A bill to establish an energy efficiency program in this state for electric and natural gas utilities; to promote load management; to prescribe the powers and duties of certain state agencies and officials; and to provide for sanctions.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This act shall be known and may be cited as the "energy efficient Michigan act".

Sec. 3. As used in this act:

(a) "Commission" means the Michigan public service commission created in section 1 of 1939 PA 3, MCL 460.1.

(b) "Cost-effective" means that the program being evaluated meets the utility system resource cost test.

(c) "Electric utility" means a person, partnership, corporation, association, or other legal entity whose transmission
or distribution of electricity the commission regulates under 1909
PA 106, MCL 460.551 to 460.559, or 1939 PA 3, MCL 460.1 to
460.10cc. Electric utility does not include a municipally owned
utility, affiliated transmission company, or independent
transmission company.

(d) "Energy efficiency" means a decrease in the consumption of
electricity or natural gas achieved through measures or programs
that target customer behavior, equipment, or devices without
reducing the amount or quality of energy services. Energy
efficiency does not include load management.

(e) "Large customer" means a utility customer at a single,
contiguous field, location, or facility, regardless of the number
of meters at that field, location, or facility, with an electric
billing demand greater than 1-megawatt.

(f) "Load management" means measures or programs that decrease
peak electricity demand or shift demand from peak to off-peak
periods.

(g) "Natural gas utility" means an investor-owned business
engaged in the sale and distribution of natural gas within this
state whose rates are regulated by the commission.

(h) "Utility", except as used in section 15, means an electric
utility or natural gas utility.

(i) "Utility system resource cost test" means a standard that
is met if, for an investment in energy efficiency, on a life-cycle
basis the total avoided supply-side costs, including representative
values for electricity and/or natural gas supply, transmission,
distribution, and other associated costs, are greater than the
total costs to the utility of administering and delivering the
energy efficiency program, including any costs for incentives paid
to customers.

Sec. 5. (1) Within 60 days after the effective date of this
act and biennially thereafter, a utility shall file an energy
efficiency programs plan with the commission. An energy efficiency
programs plan shall do all of the following:

(a) Propose a set of energy efficiency programs that include
offerings for each customer class. The commission shall allow
utilities flexibility to tailor the relative amount of effort
devoted to each customer class based on the specific
characteristics of their service territory.

(b) Specify necessary funding levels.

(c) Demonstrate that the proposed energy efficiency programs
and funding are sufficient to ensure the achievement of applicable
energy efficiency performance standards under section 7.

(d) Demonstrate that the utility's energy efficiency programs
will collectively be cost-effective.

(e) Include a plan for the practical and effective
administration of the proposed energy efficiency programs. The
commission shall allow utilities flexibility in designing their
energy efficiency programs and administrative approach. A utility's
energy efficiency program may be administered by the utility, alone
or jointly with other utilities, by a state agency, or by an
appropriate experienced nonprofit organization selected after a
competitive bid process.

(f) Include a process for obtaining an independent expert
evaluation of the actual energy efficiency programs to verify the
incremental energy savings from each energy efficiency program for
purposes of section 7. All such evaluations shall be subject to
public review and commission oversight.

(2) Within 120 days of receiving an energy efficiency plan
from a utility, the commission shall approve or reject the plan. If
the commission rejects the plan, the commission shall state the
reasons for the rejection. Within 30 days after the rejection, the
utility shall submit a revised plan that addresses the reasons for
rejection cited by the commission. Within 30 days after receiving
the revised plan, the commission shall approve or reject the
revised plan. If the commission rejects the revised plan, the
commission shall state the reasons for the rejection. The procedure
for revised plans shall be repeated until the commission approves a
revised plan. Rejection of the plan does not affect the
applicability of the requirements of section 7.

Sec. 7. (1) An electric utility's energy efficiency programs
shall collectively meet the following minimum energy efficiency
performance standards:

(a) Biennial incremental energy savings in 2008-2009
equivalent to 0.3% of total annual electricity sales in kilowatt
hours in 2007.

(b) Annual incremental energy savings in 2010 equivalent to
0.5% of total annual electricity sales in kilowatt hours in 2009.

(c) Annual incremental energy savings in 2011 equivalent to
0.75% of total annual electricity sales in kilowatt hours in 2010.

