

## **CLEAN AND RENEWABLE ENERGY AND ENERGY WASTE REDUCTION**

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**Senate Bill 438 as enacted**  
**Public Act 342 of 2016**  
**Sponsor: Sen. John Proos**  
**House Committee: Placed directly on Second Reading**  
**Senate Committee: Energy Policy**

Analysis available at  
<http://www.legislature.mi.gov>

**Complete to 1-27-17**

### **BRIEF SUMMARY AND OVERVIEW:**

Senate Bill 438 makes numerous changes to the Clean, Renewable, and Efficient Energy Act. The bill changes the name of the act to the Clean and Renewable Energy and Energy Waste Reduction Act, and revises the purpose of the act to focus on using a combination of energy waste reduction and renewable energy to meet 35 percent of the state's needs rather than referring to energy efficiency and energy optimization.

Electric providers will be required to achieve a renewable energy credit (REC) portfolio higher than the 10 percent set in the original act, with incremental increases required until the REC portfolio reaches at least 15 percent in 2021. Numerous sections pertaining to renewable energy plans, renewable energy capacity portfolio, and renewable and cleaner energy credits will be repealed and others revised. Renewable energy plans and associated revenue recovery mechanisms in existence on the bill's effective date will remain in effect (though these will be subject to review by the Michigan Public Service Commission and may be amended in order to remain in compliance with the act).

The bill also contains several innovative approaches to encourage using electricity generated from renewable sources and to encourage efforts to reduce the amount of electricity and natural gas needed through waste reduction practices. For instance, electric customers will be able to participate in a green pricing program that, generally speaking, allows a customer to choose the amount of the customer's monthly electricity consumption that is to be attributed to renewable energy.

Electric providers and natural gas providers that are regulated by the PSC will also be able to offer programs under which a residential customer could obtain a loan to make energy-related home improvements and repay the loan as a separate charge added to the customer's monthly electric or gas bill. If the customer sold the residence before the loan was repaid, the new buyer will assume the balance. (The aim is to encourage homeowners to make energy saving repairs or upgrades sooner than they may otherwise and without the worry of whether the costs could be recouped should the home be sold; moreover, say proponents, the monthly energy savings generated from the repairs and upgrades may significantly offset or even cover the monthly loan installments.)

Other important amendments to the act include revisions to the net metering program, which will be revised and renamed as the *distributed generation program*. Along with provisions contained in a companion bill, Senate Bill 437, all users of the energy grid (including distributed generation customers) will share in supporting the grid's infrastructure. Moreover, the attorney general or a customer of a municipally owned electric utility or a cooperative electric utility that is not regulated by the PSC would be able to sue a utility if it failed to meet the bill's requirements pertaining to waste reduction standards.

Substantial changes made by Senate Bill 438 include the following:

- Rename the act as the Clean and Renewable and Energy Waste Reduction Act.
- Revise the purpose of the act to focus on promoting the development and use of clean and renewable energy resources and the reduction of energy waste.
- Add as a goal of the act to meet 35 percent of the state's electric needs through a combination of energy waste reduction and renewable energy by 2025.
- Add as a goal of the act "to remove unnecessary burdens on the appropriate use of solid waste as a clean energy source."
- Maintain the 10 percent renewable energy credit (REC) portfolio requirement through 2018, increase the standard to 12.5 percent from 2019 through 2020, and require electric providers to achieve a 15 percent REC portfolio in 2021.
- Change references and provisions pertaining to "energy optimization" to refer instead to "energy waste reduction."
- Replace the "net metering program" with the "distributed generation program."
- Create a voluntary Green Pricing Program under which a customer can choose the amount of electricity attributed to renewable energy.
- Create Part 7 to allow certain electric and natural gas providers to establish programs by which residential customers may obtain loans for energy projects and make monthly repayments on their utility bills. If recorded with the county register of deeds, the loan would run with the property and new owners would be obligated to repay any outstanding loan balance.
- Increase the financial incentive for providers who exceed the energy waste reduction performance standards and expand eligibility for the incentive.
- Allow load management programs by which a utility could remotely shutdown a customer's energy intensive systems (e.g., HVAC, refrigeration) for a period of time to avoid system overloads.
- Allow fuel manufactured from waste to be a "renewable energy resource." The term will not include pet coke, hazardous waste, coal waste, or scrap tires as fuel meeting the requirements of the definition.
- Transfer certain duties of the PSC regarding promoting energy efficiency and energy conservation to the Michigan Agency for Energy.
- Eliminate the requirements that electric utilities include itemized charges or savings from renewable energy programs on a customer's monthly bill.
- Allow for the use of pyrolysis technologies in the generation of renewable energy. ("Pyrolysis" is not defined in the bill but generally refers to a high-temperature, oxygen-free process to make biofuels from a wide range of agricultural, industrial, and municipal solid waste.)
- Revise, eliminate, and add definitions.

- Repeal numerous sections.
- Unless otherwise provided, provisions take effect April 20, 2017.

**DETAILED SUMMARY:**

The following is a section-by-section description of the more significant changes in Senate Bill 438 (Public Act 342 of 2016).

