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Senate Bill 271 (as introduced 4-19-23)
Sponsor: Senator Erika Geiss
Committee: Energy and Environment

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INTRODUCTION

The Clean and Renewable Energy and Energy Waste Reduction Act requires electric providers regulated by the Michigan Public Service Commission (MPSC) to maintain renewable energy plans that meet standards for renewable energy usage by specified dates. For example, the Act requires an electric provider to achieve a renewable energy credit portfolio of at least 15% in 2021. Under the bill, an electric provider would have to achieve a portfolio of at least 15% through 2029, 60% through 2034, and 100% in 2035 and after. The bill would allow the MPSC to grant an electric provider a good cause exemption to any of these deadlines and remove advanced clean energy systems from the list of renewable technologies for which a provider could recuperate costs. In addition, the bill would allow the Attorney General or a customer of a municipally owned electric utility or a cooperative electric utility to commence a civil action against that utility if it failed to meet the renewable energy portfolio standards of Subpart A (Renewable Energy) of the Act.

The bill would take effect 90 days after its enactment.

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local units of government.

The Department of Attorney General could incur unknown costs if it were to bring a civil action against a municipally owned or cooperative electric utility. However, the likely small number of actions suggest that the cost of bringing such a case would be adequately funded through existing appropriations. A municipally owned electric utility also could incur litigation costs if it were subject to such an action. The costs incurred are indeterminate as they would vary significantly based on the exact nature of the action.

MCL 460.1003 et al.

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CONTENT

The bill would amend the Clean and Renewable Energy and Energy Waste Reduction Act to do the following:

- Require an electric provider regulated by the MPSC to achieve a renewable energy credit portfolio of at least 15% in 2021 through 2029, 60% in 2030 through 2034, and 100% in 2035 and after.**
- Allow the MPSC to grant up to two good cause exemptions to the requirements described above, not to exceed one year per exemption.**
- Delete provisions allowing an electric provider to include advanced cleaner energy systems within calculations determining the incremental costs of compliance with a renewable energy plan.**
- Allow the Attorney General or any customer of a municipally owned electric utility or a cooperative electric utility to commence a civil action against that utility if the utility failed to meet the applicable requirements of a renewable energy plan and portfolio or an order issued or rule promulgated related to such.**

Renewable Energy Plan

The Act required electric providers in the State to submit renewable energy plans for MPSC review and approval. Public Act 342 of 2016 amended the Clean and Renewable Energy and Energy Waste Reduction Act to repeal that requirement but specified that submitted plans and associated revenue recovery mechanisms remain in effect. The MPSC must approve the plan or amendments if it determines that the plan is reasonable and prudent related to costs and that the plan meets the renewable energy credit standard prescribed by the Act through 2021. The bill would require a plan to meet the standard through 2035.

("Renewable energy plan" means a plan approved under the Act or found to comply with the Act and with any amendments adopted. The bill specifies that a renewable energy plan starting in 2035 would credit approved nuclear energy toward the clean energy requirement or renewable portfolio.)

Under the bill, by April 20, 2024, and every two years after, the MPSC would have to review each electric provider's plan in a filing schedule established by the MPSC. For the 2024 review, the bill would require electric providers to propose plan amendments to agree with the increases in the renewable energy credit standards proposed by the bill and described below.

Among other outdated requirements, the Act requires an electric provider to achieve a renewable energy credit portfolio of at least 15% in 2021. Under the bill, an electric provider would have to achieve a renewable energy credit portfolio of at least the following:

- In 2021 through 2029, 15%.
- In 2030 through 2034, 60%.
- In 2035 and after, 100%.

(Generally, an electric provider calculates the renewable energy credit portfolio by determining the number of renewable energy credits used in a year and dividing it by either the number of megawatt hours of electricity sold by the provider during the previous year to retail customers in the State or the average number of megawatt hours of electricity sold by the provider annually during the previous three years to retail customers in the State. Then, the provider multiplies that number by 100 to convert the amount to a percent.

Providers can obtain credits by generating electricity from renewable energy systems for sale to retail customers or by purchasing or otherwise acquiring renewable energy credits with or without the associated renewable energy. A provider must contract for the purchased or acquired credits and the MPSC must review and either approve or disapprove the contract.)

"Renewable energy resource" means a resource that naturally replenishes over a human, not a geological, time frame and that is ultimately derived from solar, water, or wind power. The Act specifies that 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. Among other things, the term includes biomass, municipal solid waste, landfill gas produced by municipal solid waste, and fuel that has been manufactured in whole or significant part from waste, including municipal solid waste. The bill would delete the inclusion of these things within the definition of "renewable energy resource".

