

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

18 (4) ~~(3)~~—The commission shall by order establish the rates,  
19 terms, and conditions of service for customers related to this  
20 subpart.

21 (5) ~~(4)~~—The commission shall by order do all of the following:

22 (a) Require a customer to utilize the services of an energy  
23 optimization service company to develop and implement a self-  
24 directed plan. This subdivision does not apply to a customer that  
25 had an annual peak demand in the preceding year of at least 2  
26 megawatts at each site to be covered by the self-directed plan or  
27 10 megawatts in the aggregate at all sites to be covered by the

1 self-directed plan.

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

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

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

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

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

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

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

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

24 (d) The self-directed plan shall specify whether electricity  
25 usage will be weather-normalized or based on the average number of  
26 megawatt hours of electricity sold by the electric provider  
27 annually during the previous 3 years to retail customers in this

1 state. Once the self-directed plan is submitted to the provider,  
2 this option shall not be changed.

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

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

16 (8) ~~(7)~~—Once a customer begins to implement a self-directed  
17 plan at a site covered by the self-directed plan, that site is  
18 exempt from energy optimization program charges under section 89 or  
19 91 and is not eligible to participate in the relevant electric  
20 provider's energy optimization programs.

21 (9) ~~(8)~~—A customer implementing a self-directed energy  
22 optimization plan under this section shall submit to the customer's  
23 electric provider every 2 years a brief report documenting the  
24 energy efficiency measures taken under the self-directed plan  
25 during that 2-year period, and the corresponding energy savings  
26 that will result. The report shall provide sufficient information  
27 for the provider and the commission to monitor progress toward the

1 goals in the self-directed plan and to develop reliable estimates  
2 of the energy savings that are being achieved from self-directed  
3 plans. A customer shall promptly notify the provider if the  
4 customer fails to achieve incremental energy savings as set forth  
5 in its self-directed plan for a year that will be the first year  
6 covered by the next biannual report. If a customer submitting a  
7 report or notice under this subsection wishes to amend its self-  
8 directed plan, the customer shall submit with the report or notice  
9 an amended self-directed plan. A report under this subsection shall  
10 be accompanied by an affidavit from a knowledgeable official of the  
11 customer that the information in the report is true and correct to  
12 the best of the official's knowledge and belief. If the customer  
13 has retained an independent energy optimization service company,  
14 the requirements of this subsection shall be met by the energy  
15 optimization service company.

16 (10) ~~(9)~~—An electric provider shall provide an annual report  
17 to the commission that identifies customers implementing self-  
18 directed energy optimization plans and summarizes the results  
19 achieved cumulatively under those self-directed plans. The  
20 commission may request additional information from the electric  
21 provider. If the commission has sufficient reason to believe the  
22 information is inaccurate or incomplete, it may request additional  
23 information from the customer to ensure accuracy of the report.

24 (11) ~~(10)~~—If the commission determines after a contested case  
25 hearing that the minimum energy optimization goals under subsection  
26 ~~(5)(b)~~ **(6)(B)** have not been achieved at the sites covered by a  
27 self-directed plan, in aggregate, the commission shall order the

1 customer or customers collectively to pay to this state an amount  
2 calculated as follows:

3 (a) Determine the proportion of the shortfall in achieving the  
4 minimum energy optimization goals under subsection ~~(5)(b)~~ **(6)(B)**.

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

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

12 **(12)** ~~(11)~~—If a customer has submitted a self-directed plan to  
13 an electric provider, the customer, the customer's energy  
14 optimization service company, if applicable, or the electric  
15 provider shall provide a copy of the self-directed plan to the  
16 commission upon request.

17 **(13)** ~~(12)~~—By September 1, 2010, following a public hearing,  
18 the commission shall establish an approval process for energy  
19 optimization service companies. The approval process shall ensure  
20 that energy optimization service companies have the expertise,  
21 resources, and business practices to reliably provide energy  
22 optimization services that meet the requirements of this section.  
23 The commission may adopt by reference the past or current standards  
24 of a national or regional certification or licensing program for  
25 energy optimization service companies. However, the approval  
26 process shall also provide an opportunity for energy optimization  
27 service companies that are not recognized by such a program to be

1 approved by posting a bond in an amount determined by the  
2 commission and meeting any other requirements adopted by the  
3 commission for the purposes of this subsection. The approval  
4 process for energy optimization service companies shall require  
5 adherence to a code of conduct governing the relationship between  
6 energy optimization service companies and electric providers.

7 (14) ~~(13)~~—The department of **ENERGY**, labor, and economic growth  
8 shall maintain on the department's website a list of energy  
9 optimization service companies approved under subsection ~~(12)~~—(13).

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