**TITLE**

The title will be amended to revise the stated purpose of the act as follows:

- Require certain providers of electric service to establish *and recover costs for* renewable energy programs.
- Replace references to *energy optimization programs* with *energy waste reduction programs*.
- Delete, as a purpose, to provide for certain charges on electric and natural gas bills.
- Add *to reduce energy waste* by state agencies and the public, instead of *to promote energy conservation* by those entities.
- Replace references to *net metering* with *customer generation and net metering*.
- Add, as a purpose, to authorize the establishment of residential energy improvement programs by providers of electric or natural gas service.

**PART 1: General Provisions**

Section 1: Title and Purpose of Act

The act will be renamed the Clean and Renewable and Energy Waste Reduction Act (currently it is the Clean, Renewable, and Efficient Energy Act). Changes, with highlighting denoting revisions to existing provisions, include:

- Promote the development *and use of clean and renewable energy resources and the reduction of energy waste through programs* that will cost-effectively do all of several listed goals instead of *promoting the development of clean energy, renewable energy, and energy optimization through the implementation of a clean, renewable, and energy efficient standard*.
- Replace references to *energy efficiency* with *energy waste reduction*.
- *Coordinate with federal regulations* to provide improved air quality and other benefits to energy consumers and citizens of the state.
- Add as a goal to remove unnecessary burdens on the appropriate use of solid waste as a clean energy source.
- Add as a goal, that not less than 35 percent of the state's electric needs be met through a combination of energy waste reduction and renewable energy by 2025, if the investments in energy waste reduction and renewable energy are the most reasonable means of meeting an electric utility's energy and capacity needs relative to other resource options. Both of the following will count toward achievement of this goal:

- (1) All renewable energy (including renewable energy credits purchased or otherwise acquired with or without the associated renewable energy) and any banked renewable credits that counted toward the renewable energy standard on the bill's effective date, and (2) renewable energy credits granted as a result of any investments made in renewable energy by the utility or a utility customer after the bill's effective date.
- The sum of the annual electricity savings since October 6, 2008, as recognized by the Public Service Commission through annual reconciliation proceedings, that resulted from energy waste reduction measures implemented under an energy optimization plan or energy waste reduction plan approved under Section 73.

### **Definitions**

The following definitions will be revised, added, or eliminated:

#### **Section 3:**

##### *Eliminated:*

"Advanced cleaner energy credit" and "affiliated transmission company."

##### *Revised:*

"Carbon dioxide emissions benefits" will also mean that the carbon dioxide emissions per megawatt hour of electricity generated by an integrated pyrolysis combined cycle facility are at least 70 percent less than the average carbon dioxide emissions per megawatt hour of electricity generated from all coal-fired electric generating facilities operating in Michigan on January 1, 2008 (the same level currently specified for an integrated gasification combined cycle facility).

##### *Added:*

"Cogeneration facility" will mean a facility that produces both electricity and useful thermal energy, such as heat or steam, in a way that is more efficient than the separate production of those forms of energy.

"Distributed generation program" means the program established by the MPSC under Section 173.

#### **Section 5:**

##### *Revised:*

The term "electric provider" is no longer subject to Sections 21, 23, and 25 as those sections will be repealed.

The definition of "energy conservation" no longer excludes the use of advanced cleaner energy systems.

#### **Section 7:**

##### *Eliminated*

"Industrial cogeneration facility," "industrial thermal energy," and industrial waste energy."

*Revised*

"Load management" will include measures or programs to target *behavior* to result in decreased peak electricity demand, rather than targeting *devices* to do so.

"Modified net metering"—references to *modified net metering customers* will be changed to *modified net metering for distributed generation customers*. In addition, [and subject to Section 177(5)], a charge for net metering and distributed generation customers established under Section 6a of the Michigan Public Service Commission Enabling Act could not be recovered more than once.

*Added*

"Integrated pyrolysis combined cycle facility" would be defined to mean a pyrolysis facility that uses exhaust heat to generate electricity.

"Megawatt," "megawatt hour," or "megawatt hour of electricity" would be defined to include, unless the context implies otherwise, the steam equivalent of a megawatt or megawatt hour of electricity.

Section 9:

*Eliminated*

"Qualifying small power production facility."

*Revised*

"Natural gas provider" is revised to refer to investor-owned businesses engaged in the sale and distribution *at retail* of natural gas within the state whose rates are regulated by the MPSC. The exclusion for an alternative gas supplier licensed under Public Act 3 of 1939 will be eliminated.

*Added*

"Pet coke" would be defined to mean a solid carbonaceous residue produced from a coker after cracking and distillation from petroleum refining operations.

"Pyrolysis facility" would be defined to mean a facility that effects thermochemical decomposition at elevated temperatures without the participation of oxygen, from carbon-based feedstocks including, but not limited to, coal, wood, biomass, industrial waste, or solid waste, but not including pet coke, hazardous waste, coal waste, or scrap tires. The term would include the transmission lines, gas transportation lines and facilities, and associated property and equipment specifically attributable to the facility. It would also include, but not be limited to, an integrated pyrolysis combined cycle facility.

