

SUBSTITUTE FOR  
HOUSE BILL NO. 5548

A bill to require providers of retail electric service to establish a renewable energy program; 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:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "renewable energy portfolio act".

3           Sec. 3. As used in this act:

4           (a) "Biomass" means any organic matter that is not derived  
5 from fossil fuels, that can be converted to usable fuel for the  
6 production of energy, and that is available on a renewable basis,  
7 including, but not limited to, all of the following:

8           (i) Agricultural crops and crop wastes.

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- 1       (ii) Short-rotation energy crops.
- 2       (iii) Herbaceous plants.
- 3       (iv) Trees and wood, but only if derived from sustainably  
4 managed forests or procurement systems, as defined in section 261c  
5 of the management and budget act, 1984 PA 431, MCL 18.1261c.
- 6       (v) Paper and pulp products.
- 7       (vi) Precommercial wood thinning waste, brush, or yard waste.
- 8       (vii) Wood wastes and residues from the processing of wood  
9 products or paper.
- 10       (viii) Animal wastes.
- 11       (ix) Wastewater sludge or sewage.
- 12       (x) Aquatic plants.
- 13       (xi) Food production and processing waste.
- 14       [
- 15
- 16       (xii)] Organic by-products from the production of biofuels.
- 17       (b) "Commission" means the Michigan public service commission.
- 18       (c) "Customer meter" means an electric meter of a provider's  
19 retail customer. Customer meter does not include a municipal water  
20 pumping meter or additional meters at a single site that were  
21 installed specifically to support interruptible air conditioning,  
22 interruptible water heating, net metering, or time-of-day tariffs.
- 23       (d) "Electronic waste" means any of the following discarded  
24 items:
- 25       (i) A computer, including a computer monitor or peripheral.
- 26       (ii) A television.
- 27       (iii) A telephone.

1 (iv) A personal digital assistant device.

2 (v) A radio.

3 (vi) A compact disc or digital video disc or a compact disc or  
4 digital video disc player.

5 (vii) Other similar items as determined by the commission.

6 (e) "Incremental costs of compliance" means the net revenue  
7 required by a provider to comply with the renewable energy  
8 portfolio standard, calculated as provided under section 27(2).

9 (f) "Industrial cogeneration" means the generation of  
10 electricity using industrial thermal energy.

11 (g) "Industrial thermal energy" means thermal energy that is a  
12 by-product of an industrial or manufacturing process and that would  
13 otherwise be wasted. For the purposes of this subdivision,  
14 industrial or manufacturing process does not include the generation  
15 of electricity.

16 (h) "Provider", subject to sections 7(1) and 9(1), means any  
17 of the following:

18 (i) Any person or entity that is regulated by the commission  
19 for the purpose of selling electricity to retail customers in this  
20 state.

21 (ii) A municipally owned electric utility in this state.

22 (iii) A cooperative electric utility in this state.

23 (iv) An alternative electric supplier licensed in this state.

24 (i) "PURPA" means the public utility regulatory policies act  
25 of 1978, Public Law 95-617.

26 (j) "Qualifying cogeneration facility" means that term as  
27 defined in 16 USC 824a-3.

1 (k) "Qualifying small power production facility" means that  
2 term as defined in 16 USC 824a-3.

3 Sec. 5. As used in this act:

4 (a) "Renewable energy" means electricity generated using a  
5 renewable energy system.

6 (b) "Renewable energy contract" means a contract to acquire  
7 renewable energy and the associated renewable energy credits from 1  
8 or more renewable energy systems.

9 (c) "Renewable energy credit" means a credit certified under  
10 this act that represents generated renewable energy.

11 (d) "Renewable energy portfolio" for the years 2012 through  
12 2015 means the percentage determined as follows for a given  
13 provider and year:

14 (i) Determine the number of renewable energy credits used to  
15 comply with this act during that year.

16 (ii) Divide by 1 of the following at the option of the provider  
17 as specified in its renewable energy portfolio plan:

18 (A) The number of weather-normalized megawatt hours of  
19 electricity sold by the provider during the previous year to retail  
20 customers in this state.

21 (B) The average number of megawatt hours of electricity sold  
22 by the provider annually during the previous 3 years to retail  
23 customers in this state.

24 (iii) Multiply by 100.

25 (e) "Renewable energy portfolio" for the year 2016 and  
26 thereafter means the number of renewable energy credits used to  
27 comply with this act during that year.