Good Cause Extension

Under the bill, upon petition by an electric provider, the MPSC could for good cause grant an extension of a renewable energy standard deadline described above. For any specific deadline, the MPSC could not grant more than two extensions and neither extension could exceed one year. An extension of a deadline would not affect a subsequent deadline. "Good cause" would include, but is not limited to, the electric provider's inability, as determined by the MPSC, to meet a renewable energy standard because of a renewable energy system feasibility limitation, including, but not limited to, any of the following:

- Renewable energy system site requirements; zoning, siting, or land use issues; permits, including environmental permits; any certificate of necessity process; or any other necessary governmental approvals that effectively limit availability of renewable energy systems, if the electric provider exercised reasonable diligence in attempting to secure the necessary governmental approvals.
- High costs of or shortages of renewable energy system components or electrical equipment if the high costs or shortages effectively limit availability of renewable energy systems.
- Cost, availability, or time requirements for electric transmission and interconnection.
- Projected or actual unfavorable electric system reliability or operational impacts.
- Labor shortages that effectively limit availability of renewable energy systems.
- An order of a court of competent jurisdiction that effectively limits the availability of renewable energy systems.

As used above, "reasonable diligence" would include, but would not be limited to, submitting timely applications for the necessary governmental approvals and making good-faith efforts to ensure that the applications are administratively complete and technically sufficient.

An electric provider that made a good-faith effort to spend the full amount of costs authorized for recovery under the Act and that complied with its approved plan, subject to any approved extensions, would be in compliance with the Act.

Costs Authorized for Recovery & Reconciliation

The Act requires the MPSC to consider all actual costs that an electric provider reasonably and prudently incurs in good faith to implement an MPSC-approved renewable energy plan. The MPSC must allow an electric provider to recover through its retail rate for electricity all the provider's incremental costs of compliance. The Act requires the MPSC to calculate a provider's incremental costs of compliance by determining the sum of specified costs that were not already approved for recovery and subtracting those costs by specified revenues.

Generally, the costs may include the following, related to renewable energy systems or advanced cleaner energy systems: 1) capital, operating, and maintenance costs; 2) financing costs; 3) costs otherwise not recoverable by the Federal Energy Regulatory Commission; 4) ancillary services; and 5) the costs of renewable energy credits and associated contracts. The revenues may include the following, related to renewable energy systems or advanced cleaner energy systems: 1) revenue from the sale of environmental attributes; 2) interest on liabilities; 3) tax credits designed to promote renewable energy; and 4) revenue from the sale of renewable energy.

The bill would delete references to advanced cleaner energy systems, allowing the costs and revenues calculated for a renewable energy plan's incremental costs of compliance to come only from renewable energy systems. The bill also would delete the definition of "advanced cleaner energy system", which generally includes any of the following: 1) a gasification facility; 2) a cogeneration facility; 3) a coal-fired electric generating facility if 95.0% of the emissions are captured; and 4) a hydroelectric pumped storage facility.

The Act also requires the MPSC to commence an annual renewable cost reconciliation for each electric provider at which an electric provider may propose any necessary modifications to its renewable energy plan to ensure the recovery of incremental costs of compliance. Among other things, the MPSC must establish the price per megawatt hour for advanced cleaner energy capacity and advanced cleaner energy to be recovered through the power supply cost recovery clause of a plan. The bill would delete the provision requiring the MPSC to establish the price and recovery of advanced cleaner energy.

Civil Action Against Municipal or Cooperative Electric Utility

Under the bill, the Attorney General or any customer of a municipally owned electric utility or a cooperative electric utility that was member-regulated under the Electric Cooperative Member-Regulation Act could commence a civil action for injunctive relief against that municipally owned electric utility or cooperative electric utility if the municipally owned electric utility or cooperative electric utility failed to meet the applicable requirements of a renewable energy plan or an order issued or rule promulgated relating to a renewable energy plan. The Attorney General or customer would have to commence the action in the circuit court for the circuit in which the principal office of the municipally owned electric utility or cooperative electric utility was located. The Attorney General or customer could not file the action unless the Attorney General or customer had given the municipally owned electric utility or cooperative electric utility at least 60 days' written notice of the intent to sue, the basis for the suit, and the relief sought.

Within 30 days after the municipally owned electric utility or cooperative electric utility received written notice of the intent to sue, the municipally owned electric utility or cooperative electric utility and the Attorney General or customer would have to meet and make a good faith attempt to determine if there were a credible basis for the action. The municipally owned electric utility or cooperative electric utility would have to take all reasonable and prudent steps necessary to comply with the applicable requirements of a renewable energy plan or an order issued or rule promulgated to a renewable energy plan within 90 days after the meeting if there were a credible basis for the action. If the parties did not agree as to whether there was a credible basis for the action, the Attorney General or customer could proceed to file the suit.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.