Section 11:

*Eliminated*

"Renewable energy capacity portfolio" and "renewable energy generator."

*Revised*

"Renewable energy resource," in addition to resources currently listed in the act, will also include thermal energy produced from a geothermal heat pump.

Currently, municipal solid waste and landfill gas produced by municipal solid waste are included in the list of resources deemed as a renewable energy resource. The bill separates

these out as a "cleaner energy resources" subcategory and, regarding municipal solid waste, includes both the biogenic and anthropogenic fractions. The bill also includes in the subcategory of "cleaner energy resources" fuel that has been manufactured in whole or significant part from waste, including, but not limited to, municipal solid waste. Fuel that meets the bill's requirements include, but are not limited to, material listed in federal law under 40 CFR 241.3(b) or 241(a) or for which a non-waste determination is made by the U.S. Environmental Protection Agency under 40 CFR 241.3(c). Pet coke, hazardous waste, coal waste, or scrap tires are not fuel that meets the requirements of this provision.

"Renewable energy system" is defined as a facility using renewable energy resources to generate electricity; the bill expands the definition to include a facility using renewable energy resources to generate steam.

Currently, an incinerator is not included as a renewable energy system unless it is a municipal solid waste incinerator as defined in Section 11504 of NREPA that was brought into service before the effective date of the act. The bill would delete the highlighted text as well as a list of several examples of incinerators. A renewable energy system would therefore include all municipal solid waste incinerators that meet the NREPA definition.

#### Section 13:

##### *Revised*

"Wind energy conversion system" will refer to a *system*, rather than a *renewable energy system*, that uses one or more wind turbines to generate electricity and has a capacity of 100 kilowatts or more.

## **Part 2: Energy Standards** **Subpart A: Renewable Energy**

#### Sections 21, 23, and 25: Proposed renewable energy plan/Repealed

The provisions require all regulated electric providers, alternative energy suppliers (AES) and cooperative electric utilities, and municipally owned electric utilities, respectively, to file a renewable energy plan. All three sections are repealed.

#### Section 22

Section 22 is added to specify that renewable energy plans and associated revenue recovery mechanisms filed by an electric provider under former Sections 21 and 23 or in compliance with former Section 25 and in effect on the bill's effective date will remain in effect. Within one year of the bill's effective date, the PSC must review each provider's plan, as a contested case, and approve or reject the plan or amendments to it. The bill also provides a process for approval or rejection of proposed amendments to a plan file after the review process.

#### Section 27: Renewable energy capacity/renewable energy credit portfolio/Repealed

Repeals the requirement for electric providers to reach a 10 percent renewable energy portfolio by 2015 and maintain it beginning in 2016. These provisions are replaced by those in Section 28, described below.

### Section 28: Renewable energy credit portfolio

The bill adds Section 28 to require that electric providers maintain the 10 percent renewable energy portfolio through 2018, increase the standard to 12.5 percent in 2019 and 2020, and achieve a 15 percent renewable energy portfolio in 2021, as calculated under the bill. The portfolio can be met either by generating electricity from renewable energy systems or by purchasing or otherwise acquiring renewable energy credits with or without the associated renewable energy. In addition, the bill allows energy waste reduction credits, on a one-to-one basis, to be substituted for up to 10 percent of renewable energy credits.

### Section 29: Renewable energy system location

Section 29 pertains to the location requirements of a renewable energy system that is the source of renewable energy credits. The act does not apply the location requirements if any of certain listed requirements are met. For instance, location requirements do not apply to electricity generated from a renewable energy system that is sold by a not-for-profit entity in Ohio to a municipally owned electric utility in Michigan when the electricity is not being used to meet another state's standard for renewable energy; the bill expands the provision to also include sales to a cooperative electric utility in the state. The bill also deletes a provision pertaining to advanced cleaner energy credits made obsolete by the repeal of Section 27.

### Section 31: Repealed

The provision allows for extensions to be granted by the PSC for good cause to an electric provider for additional time to meet the 2015 renewable energy standard.

### Section 33: Repealed

The repealed provision pertains to how an electric provider having one million or more retail customers in this state on January 1, 2008, was to obtain the renewable energy credits to meet the 2015 renewable energy credit standard.

### Section 37: Repealed

Pertains to a renewable energy contract without associated renewable energy.

### Section 39: Renewable energy credit

Currently, except as provided in Section 35(1) of the act, one renewable energy credit is granted to the owner of a renewable energy system for each megawatt hour of electricity generated from the system, subject to certain conditions. The bill eliminates a provision that does not allow a renewable energy credit for renewable energy generated from a municipal solid waste incinerator to the extent the renewable energy was generated by operating the incinerator in excess of the incinerator's nameplate capacity rating as of January 1, 2008, or, if the incinerator had been expanded, the nameplate capacity rating required to accommodate the expansion, whichever is greater.

The act provides for additional renewable energy credits, known as *Michigan incentive renewable energy credits*, to be granted under certain circumstances. One circumstance grants two renewable energy credits for each megawatt hour of electricity from solar power. Under the bill, the two renewable energy credits would be granted for each megawatt hour of electricity from solar power generated by a renewable energy system that was approved in a renewable energy plan before the bill's effective date.