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1 (f) "Renewable energy portfolio plan" or "plan" means a plan  
2 approved under section 7(3) or 9(3).

3 (g) "Renewable energy portfolio standard" means the minimum  
4 renewable energy portfolio required to be achieved under section  
5 13.

6 (h) "Renewable energy resource" means any of the following:

7 (i) Biomass.

8 (ii) Solar energy.

9 (iii) Wind energy.

10 (iv) Kinetic energy of moving water, including all of the  
11 following:

12 (A) Waves, tides, or currents.

13 (B) Water released through a dam.

14 (C) Water released from a pumped storage facility to the  
15 extent that the water was pumped into the storage facility using  
16 renewable energy.

17 (v) Hydrogen synthesis gas produced from the plasma  
18 gasification of industrial by-products or electronic waste.

19 (vi) Geothermal energy.

20 (vii) Industrial thermal energy.

[*viii*) Municipal solid waste, including, but not limited to,  
landfilled municipal solid waste that produces landfill gas.]

21 (i) "Renewable energy system" means a facility, electricity  
22 generation system, or integrated set of electricity generation  
23 systems that use 1 or more renewable energy resources to generate  
24 electricity. Renewable energy system does not include any of the  
25 following:

26 (i) A hydroelectric facility that uses a dam constructed after  
27 the effective date of this act unless the dam is a repair or

1 replacement of a dam in existence on the effective date of this  
2 act.

3 (ii) An incinerator unless the incinerator is a municipal solid  
4 waste incinerator as defined in section 11504 of the natural  
5 resources and environmental protection act, 1994 PA 451, MCL  
6 324.11504, and was brought into service before the effective date  
7 of this act.

8 (j) "Renewable energy generator" means a person that, together  
9 with its affiliates, has constructed or has owned and operated 1 or  
10 more renewable energy systems with combined gross generating  
11 capacity of at least 10 megawatts.

12 (k) "Revenue recovery mechanism" means the mechanism for  
13 recovery of incremental costs of compliance established under  
14 section 7(4).

15 Sec. 7. (1) As used in this section, "provider" means a  
16 provider whose rates are regulated by the commission.

17 (2) Within 90 days after the commission issues a temporary  
18 order under section 37, each provider shall file a proposed  
19 renewable energy portfolio plan with the commission. The proposed  
20 plan shall meet all of the following requirements:

21 (a) Describe how the provider will meet the renewable energy  
22 portfolio standards.

23 (b) Specify whether the number of megawatt hours of  
24 electricity used in the calculation of the renewable energy  
25 portfolio will be weather-normalized or based on a 3-year running  
26 average. Once the plan is approved by the commission, this option  
27 shall not be changed.

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1 (c) Include the expected incremental cost of compliance with  
2 the renewable portfolio standard for a 20-year period beginning  
3 when the plan is approved by the commission.

4 (d) Include a nonvolumetric mechanism for the recovery of the  
5 incremental costs of compliance within the provider's customer  
6 rates.

7 (e) For a provider that is an [electric utility with 1,000,000 or  
8 more retail customers in this state as of January 1, 2008], describe the  
9 bidding  
10 process to be used by the provider under section 17(2). The  
11 description shall include measures to be employed in the  
12 preparation of requests for proposals and the handling and  
13 evaluation of proposals received to ensure that any bidder that is  
14 an affiliate of the electric utility is not afforded a competitive  
15 advantage over any other bidder and that each bidder, including any  
16 bidder that is an affiliate of the provider, is treated in a fair  
17 and nondiscriminatory manner.

18 (3) The commission shall conduct a contested case hearing on  
19 the proposed plan filed under subsection (2), pursuant to the  
20 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
21 24.328. If a renewable energy generator files a petition to  
22 intervene in the contested case in the manner prescribed by the  
23 commission's rules for interventions generally, the commission  
24 shall grant the petition. After the hearing and within 90 days  
25 after the proposed plan is filed with the commission, the  
26 commission shall approve, with any changes consented to by the  
27 provider, or reject the plan. A provider shall not begin recovery  
of the incremental costs of compliance within its rates until the

1 commission has approved its proposed plan.

