

Act No. 269
Public Acts of 2010
Approved by the Governor
December 14, 2010
Filed with the Secretary of State
December 14, 2010
EFFECTIVE DATE: December 14, 2010

**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010**

Introduced by Senator Van Woerkom

ENROLLED SENATE BILL No. 1502

AN ACT to amend 2008 PA 295, entitled "An act to require certain providers of electric service to establish renewable energy programs; to require certain providers of electric or natural gas service to establish energy optimization programs; to authorize the use of certain energy systems to meet the requirements of those programs; to provide for the approval of energy optimization service companies; to provide for certain charges on electric and natural gas bills; to promote energy conservation by state agencies and the public; to create a wind energy resource zone board and provide for its power and duties; to authorize the creation and implementation of wind energy resource zones; to provide for expedited transmission line siting certificates; to provide for a net metering program and the responsibilities of certain providers of electric service and customers with respect to net metering; to provide for fees; to prescribe the powers and duties of certain state agencies and officials; to require the promulgation of rules and the issuance of orders; and to provide for civil sanctions, remedies, and penalties," by amending section 93 (MCL 460.1093).

The People of the State of Michigan enact:

Sec. 93. (1) An eligible electric customer is exempt from charges the customer would otherwise incur as an electric customer under section 89 or 91 if the customer files with its electric provider and implements a self-directed energy optimization plan as provided in this section.

(2) Subject to subsection (3), an electric customer is not eligible under subsection (1) unless it is a commercial or industrial electric customer and meets all of the following requirements:

(a) In 2009 or 2010, the customer must have had an annual peak demand in the preceding year of at least 2 megawatts at each site to be covered by the self-directed plan or 10 megawatts in the aggregate at all sites to be covered by the plan.

(b) In 2011, 2012, or 2013, the customer or customers must have had an annual peak demand in the preceding year of at least 1 megawatt at each site to be covered by the self-directed plan or 5 megawatts in the aggregate at all sites to be covered by the plan.

(c) In 2014 or any year thereafter, the customer or customers must have had an annual peak demand in the preceding year of at least 1 megawatt in the aggregate at all sites to be covered by the self-directed plan.

(3) The eligibility requirements of subsection (2) do not apply to a commercial or industrial customer that installs or modifies an electric energy efficiency improvement under a property assessed clean energy program pursuant to the property assessed clean energy act.

(4) The commission shall by order establish the rates, terms, and conditions of service for customers related to this subpart.

(5) The commission shall by order do all of the following:

(a) Require a customer to utilize the services of an energy optimization service company to develop and implement a self-directed plan. This subdivision does not apply to a customer that had an annual peak demand in the preceding year of at least 2 megawatts at each site to be covered by the self-directed plan or 10 megawatts in the aggregate at all sites to be covered by the self-directed plan.

(b) Provide a mechanism to recover from customers under subdivision (a) the costs for provider level review and evaluation.

(c) Provide a mechanism to cover the costs of the low income energy optimization program under section 89.

(6) All of the following apply to a self-directed energy optimization plan under subsection (1):

(a) The self-directed plan shall be a multiyear plan for an ongoing energy optimization program.

(b) The self-directed plan shall provide for aggregate energy savings that each year meet or exceed the energy optimization standards based on the electricity purchases in the previous year for the site or sites covered by the self-directed plan.

(c) Under the self-directed plan, energy optimization shall be calculated based on annual electricity usage. Annual electricity usage shall be normalized so that none of the following are included in the calculation of the percentage of incremental energy savings:

(i) Changes in electricity usage because of changes in business activity levels not attributable to energy optimization.

(ii) Changes in electricity usage because of the installation, operation, or testing of pollution control equipment.

(d) The self-directed plan shall specify whether electricity usage will be weather-normalized or based on the average number of megawatt hours of electricity sold by the electric provider annually during the previous 3 years to retail customers in this state. Once the self-directed plan is submitted to the provider, this option shall not be changed.