The bill revises when a renewable energy credit expires so that it would be understood to expire at the earliest of the following times:

- When used by an electric provider to comply with its renewable energy standard.
- When substituted for an energy waste reduction credit under Section 77.
- When used by an electric provider whose rates are regulated by the PSC to contribute to achieving at least 35 percent of the state's electric needs being met through a combination of energy waste reduction and renewable energy by 2025.
- Five years (instead of three) after the end of the month in which the renewable energy credit was generated.

A provision allowing a renewable energy credit associated with renewable energy generated within 120 days after the start of a calendar year to be used to satisfy the prior year's renewable energy standard is eliminated.

#### Section 41: Trade, sale, or transfer of renewable energy credits

The bill strikes a provision in this section that has been rendered obsolete by other provisions; that provision being struck requires that the renewable energy credit certification and tracking program created by the PSC include a method for ensuring that both a renewable energy credit and an advanced cleaner energy credit are not awarded for the same megawatt hour of energy.

#### Section 43: Repealed

The repealed provision pertains to a cleaner energy credit generated from an advanced cleaner energy system.

#### Section 45: Charges for electric provider's tariffs that permit recovery of incremental costs of compliance

Provisions will be eliminated requiring a regulated electric provider to include in a customer's billing statement certain itemized charges and savings pertaining to the renewable energy program and the energy optimization program, and also the website address at which the PSC annual report is posted.

#### Section 47: Cost of service to be recovered for a renewable energy plan

The capital, operating, and maintenance costs of an advanced cleaner energy system, and financing costs attributable to a system, are included as incremental costs of compliance with a renewable energy plan for which an electric provider may recover through its retail electric rates. The bill relocates (from Section 3) *and* revises the definition of "advanced cleaner energy system" to mean the following (highlights denote additions, or deletions as noted):

- A gasification facility.
- A cogeneration facility (instead of *industrial* cogeneration facility).
- A coal-fired electric generating facility if 85 percent or more of the carbon dioxide emissions are captured and permanently geologically sequestered *or used for other commercial or industrial purposes that do not result in release of carbon dioxide to the atmosphere.*
- *A hydroelectric pumped storage facility.*



- An electric generating facility or system that uses technologies not in commercial operation on October 6, 2008, *and that the commission determines has carbon dioxide emissions benefits or will significantly reduce other regulated air emissions.*

#### Section 49: Renewable cost reconciliation

Deletes references to Section 51, which will be repealed by the bill, and other changes of a technical nature.

#### Section 51: Repealed January 1, 2023

The provision pertains to submission of an annual report by electric providers regarding efforts to comply with renewable energy standards.

#### Section 53: Repealed

The provision pertains to failure to meet a renewable energy credit standard.

#### Section 54:

The bill adds Section 54 to specify that nothing in Subpart A abrogates the powers granted to local units of government under the Michigan Zoning Enabling Act.

### **Subpart B: Customer-Requested Renewable Energy**

Currently, Subpart B is entitled "Energy Optimization" (this subpart will be renamed as "Subpart C. Energy Waste Reduction" and discussed later).

#### Section 61:

The bill adds Section 61 to do the following:

- Require electric providers to offer customers the opportunity to participate in a voluntary green pricing program.
- Allow participants to specify, from available options, the amount of electricity attributable to the customer that will be renewable energy.
- Require the PSC to approve green pricing programs offered by regulated providers, including the rates paid for renewable energy.
- Make the customer responsible for any additional costs incurred but also allow the customer to accrue any additional savings from program participation.
- If the electric provider does not fully recover the incremental costs of compliance, apply the following:
  - Exempt a customer receiving at least 50 percent of their average monthly electricity consumption through the program from paying surcharges for incremental costs of compliance; *and*,
  - Require an electric provider to notify a customer who will receive less than 50 percent of their average monthly electricity consumption that the customer will be responsible for the full applicable charges for the incremental costs of compliance and for participation in the green pricing program. The notice must be given before the customer enters into an agreement to participate in the green pricing program.

## Subpart C: Energy Waste Reduction

The bill renames "Subpart B. Energy Optimization" as "Subpart C. Energy Waste Reduction." Most references to "energy optimization" will be replaced with "energy waste reduction" in the bill and in the following descriptions.

### Section 71: Proposed energy optimization plan

Under the bill, energy optimization plans filed under the act will remain in effect, subject to any amendments, but as *energy waste reduction plans*. Other changes include:

- Adding as a goal of energy waste reduction: *to help the provider's customers reduce energy waste.*
- Revise requirements for an energy waste reduction program to include:
  - Ensure that charges collected from a particular customer rate class are spent on energy waste reduction programs *that benefit* that rate class.
  - Allow providers the flexibility to determine the relative amount of effort to be devoted to each customer class based on the specific characteristics of the provider's service territory.