(d) Annual incremental energy savings in 2012 and each year
thereafter equivalent to 1.0% of total annual electricity sales in kilowatt hours in the preceding year.

(2) A natural gas utility shall meet the following minimum energy efficiency performance standards using energy efficiency programs:

(a) Biennial incremental energy savings in 2008-2009 equivalent to 0.1% of total annual natural gas sales in therms in 2007.

(b) Annual incremental energy savings in 2010 equivalent to 0.25% of total annual natural gas sales in therms in 2009.

(c) Annual incremental energy savings in 2011 equivalent to 0.5% of total annual natural gas sales in therms in 2010.

(d) Annual incremental energy savings in 2012 and each year thereafter equivalent to 0.75% of total annual natural gas sales in therms in the preceding year.

(3) If a utility's annual incremental energy savings in the 2008-2009 biennium or any year thereafter exceed the applicable energy efficiency performance standard in subsection (1) or (2), those savings may be carried forward and credited to the next year's standard. However, both of the following apply:

(a) The amount of those savings carried forward shall not exceed 1/3 of the next year's standard.

(b) Savings shall not be carried forward if, for its performance during the same biennium or year, the utility accepts a financial incentive under section 9(3).

(4) Incremental energy savings under subsection (1) or (2) for the 2008-2009 biennium or any year thereafter shall be determined
for a utility by adding the energy savings expected to be achieved
during a 1-year period by energy efficiency measures installed
during the 2008-2009 biennium or year thereafter under any of the
energy efficiency programs consistent with the utility's energy
efficiency program plan. The amount of energy savings achieved or
expected to be achieved by each individual energy efficiency
program shall be determined under the independent expert evaluation
process provided for under section 5(1)(f).

Sec. 9. (1) The commission shall allow a utility that
undertakes an approved energy efficiency program to recover the
actual, reasonable costs of implementing the program. This cost
recovery shall be accomplished through a tariff rider or other
appropriate volumetric charge applied to distribution company
rates. To the extent feasible, charges collected from a particular
customer sector shall be devoted to energy efficiency programs and
services for that sector. Charges shall be applied to distribution
customers regardless of the source of their electricity or natural
gas supply.

(2) A utility that spends a minimum of 0.5% of total revenues,
including electricity or natural gas commodity costs, per year on
commission approved energy efficiency programs shall be allowed to
adopt a symmetrical revenue decoupling true-up mechanism that
adjusts for sales volumes that are above or below forecasted
levels. A utility shall not spend more than 2.0% of total revenues,
including electricity or natural gas commodity costs, in any year
on energy efficiency programs without specific approval from the
commission.
(3) If a utility meets or exceeds the energy performance standards in section 7 during the 2008-2009 biennium or any year thereafter, as documented through commission-approved program evaluation, the commission upon application and after a hearing may allow the utility to receive a financial incentive for that performance. Any financial incentive shall not exceed 15% of the utility's actual energy efficiency program expenditures for that year. If approved, a financial incentive shall be added to the total energy efficiency program costs to be recovered by the utility. A financial incentive is subject to the requirement that the utility's energy efficiency programs collectively be cost-effective.

Sec. 11. (1) Sections 5, 7, and 9 do not apply to a utility that transfers the following minimum amount of money each year to an independent energy efficiency program administrator selected by the commission:

(a) In 2009, 0.75% of total utility sales revenues for 2007.
(b) In 2010, 1.0% of total utility sales revenues for 2008.
(c) In 2011, 1.5% of total utility sales revenues for 2009.
(d) In 2012 and each year thereafter, 2.0% of total utility sales revenues for the preceding year.

(2) Funds received from a utility by the energy efficiency program administrator under subsection (1) shall be used to administer energy efficiency programs for the utility. Funds unspent in any given year shall be carried forward to be spent in the subsequent year.

(3) The commission shall allow a utility that complies with
subsection (1) to recover the amount of money transferred. This cost recovery shall be accomplished through a tariff rider or other appropriate volumetric charge applied to distribution company rates. Such a charge shall be applied to all distribution customers, regardless of the source of their electricity or natural gas supply.

(4) The commission shall select through competitive bid a qualified nonprofit organization to administer energy efficiency programs under this section.

Sec. 13. (1) The commission shall monitor utility performance to ensure compliance with the requirements of this act.