(e) The self-directed plan shall outline how the customer intends to achieve the incremental energy savings specified in the self-directed plan.

(7) A self-directed energy optimization plan shall be incorporated into the relevant electric provider's energy optimization plan. The self-directed plan and information submitted by the customer under subsection (10) are confidential and exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. Projected energy savings from measures implemented under a self-directed plan shall be attributed to the relevant provider's energy optimization programs for the purposes of determining annual incremental energy savings achieved by the provider under section 77 or 81, as applicable.

(8) Once a customer begins to implement a self-directed plan at a site covered by the self-directed plan, that site is exempt from energy optimization program charges under section 89 or 91 and is not eligible to participate in the relevant electric provider's energy optimization programs.

(9) A customer implementing a self-directed energy optimization plan under this section shall annually submit to the customer's electric provider a brief report documenting the energy efficiency measures taken under the self-directed plan during the previous year, and the corresponding energy savings that will result. The report shall provide sufficient information for the provider and the commission to monitor progress toward the goals in the self-directed plan and to develop reliable estimates of the energy savings that are being achieved from self-directed plans. The customer report shall indicate the level of incremental energy savings achieved for the year covered by the report and whether that level of incremental energy savings meets the goal set forth in the customer's self-directed plan. If a customer submitting a report under this subsection wishes to amend its self-directed plan, the customer shall submit with the report an amended self-directed plan. A report under this subsection shall be accompanied by an affidavit from a knowledgeable official of the customer that the information in the report is true and correct to the best of the official's knowledge and belief. If the customer has retained an independent energy optimization service company, the requirements of this subsection shall be met by the energy optimization service company.

(10) An electric provider shall provide an annual report to the commission that identifies customers implementing self-directed energy optimization plans and summarizes the results achieved cumulatively under those self-directed plans. The commission may request additional information from the electric provider. If the commission has sufficient reason to believe the information is inaccurate or incomplete, it may request additional information from the customer to ensure accuracy of the report.

(11) If the commission determines after a contested case hearing that the minimum energy optimization goals under subsection (6)(b) have not been achieved at the sites covered by a self-directed plan, in aggregate, the commission shall order the customer or customers collectively to pay to this state an amount calculated as follows:

(a) Determine the proportion of the shortfall in achieving the minimum energy optimization goals under subsection (6)(b).

(b) Multiply the figure under subdivision (a) by the energy optimization charges from which the customer or customers collectively were exempt under subsection (1).

(c) Multiply the product under subdivision (b) by a number not less than 1 or greater than 2, as determined by the commission based on the reasons for failure to meet the minimum energy optimization goals.

(12) If a customer has submitted a self-directed plan to an electric provider, the customer, the customer's energy optimization service company, if applicable, or the electric provider shall provide a copy of the self-directed plan to the commission upon request.

(13) By September 1, 2010, following a public hearing, the commission shall establish an approval process for energy optimization service companies. The approval process shall ensure that energy optimization service companies have the expertise, resources, and business practices to reliably provide energy optimization services that meet the requirements of this section. The commission may adopt by reference the past or current standards of a national or regional certification or licensing program for energy optimization service companies. However, the approval process shall also provide an opportunity for energy optimization service companies that are not recognized by such a program to be approved by posting a bond in an amount determined by the commission and meeting any other requirements adopted by the commission for the purposes of this subsection. The approval process for energy optimization service companies shall require adherence to a code of conduct governing the relationship between energy optimization service companies and electric providers.

(14) The department of energy, labor, and economic growth shall maintain on the department's website a list of energy optimization service companies approved under subsection (13).

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5640 of the 95th Legislature is enacted into law.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives

Approved

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Governor

Compiler's note: House Bill No. 5640, referred to in enacting section 1, was filed with the Secretary of State December 14, 2010, and became 2010 PA 270, Imd. Eff. Dec. 14, 2010.