### Section 73: PSC approval for energy waste reduction plan

Currently, energy waste reduction plans must be filed with, reviewed by, and approved or rejected by the PSC. The bill adds that for a provider whose rates are regulated by the PSC, the plan will be enforced by the PSC; for a provider whose rates are not regulated by the PSC this will be enforced as provided in a provision added by the bill (Section 99). A municipally owned electric utility will be allowed to design and administer energy waste reduction plans in a manner consistent with the administrative changes approved in a PSC order dated April 17, 2012 (Case Nos. U-16688 to U-16728 and U-17008).

Further, the bill requires the PSC to review an approved plan every two years. For a provider whose rates are regulated, the PSC will conduct a contested case hearing and either approve the plan (with any changes consented to by the provider) or reject the plan and any proposed amendments. A provider proposing to amend its plan other than during the biennial review process must file the amendment; the PSC will have 90 days in which to conduct a hearing and approve or reject the plan and any proposed amendments. The reasons for a rejection of a plan or amendment must be explained in writing by the PSC.

After December 31, 2021, Section 73 will only apply to an electric provider whose rates are regulated by the PSC.

### Section 74: Energy waste reduction cost reconciliation

Section 74 is added to require the PSC to commence—concurrent with the submission of each report required under Section 97—an energy waste reduction cost reconciliation as a contested case for each electric or natural gas provider whose rates are regulated by the commission.

Reasonable discovery must be permitted before and during the energy waste reduction cost reconciliation to assist in obtaining evidence concerning reconciliation issues including, but not limited to, the reasonableness and prudence of expenditures and the amounts

collected under energy waste reduction charges set by the PSC. At the reconciliation, a provider could propose any necessary modifications of the energy waste reduction charges previously set by the commission to ensure the provider's recovery of its costs to comply with the energy waste reduction standards.

The PSC is required to reconcile the pertinent revenues recorded with the amounts actually expensed and projected according to the provider's plan for compliance. The PSC must consider any issue regarding the reasonableness and prudence of expenses for which customers were charged in the relevant reconciliation period. In the PSC order, the commission must make a determination of a provider's compliance with the energy waste reduction standards and also adjust, if necessary, the energy waste reduction charges previously set by the PSC.

Section 75: Exceeding standard for an energy waste reduction plan

Currently, the act allows a financial incentive for a provider whose rates are regulated by the PSC for exceeding the energy optimization performance standard. The bill retains the incentive, but applies it to an energy waste reduction performance standard and revises the allowable incentive. Under the bill, the total amount of a financial incentive for an electric provider that achieves annual incremental savings of greater than 1.5 percent of its total annual retail electricity sales in megawatt hours in the preceding year or a natural gas provider that achieves annual incremental savings of greater than 1.0 percent of its total annual retail natural gas sales in decatherms in the preceding year could not exceed the lesser of the following amounts:

- 30 percent (instead of 25 percent) of the net present value of life-cycle cost reductions experienced by the provider's customers as a result of implementation, during the year for which the financial incentive is paid, of the energy waste reduction plan.
- 20 percent (instead of 15 percent) of the provider's actual energy waste reduction program expenditures for the year.

The bill adds additional incentives for providers that achieve annual incremental savings of lesser amounts. For an electric provider achieving annual incremental savings of greater than 1.25 percent but not greater than 1.5 percent of its total annual retail electricity sales in megawatt hours in the preceding year or for a natural gas provider achieving annual incremental savings of greater than 0.875 percent but not greater than 1.0 percent of its total annual retail natural gas sales in decatherms in the preceding year, the total amount of a financial incentive could not exceed the lesser of the following amounts:

- 27.5 percent of the net present value of life-cycle cost reductions experienced by the provider's customers as a result of implementation, during the year for which the financial incentive is paid, of the energy waste reduction plan.
- 17.5 percent of the provider's actual energy waste reduction program expenditures for the year.

The total amount of a financial incentive for an electric provider that achieves annual incremental savings of greater than 1.0 percent but not greater than 1.25 percent of its total annual retail electricity sales in megawatt hours in the preceding year or a natural gas provider that achieves annual incremental savings of at least 0.75 percent but not greater

than 0.875 percent of its total annual retail natural gas sales in decatherms in the preceding year could not exceed the lesser of the following amounts:

- 25 percent of the net present value of life-cycle cost reductions experienced by the provider's customers as a result of implementation, during the year for which the financial incentive is paid, of the energy waste reduction plan.
- 15 percent of the provider's actual energy waste reduction program expenditures for the year.

#### Section 77: Energy savings

Section 77 pertains to the minimum energy savings of a provider's energy optimization program (now energy waste reduction program). Under the bill, and subject to Section 97, the annual incremental energy savings *through 2021* must be equivalent to one percent of the total annual retail electricity sales in megawatt hours in the preceding year.

The bill retains the requirement that, subject to Section 97, a natural gas provider's energy waste reduction program achieve annual incremental energy savings each year equivalent to 0.75 percent (three-quarters of one percent) of total annual retail natural gas sales in decatherms or equivalent MCFs in the preceding year.

The incremental energy savings expected to be achieved will be determined using a savings database or other savings measurement approach as determined reasonable by the PSC. Further, the bill retains the 10 percent cap on using renewable energy credits, load management that reduces overall energy usage, or a combination to meet the energy waste reduction standard. Substitutions for energy waste reduction credits will be made at the rate of *one renewable energy credit per energy waste reduction credit*. The bill also updates numerous terms and deletes obsolete language, including references to advanced cleaner energy credits, as Section 43 will be repealed.

