements

The bill requires the MPSC to conduct at least four public meetings, hearings, town halls, or similar events per year in geographically dispersed areas of the state. The MPSC must set the time, place, and procedures for public engagement at these events to take comments from low-income residential customers, residential customers with high energy burdens, and individuals and communities likely to be affected by the outcome of MPSC proceedings, as well as to encourage meaningful participation by those individuals and groups. A public meeting, hearing, town hall, or other opportunity for public engagement that the MPSC is otherwise required to conduct under law can count toward the four-times-a-year requirement.

By June 1, 2024, the MPSC must open a proceeding to consider options for expanding opportunities for public engagement in its decision-making processes and procedures with respect to all of the following:

- The accessibility and transparency of the MPSC’s decision-making processes.
- Opportunities for participation in the MPSC’s decision-making processes, especially by low-income residential customers, residential customers with high energy burdens, and individuals and communities affected by commission decisions.
- The responsiveness of MPSC decisions to community needs and priorities.

¹² The \$1.8 million assessment under the bill was previously a 2017 base of \$900,000, adjusted annually for inflation beginning January 2018, and the \$2.0 million assessment was previously a 2017 base of \$650,000, adjusted annually for inflation beginning January 2018. <https://www.michigan.gov/lara/about/ucpb>

¹³ <http://legislature.mi.gov/doc.aspx?mcl-460-6w> and <http://legislature.mi.gov/doc.aspx?mcl-460-10i>

¹⁴ <http://legislature.mi.gov/doc.aspx?mcl-act-295-of-2008>

In addition, by June 1, 2024, the MPSC must open a proceeding to investigate opportunities for improving the process by which it reviews utility rate requests.

Net metering/distributed generation tariff

The act requires the MPSC to approve a tariff, reflecting equitable cost of service for utility revenue requirements, in the rates of all customers participating in a net metering or distributed generation program under the Clean and Renewable Energy and Energy Waste Reduction Act.¹⁵ The bill adds that the approval of such a tariff must be subject to section 173(7) of that act.¹⁶

MCL 460.6a et seq.

FISCAL IMPACT:

Senate Bill 502 would have fiscal implications for the Michigan Public Service Commission (housed within the Department of Licensing and Regulatory Affairs) and the Department of Environment, Great Lakes, and Energy.

The bill would increase the amounts that energy utilities remit to the Utility Consumer Representation Fund (UCRF), thereby also increasing allocations made from the UCRF. Utilities serving at least 100,000 customers would be liable for a proportional share of a \$1.8 million assessment (currently set at \$900,000), which is allocated to the attorney general for participation in administrative and judicial proceedings in various utility cases. Utilities serving at least 100,000 residential customers would be liable for a proportional share of a \$2.0 million assessment (currently set at \$650,000), which is used to support the Utility Consumer Participation Board and application-based grants for interest groups that advocate on behalf of residential consumers.

The bill would also increase the frequency and scope of assessments conducted by the MPSC, in consultation with EGLE. It is unclear whether the changes under the bill could be sufficiently absorbed by existing resources, or whether additional appropriations would be required to offset the cost. In the event that additional resources were required, the MPSC is financed primarily by public utility assessments levied on the utilities, so any additional incurred costs would likely be factored into the assessment and sufficiently mitigated.

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■ 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.

¹⁵ For a description of distributed generation and net metering (from 2018), see: https://www.michigan.gov/mpsc/-/media/Project/Websites/mpsc/consumer/info/briefs/Distributed_Generation_Issue_Brief_4-18-18.pdf

¹⁶ <http://legislature.mi.gov/doc.aspx?mcl-460-1173> (amended by Senate Bill 273).