2 (4) The plan, as approved by the commission, shall establish a  
3 nonvolumetric mechanism for the recovery of the incremental costs  
4 of compliance within the provider's customer rates. The revenue  
5 recovery mechanism shall not result in rate impacts that exceed the  
6 monthly maximum retail rate impacts specified under section 25. A  
7 customer participating in a commission-approved voluntary renewable  
8 energy program under an agreement in effect on the effective date  
9 of this act shall not incur charges under the revenue recovery  
10 mechanism except to the extent that the charges under the revenue  
11 recovery mechanism exceed the charges the customer is incurring for  
12 the voluntary renewable energy program. The limitation on charges  
13 applies only during the term of the agreement, not including  
14 automatic agreement renewals, or until 1 year after the effective  
15 date of this act, whichever is later. Before entering an agreement  
16 with a customer to participate in a commission-approved voluntary  
17 renewable energy program and before the last automatic monthly  
18 renewal of such an agreement that will occur less than 1 year after  
19 the effective date of this act, a provider shall notify the  
20 customer that the customer will be responsible for the full  
21 applicable charges under the revenue recovery mechanism as well as  
22 under the voluntary renewable energy program as provided under this  
23 subsection.

24 (5) If proposed by the provider in its proposed plan, the  
25 revenue recovery mechanism shall result in an accumulation of  
26 reserve funds in advance of expenditure and the creation of a  
27 regulatory liability that accrues interest at the average short-

1 term borrowing rate available to the provider during the  
2 appropriate period. If proposed by the provider in its proposed  
3 plan, the commission shall establish a minimum balance of  
4 accumulated reserve funds for the purposes of section 27(4).

5 (6) A revenue recovery mechanism is subject to adjustment  
6 under sections 27(4) and 29.

7 (7) Every 2 years after initial approval of a renewable energy  
8 portfolio plan under subsection (3), the commission shall review  
9 the plan. The commission shall conduct a contested case hearing on  
10 the plan pursuant to the administrative procedures act of 1969,  
11 1969 PA 306, MCL 24.201 to 24.328. A renewable energy generator may  
12 intervene in the contested case as provided in subsection (3). The  
13 annual renewable cost reconciliation under section 29 for that year  
14 may be joined with the overall plan review in the same contested  
15 case hearing. After the hearing, the commission shall approve, with  
16 any changes consented to by the provider, or reject any proposed  
17 amendments to the plan.

18 (8) If a provider proposes to amend its renewable energy  
19 portfolio plan at a time other than during the biennial review  
20 process under subsection (7), the provider shall file the proposed  
21 amendment with the commission. If the proposed amendment would  
22 modify the revenue recovery mechanism, the commission shall conduct  
23 a contested case hearing on the amendment pursuant to the  
24 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
25 24.328. A renewable energy generator may intervene in the contested  
26 case as provided in subsection (3). The annual renewable cost  
27 reconciliation under section 29 may be joined with the plan

1 amendment in the same contested case proceeding. After the hearing  
2 and within 90 days after the amendment is filed, the commission  
3 shall approve, with any changes consented to by the provider, or  
4 reject the amendment.

5       Sec. 9. (1) As used in this section, "provider" means a  
6 provider whose rates are not regulated by the commission.

7       (2) Within 90 days after the commission issues a temporary  
8 order under section 37, each provider shall file a proposed  
9 renewable energy portfolio plan with the commission. The proposed  
10 plan shall meet all of the following requirements:

11       (a) Describe how the provider will meet the renewable energy  
12 portfolio standards.

13       (b) Specify whether the number of megawatt hours of  
14 electricity used in the calculation of the renewable energy  
15 portfolio will be weather-normalized or based on a 3-year running  
16 average. Once the plan is approved by the commission, this option  
17 shall not be changed.

18       (c) Include the expected incremental cost of compliance with  
19 the renewable portfolio standard for a 20-year period beginning  
20 when the plan is approved by the commission.

21       (d) Describe the manner in which the provider will allocate  
22 costs, subject to section 25(1).

23       (3) The commission shall provide an opportunity for public  
24 comment on the proposed plan filed under subsection (2). However,  
25 the commission need not provide an opportunity for public comment  
26 if the provider is a municipally owned electric utility and the  
27 governing body of the provider has already provided an opportunity

1 for public comment and filed the comments with the commission along  
2 with the plan. After the applicable opportunity for public comment  
3 and within 90 days after the proposed plan is filed with the  
4 commission, the commission shall approve, with any changes  
5 consented to by the provider, or reject the plan. The provider  
6 shall not begin recovery of the incremental costs of compliance  
7 within its rates until the commission has approved its proposed  
8 plan. However, if the provider is a municipally owned electric  
9 utility, the provider may begin recovery of the incremental costs  
10 of compliance upon approval of its proposed plan by the governing  
11 body of the municipally owned electric utility.