#### Section 78

The bill adds Section 78 to do the following:

- For electric providers whose rates are regulated by the PSC, require by January 1, 2022, and every two years after that, that they file an energy waste reduction plan amendment detailing the amount of energy waste reduction it proposes to achieve for the succeeding two-year period. A level higher or lower than what is in the current plan could be approved if the PSC determines that level to be the most reasonable and prudent.
- Allow the electric provider or a natural gas provider to petition for an alternative energy waste reduction level if the provider cannot achieve the approved level over a two-year period in a cost-effective manner. For regulated electric providers, a contested case hearing will be held to make the determination; for natural gas providers, the PSC will make the determination whether to revise the level.

#### Section 79: Repealed

The provision pertains to the location of advanced cleaner energy systems used as a source of advanced cleaner energy credits.

Section 81: Repealed January 1, 2022

The provision pertains to alternative energy waste reduction standards for certain electric providers who cannot reasonably meet the energy waste reduction standards with programs that are collectively cost-effective.

Section 83:

The bill makes numerous revisions of a technical nature; for instance, referring to "waste reduction standard" instead of "optimization standard" and changing references to Section 27 to Section 28.

Section 85:

The bill deletes an obsolete provision regarding a report due in 2011.

Section 87: Energy waste reduction certification and tracking program

The bill requires one energy waste reduction credit to be granted to an electric provider for each megawatt hour of annual incremental energy savings achieved through energy waste reduction.

Section 89: Recovery of costs

Currently, the PSC allows a gas or electric provider whose rates are regulated by the commission to recover the actual costs of implementing its approved energy optimization plan; the bill will apply the provisions to energy waste reduction plans. The bill specifies that fixed-per meter charges could vary by rate class. Charges could be itemized on utility bills but not on or after January 1, 2021.

The cap on the percentage of total utility retail sales revenue a natural gas provider or an electric provider may spend to comply with the energy optimization performance standard is eliminated.

Section 91: Payment to an independent energy waste reduction program administrator

The act specifies that Sections 71-89 pertaining to energy optimization plans [with the exception of 89(5)] do not apply to a provider who pays two percent of total retail sales revenues for the two years preceding to an independent energy optimization program administrator. The bill instead specifies that the listed sections do not apply to a provider that each year pays not less than two percent of total utility sales revenues for the second year preceding, including electricity or natural gas commodity costs, to an independent energy waste reduction program administrator.

The act requires an alternative compliance payment received from a provider by the energy waste reduction program administrator to be used to administer energy efficiency programs for the provider. The bill eliminates a provision allowing money unspent in a year to be carried forward to be spent in the subsequent year.

The act allows a provider to recover an alternative compliance payment made to an independent energy optimization program administrator from residential customers. The bill allows fixed, per-meter charges to vary by rate class. Charges could be itemized on utility bills but not on or after January 1, 2021.

### Section 93: Self-directed energy waste reduction plan

The bill makes several revisions of a technical nature.

### Section 95: PSC duties

As one of its duties, the PSC is to promote load management in appropriate circumstances. The bill includes the expansion of existing programs, and the establishment of new load management programs in which an electric provider could manage the operation of energy consuming devices and remotely shut down air conditioning or other energy intensive systems of participating consumers; demand response programs that use time of day pricing and dynamic rate pricing; and similar programs—for utility customers that have advanced metering infrastructure. Participation by providers or enrollment by customers in such programs will be voluntary.

However, electric providers whose rates are regulated by the PSC, and whose rates include the cost of advanced metering infrastructure, must offer commission-approved demand response programs. The programs could provide incentives for customer participation and must include customer protection provisions as required by the PSC. As a condition of participation, a customer must agree to remain in the program for at least one year.

The above provision could not be construed to prevent an electric utility from recovering the full cost associated with providing electric service and load management programs or installing metering and retrieving metering data necessary to properly, accurately, and efficiently bill for the utility's services without manual intervention or manual calculation.

The following duties are transferred from the PSC to the Michigan Agency for Energy:

- Promote energy efficiency and energy conservation.
- Actively pursue increasing public awareness of energy conservation and energy efficiency.
- Actively engage in energy conservation and energy efficiency efforts with providers.
- Engage in regional efforts to reduce demand for energy through energy conservation and energy efficiency.

The bill also deletes obsolete reporting requirements.

### Section 97: Compliance with energy waste reduction standards; reports

The act authorizes the PSC to suspend a provider's energy waste reduction program if it has not been cost-effective; under the bill, this provision will not apply to an electric provider on or after January 1, 2022.

Currently, a report by the PSC evaluating and determining whether Subpart C has been cost-effective and that contains recommendations to the Legislature must be combined with any concurrent report required under Section 51. Section 51 will be repealed; the bill, therefore, allows the report required under Section 97 to be combined with the annual report required under Section 5a of Public Act 3 of 1939 (which summarizes the activities of the commission and is submitted to the governor and the legislature annually on or before the first Monday of March). Numerous obsolete provisions will also be eliminated.

