

Legislative Analysis



REVISE CLEAN, RENEWABLE, AND EFFICIENT ENERGY ACT

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House Bill 4297 as introduced
Sponsor: Rep. Aric Nesbitt
Committee: Energy Policy
Complete to 4-28-15

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 'the removal of unnecessary burdens on the appropriate use of solid waste as a clean energy source.'
- Repeal the energy optimization program and eliminate provisions pertaining to energy optimization. Outstanding energy optimization credits would expire as of January 1, 2017.
- Allow fuel manufactured from municipal solid waste, among other waste sources, to be a "renewable energy resource" and revise the definition of the term.
- 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.)
- Remove the prohibition on granting a renewable energy credit for energy generated from municipal solid waste incinerators by exceeding the incinerator's nameplate capacity.
- Revise and add several definitions.
- Eliminate and repeal references and provisions pertaining to energy optimization.

DETAILED SUMMARY:

House Bill 5205 would amend the Clean, Renewable, and Efficient Energy Act (MCL 460.1001 et al.). The bill would repeal numerous provisions and references to the energy optimization program and also make numerous revisions and additions to allow for biofuels associated with the process known as *pyrolysis* to be part of the development of renewable energy. A section-by-section description of the bill follows, with the effective dates of the amendments and repealers at the end.

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 of electricity generated by an integrated pyrolysis 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 definitions of "*energy optimization*," "*energy optimization credit*," "*energy optimization plan*" or "*EO plan*," and "*energy optimization standard*" would be eliminated. Also deleted is 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 such as coal, wood, biomass, industrial waste, or solid waste (including waste described in Section 11514 of NREPA), but not including pet coke. 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.* The highlighted text above would be deleted.

In addition, the bill would revise and add to the list of what would constitute renewable energy resources. Under the bill, the sources would any of the following (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, including both the biogenic and anthropogenic fractions.
 - 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 or waste described in Section 11514 of NREPA. In addition, 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).

Further, "renewable energy resources" would not include pet coke.

[Note: Section 11514 of the Natural Resources and Environmental Protection Act, MCL 324.11514 describes numerous substances that are prohibited from delivery to, or acceptance for disposal by, a landfill. Listed substances include certain types of medical waste, used oil, low-level radioactive waste, regulated hazardous waste, sewage, PCBs, asbestos waste, a de minimis amount of yard waste or vehicle tires, and lead acid batteries.]

"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, 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 October 6, 2008, (the effective date of the Clean, Renewable, and Efficient Energy Act.

The bill would delete the highlighted text as well as several examples of incinerators that would meet the NREPA definition.

Section 13:

The definition for "*utility system resources cost test*" would be eliminated.

Part 2: Energy Standards

Subpart A: Renewable Energy

Section 21: Proposed renewable energy plan

The bill makes several changes of a technical nature.

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.

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 by 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.

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 as that section will be repealed January 1, 2016.

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 pertaining to the energy optimization program would be eliminated.

Subpart B: Energy Optimization

Section 89: Recovery of costs

Currently, the MPSC allows a gas or electric provider whose rates are regulated to recover the actual costs of implementing its approved energy optimization plan. The bill would apply the provision to costs incurred *before January 1, 2016*.

In addition, the act places a cap of two percent of total utility retail sales revenues in place for 2012 and thereafter that may be spent to comply with the energy optimization performance standard; the bill applies the cap only for the years 2012-2015.

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 instead for the years 2012-2015.

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, 2015*.

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, 2016*.

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.

Effective Dates

Sections 1, 3, 7, 9, 11, and 39 take effect 90 days after the bill's effective date.

Sections 21, 27, 43, 89, 91, 93, and 95 take effect January 1, 2016.

Sections 5, 13, and 45 take effect January 1, 2017.

Repealed Sections

Section 29, which pertains to renewable system energy location, will be repealed 90 days after the bill's effective date.

Sections 71-87, and Section 97, which pertain to the energy optimization program, will be repealed January 1, 2016.

Sections 89, 91, and 93, which also pertain to the energy optimization program, will be repealed January 1, 2017.

FISCAL IMPACT:

House Bill 4297, as introduced, would have a fiscal impact on the Public Service Commission (PSC) to the extent that the PSC would no longer hold biennial proceedings to consider energy optimization plans filed by all electric and natural gas utilities and 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

Furthermore, under current law, municipally-owned electric utilities 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

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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.

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, 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 IT system, 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."