(2) If a utility violates this act, the commission shall investigate the reasons for the violation. If the commission determines that the violation is a result of a lack of good faith effort by the utility, the commission shall implement regulatory sanctions for the utility. Such sanctions may include a reduction in authorized rate of return.

(3) If a utility fails to meet the applicable energy efficiency performance standard under section 7 in any particular year, the utility shall achieve additional energy savings, equal to the shortfall, within the following 2 years, and the additional energy savings shall be added to the energy efficiency performance standards that apply in those years.

Sec. 15. (1) A municipally owned utility shall comply with the requirements of section 5(1). The commission may recommend changes to the municipally owned utility's energy efficiency programs plan.

(2) A municipally owned utility shall comply with the
requirements of section 7. Section 13(3) applies to a municipally
owned utility that fails to meet the applicable energy efficiency
program standard under section 7 in any particular year.

(3) Any person adversely affected may commence a civil action
for injunctive relief against a municipally owned utility that
fails to meet the requirements of section 7 or, if applicable,
section 13(3). The action shall be commenced in the circuit court
for the circuit in which the alleged violation occurred. An action
shall not be filed under this subsection unless the plaintiff has
given the proposed defendant and the commission at least 60 days'
written notice of the plaintiff's intent to sue, the basis for the
suit, and the relief sought. In issuing a final order in an action
brought under this subsection, the court may award costs of
litigation, including reasonable attorney and expert witness fees,
to the prevailing or substantially prevailing party.

(4) By 1 year after the effective date of this act, and every
2 years thereafter, a municipally owned utility shall report to its
customers, the commission, and the governing body of the
municipality the municipally owned utility's expenditures on energy
efficiency programs during the preceding calendar year, details of
each program, and the overall effectiveness of each program.

Sec. 17. (1) A large customer may submit to the commission a
description of a proposed energy efficiency project, including
anticipated project expenditures and an estimate of the annual
megawatts and megawatt hours or decatherms of energy savings that
will result from the project, along with supporting documentation.
The large customer shall submit a copy of these materials to the
relevant utility.

(2) The commission shall approve or disapprove the proposed energy efficiency project if the project will provide new electricity or natural gas savings with a simple payback period of more than 1 year but less than 8 years. Otherwise, the commission shall disapprove the project. The payback period shall be calculated by dividing energy efficiency project costs by annual energy cost savings.

(3) Upon completing an approved energy efficiency project, a large customer shall submit to the relevant utility and the commission verification of the installation and an update of the information provided under subsection (1). The large customer's energy savings shall be included in the calculation of the utility's incremental energy savings under section 7.

(4) A large customer that has completed an energy efficiency project may deduct the amount of actual project expenditures, up to the amount verified by the commission under subsection (3), from the relevant utility's energy efficiency program charges that the large customer would otherwise incur under section 9 or 11 in the year in which the energy efficiency project was completed. A large customer's total annual deductions under this subsection shall not exceed 90% of such charges.

(5) The commission may develop additional procedures to accomplish the objectives of this section in an efficient and effective manner.

(6) As used in this section, "relevant utility" means the utility providing the service the demand for which will be affected
by the energy efficiency project.

Sec. 19. The commission shall promote load management in appropriate circumstances, including allowing rate recovery for prudent load management expenditures.

Sec. 21. By 1 year after the effective date of this act, and every 2 years thereafter, the commission shall report to the legislature on the progress and results from the implementation of the energy efficiency programs required to be implemented by utilities under this act. The commission shall make copies of the report available for distribution to the public. The department of labor and economic growth shall post the report on its website.

Enacting section 1. This act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

(a) Senate Bill No.____ or House Bill No. 5524(request no. 02552'07 *).
(b) Senate Bill No.____ or House Bill No. 5521(request no. 04883'07 *).
(c) Senate Bill No.____ or House Bill No. 5522(request no. 04884'07 *).
(d) Senate Bill No.____ or House Bill No. 5520(request no. 04885'07 *).
(e) Senate Bill No.____ or House Bill No. 5523(request no. 05023'07 *).
(f) Senate Bill No.____ or House Bill No.____ (request no. 05570'07).
(g) Senate Bill No.____ or House Bill No.____ (request no. 05920'07).
(h) House Bill No. 5383.
(i) House Bill No. 5384.