

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1502

A bill to amend 2008 PA 295, entitled
"Clean, renewable, and efficient energy act,"
by amending section 93 (MCL 460.1093).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 93. (1) An eligible ~~primary or secondary~~ electric
2 customer is exempt from charges the customer would otherwise incur
3 **AS AN ELECTRIC CUSTOMER** under section 89 or 91 if the customer
4 files with its electric provider and implements a self-directed
5 energy optimization plan as provided in this section.

6 (2) ~~Eligibility requirements for the exemption under~~
7 ~~subsection (1) are as follows:~~ **SUBJECT TO SUBSECTION (3), AN**
8 **ELECTRIC CUSTOMER IS NOT ELIGIBLE UNDER SUBSECTION (1) UNLESS IT IS**
9 **A COMMERCIAL OR INDUSTRIAL ELECTRIC CUSTOMER AND MEETS ALL OF THE**

1 **FOLLOWING REQUIREMENTS:**

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

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

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

14 **(3) THE ELIGIBILITY REQUIREMENTS OF SUBSECTION (2) DO NOT**
15 **APPLY TO A COMMERCIAL OR INDUSTRIAL CUSTOMER THAT INSTALLS OR**
16 **MODIFIES AN ELECTRIC ENERGY EFFICIENCY IMPROVEMENT UNDER A PROPERTY**
17 **ASSESSED CLEAN ENERGY PROGRAM PURSUANT TO THE PROPERTY ASSESSED**
18 **CLEAN ENERGY ACT.**

19 (4) ~~(3)~~—The commission shall by order establish the rates,
20 terms, and conditions of service for customers related to this
21 subpart.

22 (5) ~~(4)~~—The commission shall by order do all of the following:

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

1 10 megawatts in the aggregate at all sites to be covered by the
2 self-directed plan.

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

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

7 (6) ~~(5)~~ All of the following apply to a self-directed energy
8 optimization plan under subsection (1):

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

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

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

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

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

25 (d) The self-directed plan shall specify whether electricity
26 usage will be weather-normalized or based on the average number of
27 megawatt hours of electricity sold by the electric provider

1 annually during the previous 3 years to retail customers in this
2 state. Once the self-directed plan is submitted to the provider,
3 this option shall not be changed.

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

7 (7) ~~(6)~~—A self-directed energy optimization plan shall be
8 incorporated into the relevant electric provider's energy
9 optimization plan. The self-directed plan and information submitted
10 by the customer under subsection ~~(9)~~—(10) are confidential and
11 exempt from disclosure under the freedom of information act, 1976
12 PA 442, MCL 15.231 to 15.246. Projected energy savings from
13 measures implemented under a self-directed plan shall be attributed
14 to the relevant provider's energy optimization programs for the
15 purposes of determining annual incremental energy savings achieved
16 by the provider under section 77 or 81, as applicable.

17 (8) ~~(7)~~—Once a customer begins to implement a self-directed
18 plan at a site covered by the self-directed plan, that site is
19 exempt from energy optimization program charges under section 89 or
20 91 and is not eligible to participate in the relevant electric
21 provider's energy optimization programs.

22 (9) ~~(8)~~—A customer implementing a self-directed energy
23 optimization plan under this section shall **ANNUALLY** submit to the
24 customer's electric provider ~~every 2 years~~ a brief report
25 documenting the energy efficiency measures taken under the self-
26 directed plan during ~~that 2-year period~~, **THE PREVIOUS YEAR**, and the
27 corresponding energy savings that will result. The report shall

1 provide sufficient information for the provider and the commission
2 to monitor progress toward the goals in the self-directed plan and
3 to develop reliable estimates of the energy savings that are being
4 achieved from self-directed plans. ~~A customer shall promptly notify~~
5 ~~the provider if the customer fails to achieve incremental energy~~
6 ~~savings as set forth in its self-directed plan for a year that will~~
7 ~~be the first year covered by the next biannual report.~~ **THE CUSTOMER**
8 **REPORT SHALL INDICATE THE LEVEL OF INCREMENTAL ENERGY SAVINGS**
9 **ACHIEVED FOR THE YEAR COVERED BY THE REPORT AND WHETHER THAT LEVEL**
10 **OF INCREMENTAL ENERGY SAVINGS MEETS THE GOAL SET FORTH IN THE**
11 **CUSTOMER'S SELF-DIRECTED PLAN.** If a customer submitting a report ~~or~~
12 ~~notice~~ under this subsection wishes to amend its self-directed
13 plan, the customer shall submit with the report ~~or notice~~ an
14 amended self-directed plan. A report under this subsection shall be
15 accompanied by an affidavit from a knowledgeable official of the
16 customer that the information in the report is true and correct to
17 the best of the official's knowledge and belief. If the customer
18 has retained an independent energy optimization service company,
19 the requirements of this subsection shall be met by the energy
20 optimization service company.

21 (10) ~~(9)~~ An electric provider shall provide an annual report
22 to the commission that identifies customers implementing self-
23 directed energy optimization plans and summarizes the results
24 achieved cumulatively under those self-directed plans. The
25 commission may request additional information from the electric
26 provider. If the commission has sufficient reason to believe the
27 information is inaccurate or incomplete, it may request additional

1 information from the customer to ensure accuracy of the report.

2 (11) ~~(10)~~—If the commission determines after a contested case
3 hearing that the minimum energy optimization goals under subsection
4 ~~(5)(b)~~—(6) (B) have not been achieved at the sites covered by a
5 self-directed plan, in aggregate, the commission shall order the
6 customer or customers collectively to pay to this state an amount
7 calculated as follows:

8 (a) Determine the proportion of the shortfall in achieving the
9 minimum energy optimization goals under subsection ~~(5)(b)~~—(6) (B).

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

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

17 (12) ~~(11)~~—If a customer has submitted a self-directed plan to
18 an electric provider, the customer, the customer's energy
19 optimization service company, if applicable, or the electric
20 provider shall provide a copy of the self-directed plan to the
21 commission upon request.

22 (13) ~~(12)~~—By September 1, 2010, following a public hearing,
23 the commission shall establish an approval process for energy
24 optimization service companies. The approval process shall ensure
25 that energy optimization service companies have the expertise,
26 resources, and business practices to reliably provide energy
27 optimization services that meet the requirements of this section.

1 The commission may adopt by reference the past or current standards
2 of a national or regional certification or licensing program for
3 energy optimization service companies. However, the approval
4 process shall also provide an opportunity for energy optimization
5 service companies that are not recognized by such a program to be
6 approved by posting a bond in an amount determined by the
7 commission and meeting any other requirements adopted by the
8 commission for the purposes of this subsection. The approval
9 process for energy optimization service companies shall require
10 adherence to a code of conduct governing the relationship between
11 energy optimization service companies and electric providers.

12 (14) ~~(13)~~—The department of **ENERGY**, labor, and economic growth
13 shall maintain on the department's website a list of energy
14 optimization service companies approved under subsection ~~(12)~~—(13).

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