### Section 99

The bill adds Section 99 to allow the attorney general or any customer of a municipally owned electric utility or a cooperative electric utility to commence a civil action for injunctive relief against the utility if it fails to meet the applicable requirements of Subpart C (or an order issued or rule promulgated under Subpart C) regarding energy waste reduction. Actions would be filed in the circuit court in the circuit in which the utility's principal office is located. A written notice of the intent to sue, basis for the suit, and relief sought will have to be provided at least 60 days prior to filing. Within 30 days of receipt of the notice by the utility, the parties must meet and make a good faith attempt to determine if a credible basis for the action exists. If so, the utility will have to take all reasonable and prudent steps necessary to comply with the applicable requirements of Subpart C; if not, the attorney general or customer may proceed to file the suit.

### **Subpart D. Miscellaneous**

#### Section 113:

The bill renames Subpart C as Subpart D. Currently, Section 113 specifies that electricity or natural gas used in the installation, operation, or testing of any pollution control equipment is exempt from the requirements of, and calculations of compliance required under, Part 2. Under the bill, the exemption will no longer apply to electricity used for this purpose as of January 1, 2021.

### **PART 5: Wind Resource Zone**

#### Section 155: Wind energy resource zones

The provision, which pertains to an annual report regarding wind energy resource zones, will be repealed.

### **PART 5: Distributed Generation**

Part 5, entitled "Net Metering," will be renamed "Distributed Generation." Under the current net metering program, as explained by the PSC, customers can develop on-site renewable energy electric generation projects to meet some or all of their electric energy needs and reduce their electric bills. Customers may install an on-site renewable energy electric generation project, such as a wind turbine or solar photovoltaic panels. The program is available to customers of PSC rate-regulated utilities and cooperatives, and alternative electric suppliers (AES).

#### Section 173

The bill revises current provisions pertaining to establishment of a statewide net metering program to instead apply to a *distributed generation program*. The PSC, within 90 days of the bill's effective date, will be required to establish a *distributed generation program*; the PSC will be authorized to promulgate rules as necessary to implement it. The program will apply to electric utilities whose rates are regulated by the PSC and to alternative electric suppliers (AES) in the state.

An electric customer of any class may participate in the distributed generation program, but each participant will be limited to generation capacity designed to meet up to 100 percent of the customer's electricity consumption *for the previous 12 months* (an increase from the current limitation based on the customer's electric needs).

Currently, a utility or AES must make the program available until it reaches 1% of its in-state peak load for the preceding calendar year. Under the bill, the limit applies to 1% of its *average* in-state peak load for the preceding *five years* (instead of the preceding year).

The act allows an electric utility to study, confirm, and ensure that an eligible electric generator installation at the customer's site meets the IEEE 1547 anti-islanding requirements. The bill allows an electric utility to either use those requirements **or** any applicable successor anti-islanding requirements determined by the PSC to be reasonable and consistent with safety requirements. If necessary to promote reliability or safety, the PSC could promulgate rules requiring the use of inverters that perform specific automated grid-balancing functions to integrate distributed generation onto the electric grid. Inverters that interconnect distributed generation resources could be owned and operated by electric utilities. (Generally speaking, anti-islanding functions are those that sense when a power outage occurs and shuts itself off.)

The bill also makes numerous changes of a technical nature.

#### Section 175: Application fee

The bill reduces the application fee for processing an application for participating in the distributed generation program to not more than \$50 (instead of a fee not to exceed \$100 for the net metering program). The bill eliminates a provision limiting payment of interconnection costs to only a customer with a system capable of generating more than 20 kilowatts (thus, all customers will now pay interconnection costs). It also eliminates a provision requiring a customer capable of generating more than 150 kilowatts to pay standby costs.

#### Section 177: Customer's energy use in billing period; use of electric meters; credit

The bill specifies that a charge for net metering and distributed generation customers established under Senate Bill 437 in Section 6a cannot be reduced by any credit or other ratemaking mechanism for distributed generation under this section (Section 177).

#### Section 183

The bill adds Section 183 to allow a customer who is participating in a net metering program that the PSC approved before it establishes a tariff\* to elect to continue to receive service under the terms and conditions of that program for up to 10 years from the date of enrollment. This does not apply to an increase in the generation capacity of the customer's eligible electric generator beyond the capacity on the effective date of this new provision.

(\*The tariff referred to is contained in a provision added by a companion bill, Senate Bill 437, to Section 6a(14) of the Michigan Public Service Commission Enabling Act. Senate Bill 437 requires the PSC to conduct a study on an appropriate tariff that will reflect an equitable cost of service for utility revenue requirements for customers who participate in a net metering or distributed generation program. In any rate case filed after June 1, 2018, the PSC is required to approve such a tariff for inclusion in the rates of net metering or distributed generation customers. Customers participating in a net metering program prior to the date the tariff is established are exempted from the tariff, but only if they continue to participate in the program at their current site or facility.)



