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# ENCOURAGE GARBAGE INCINERATORS



**House Bill 5591** (Substitute H-5)
**First Analysis (9-28-88)**

**Sponsor: Rep. James A. Kosteva**
**Committee: Conservation and Environment**

## *THE APPARENT PROBLEM:*

Solid waste disposal is an increasingly serious problem both nationally and in Michigan. Accordingly, the state solid waste disposal plan identifies a number of ways of reducing the amount of solid waste being disposed of in rapidly filling landfills. One way is through "resource recovery facilities," that is, through "waste-to-energy" incinerators that burn municipal solid wastes (MSW) to produce both electricity and heat or steam energy. However, development of these cogeneration facilities has been slow, many people believe, because of the projects' high capital costs combined with difficulties that project developers have had in getting public utilities to buy the cogenerators' excess electricity. In addition, some people believe that developers hesitate to begin new cogeneration projects until the prolonged dispute over the huge Midland Cogeneration Venture (MCV) project, which currently is pending before the Michigan Public Service Commission (PSC), is resolved. Legislation has been proposed which would encourage the building of municipal garbage incinerators by addressing some of these problems.

## *THE CONTENT OF THE BILL:*

The bill would add a new section to the Public Service Commission act to require public utilities to buy electricity from municipal garbage incinerators, and to require in some circumstances that contracts between utilities and municipal garbage incinerators be granted automatically. The bill also would provide an informal procedure for resolving disputes between utilities and cogenerators.

Power purchase agreements. The bill would require public utilities with more than 500,000 customers in Michigan to enter into power purchase agreements with waste-to-energy incinerators which burn qualified solid waste (basically, municipal solid waste generated within the state). Capacity rates could not be less than the utility's full avoided costs (that is, the costs the utility avoids by buying the electricity from the cogenerator rather than building a new generating facility itself); energy rates would be equal to the utility's avoided energy cost. Capacity bought by a utility from a waste-to-energy facility could not be considered by the commission in determining the amount of capacity that the utility had in reserve before the year 2,000.

All such contracts would have to be reviewed by the Public Service Commission under contested case proceedings, though contracts would be granted automatic approval if the commission did not act within six months after the contract was filed (or within six months of the effective date of the bill, whichever were later).

Dispute resolution. Contract disputes, other than those related to rates, could be brought before the commission by either a utility or a cogenerator. Each party to the dispute would be required to submit to the commission all of the purchase agreement provisions of their last best offer and a supporting brief. The commission would have 60 days to select or reject the offers submitted by either party on any disputed provision.

Exemptions. If the amount of energy purchased by a utility from a waste-to-energy incinerator reached 120 megawatts, the bill's provisions no longer would apply.

MCL 460.6p

## *BACKGROUND INFORMATION:*

Under the current rules of the Federal Energy Regulatory Commission (FERC) and current state law, the Public Service Commission may approve cost recovery for power generated by cogenerators and small power producers, authorizing a utility to include the costs in its electric rates. Rates approved for such power are guaranteed for 17.5 years, provided that the commission holds a contested case hearing on the particular power purchase contract. Thus, the PSC is the primary administrative agency to review contracts between qualifying facilities and electric utility companies in Michigan. The commission also is responsible for determining the proper avoided cost rate for non-utility generating capacity as well as the need for new capacity additions to the utility system.

## *FISCAL IMPLICATIONS:*

Fiscal information is not available.

## *ARGUMENTS:*

### *For:*

By requiring utilities to sign contracts with the developers of waste-to-energy incinerators, and by removing the uncertainty of the Public Service Commission's treatment of need and capacity, the bill would stimulate the development of such incinerators. And by speeding up the development of these incinerators, the bill not only would help counties and cities to deal with their municipal solid waste problems and reduce the state's current dependence on landfills, but also would provide energy and capacity for the electric system.

### *For:*

The bill's informal dispute resolution mechanism would insure that no one party could hold up a potential waste-to-energy cogeneration project while negotiating a power purchase agreement. At the same time, it would assure the timely development of waste-to-energy projects by imposing a six-month time limit on the Public Service Commission for approving or disapproving contracts.

### *Against:*

The bill would unfairly ask electricity customers to subsidize a solution to the problem of solid waste disposal for which they may not be directly responsible. Customers in the

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service area of a utility might be required to pay a premium for power purchased from a garbage incinerator that helps the municipal waste disposal problems of another area of the state. Besides, the cost of waste disposal should be reflected in disposal fees rather than in electric fees.

***Response:*** The bill addresses this issue by restricting itself to covering only resource recovery facilities which meet a very narrow definition: The facility must be an incinerator which recovers energy by burning qualified solid waste (80 percent of its annual fuel) or landfill gas (90 percent of its annual fuel). The solid waste must have been generated within the state and at least some of it must have been generated within the purchasing utility's service area.

## *Against:*

Rates exceeding a utility's avoided cost would be permitted by the bill. This would be costly to the electricity customer and in violation of the federal Public Utility Regulatory Policies Act (PURPA). The Federal Energy Regulatory Commission recently overruled action by the New York legislature creating a fixed rate for renewable fuel projects, on the grounds that the rate established was in excess of the utility's avoided cost. Favoring resource recovery projects without regard to the capacity needs of a particular system also could result in the purchase of unneeded capacity. It may also lead to purchases from these projects instead of less expensive purchased power or power from other cogeneration and small power production projects.

## *POSITIONS:*

The Public Service Commission neither supports nor opposes the bill. (9-27-88)

Consumers Power Company supports the bill. (9-27-88)