### Section 185

The bill adds Section 185 to specify that, notwithstanding any other provision of the act, the act does not limit or restrict an industrial customer's ability to build, own, or operate, or have a third party build, own, or operate one or more self-generation or cogeneration facilities. In addition, none of the provisions of Part 5 could be construed or interpreted to apply to such facilities.

## **PART 7: Residential Energy Improvements**

The bill adds Part 7, which allows a provider whose rates are regulated by the PSC to establish a residential energy projects lending program for their customers, as described later. (See Section 203.)

### Section 201: Definitions

The bill adds Section 201 to define terms used in Part 7.

"Energy project" means the installation or modification of an energy waste reduction improvement or the acquisition, installation, or improvement of a renewable energy system.

"Energy waste reduction improvement" means equipment, devices, or materials intended to decrease energy consumption and includes a nonexclusive list such as insulation, storm doors and windows, energy recovery systems, and measures to reduce the usage of water or increase the efficiency of water usage.

"Home energy audit" is defined to mean an evaluation of the energy performance of a residential structure that meets certain listed requirements which include a baseline energy model and cost-benefit analysis for recommended energy waste reduction improvements.

"Record owner" means the person or persons possessed of the most recent fee title or land contract vendee's interest in property as shown by the records of the county register of deeds.

"Residential energy projects program" means the program described in Section 203.

"Property" means privately owned residential real property.

### Section 203: Financing of residential energy projects

The bill allows a provider to establish a residential energy projects program under which a property owner may obtain financing or refinancing of an energy project on the property from a commercial lender or other legal entity, including an independent subsidiary of the provider. The loan would be repaid through itemized charges on the provider's utility bill for that property. The itemized charges could cover the cost of materials and labor, home energy audit costs, permit and inspection fees, application and administrative fees, bank fees, and other fees incurred by the record owner for the installation on a specific or pro rata basis, as determined by the provider.

Section 205: PSC approval of residential energy projects program

The bill requires a residential energy projects program to be established and implemented under a plan approved by the PSC. Providers seeking to establish a program must file a proposed plan with the commission and include information as required by the bill, such as the estimated costs of administration of the program, whether the program will be administered by a third party, eligibility requirements for a property owner to participate, and provisions for billing customers any fees owed and the monthly installment payments as a per-meter charge on the bill for electric or natural gas services. A plan would have to be reasonable and prudent for the PSC to approve it. If a plan is rejected the commission must explain in writing the reasons for the determination. The PSC must review an approved plan every four years after the initial approval.

Section 207: Baseline home energy audit; shut off for nonpayment

Before an energy project under a program is undertaken, a baseline home energy audit must be conducted. Upon completion of the project, the provider must obtain verification that the energy project was properly installed and is operating as intended.

Electric or natural gas service could be shut off for nonpayment of the per-meter charge described in Section 205 in the same manner and under the same procedures used to enforce nonpayment of the provider's other charges for electric or natural gas service. If notice of a loan under the program is recorded with the county register of deeds, the obligation to repay the per-meter charge will run with the land and be binding on future customers contracting for electric or natural gas service, as applicable, to the property.

Section 209: Term of repayment

The term of a loan paid through a residential energy projects program could not exceed the anticipated useful life of the energy project or 180 months, whichever is less. The loan must be repaid in monthly installments.

A lender must comply with all state and federal laws applicable to the extension of credit for home improvements. If a nonprofit corporation makes loans to property owners to be repaid under a residential energy projects program, interest will be charged on the unpaid balance at a rate of not more than the adjusted prime rate as determined under Section 23 of the Revenue Act, plus four percent.

Section 211: Rule promulgation

The PSC would have to promulgate rules to implement Part 7 within one year after the effective date of Section 211. Every five years thereafter, the PSC must submit a report on the implementation of Part 7, and any recommendations for legislation to amend it, to the standing committees of the state Senate and House of Representatives with primary responsibility for energy issues. The report may be combined with the annual report required under Section 5a of Public Act 3 of 1939, the PSC enabling act.

Further, the act does not limit a provider's right to propose a program with elements that differ from those required in the bill or the PSC's authority to approve such a program as reasonable and prudent.

Senate Bill 438 was tie-barred to Senate Bill 437, meaning it could only take effect if SB 437 was also enacted; SB 437 was enacted as Public Act 341 of 2016, and, except as

otherwise provided, both PA 341 and 342 take effect April 20, 2017 (120 days after enactment).

MCL 460.1001 et al.

**FISCAL IMPACT:**

**Senate Bill 438** would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs (LARA). The bill would create additional responsibilities for the Public Service Commission and the Attorney General, which would increase administrative costs for the departments. Activities that the PSC would undertake according to the bill would include reviewing natural gas providers' energy waste reduction plans, promulgation of rules for the implementation of a distributed generation program, and the review of residential energy project program plans. The Attorney General would be responsible for the review of additional cases as well as enforcement of new provisions in the bill. Since the activities of the PSC are funded mainly through public utility assessments, increases in expenditures by LARA for the PSC could be offset by increases in these assessments.

Senate Bill 438 would not have a fiscal impact on local units of government.

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Marcus Coffin  
Mike Clossen

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.