12 (4) Every 2 years after initial approval of a renewable energy  
13 portfolio plan under subsection (3), the commission shall review  
14 the plan. The commission shall provide an opportunity for public  
15 comment on the plan. However, the commission need not provide an  
16 opportunity for public comment if the provider is a municipally  
17 owned electric utility and the governing body of the provider has  
18 already provided an opportunity for public comment and filed the  
19 comments with the commission. After the applicable opportunity for  
20 public comment, the commission shall approve, with any changes  
21 consented to by the provider, or reject any proposed amendments to  
22 the plan.

23 (5) If a provider proposes to amend its renewable energy  
24 portfolio plan at a time other than during the biennial review  
25 process under subsection (4), the provider shall file the proposed  
26 amendment with the commission. The commission shall provide an  
27 opportunity for public comment on the amendment. However, the

1 commission need not provide an opportunity for public comment if  
2 the provider is a municipally owned electric utility and the  
3 governing body of the provider has already provided an opportunity  
4 for public comment and filed the comments with the commission.  
5 After the opportunity for public comment and within 90 days after  
6 the amendment is filed, the commission shall approve, with any  
7 changes consented to by the provider, or reject the amendment.

8       Sec. 11. The commission shall ensure that plans submitted by  
9 providers serving customers in the same distribution territory do  
10 not create an unfair competitive advantage for any of those  
11 providers.

12       Sec. 13. Subject to sections 15 and 25, each provider shall do  
13 all of the following:

14       (a) In each of years 2012, 2013, and 2014, achieve a renewable  
15 energy portfolio of at least 4%.

16       (b) In 2015, achieve a renewable energy portfolio of at least  
17 10%.

18       (c) In 2016 and each year thereafter, maintain a renewable  
19 energy portfolio that consists of at least the same number of  
20 renewable energy credits as were required in 2015 under subdivision  
21 (b).

22       Sec. 17. (1) A provider shall comply with the renewable energy  
23 portfolio standard by obtaining renewable energy credits by any of  
24 the following means:

25       (a) Producing electricity from renewable energy systems.

26       (b) Purchasing electricity through a renewable energy  
27 contract.

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1 (c) Purchasing renewable energy credits apart from  
2 electricity.

3 (2) Subject to subsection (3), a provider that is an [electric  
4 utility with 1,000,000 or more retail customers in this state as of  
5 January 1, 2008] shall obtain the renewable energy credits that are  
6 necessary to meet the renewable portfolio standard under section  
7 13(b) and (c) as follows:

8 (a) At the provider's option, up to but no more than 33-1/3%  
9 of such renewable energy credits shall be from renewable energy  
10 systems that were developed by and are owned by the provider. A  
11 provider shall competitively bid any contract for engineering,  
12 procurement, or construction of any new renewable energy systems  
13 described in this subdivision.

14 (b) At the provider's option, up to but not more than 33-1/3%  
15 of such renewable energy credits shall be from renewable energy  
16 systems that were developed by 1 or more third parties pursuant to  
17 a contract with the provider under which the ownership of the  
18 renewable energy system may be transferred to the provider, but not  
19 before the renewable energy system begins commercial operation. A  
20 transfer of ownership resulting from such a contract does not count  
21 toward the new renewable energy systems ownership limit under  
22 subdivision (a). Any such contract shall be executed after a  
23 competitive bidding process conducted pursuant to guidelines issued  
24 by the commission. An affiliate of the provider may submit a  
25 proposal in response to a request for proposals, subject to the  
26 code of conduct under section 10a(4) of 1939 PA 3, MCL 460.10a, and  
27 the sanctions for violation thereof under section 10c of 1939 PA 3,

1 MCL 460.10c.

2 (c) At least 33-1/3% of such renewable energy credits shall be  
3 from renewable energy contracts that do not require transfer of  
4 ownership of the applicable renewable energy system to the provider  
5 or from contracts for the purchase of renewable energy credits  
6 alone. A renewable energy contract or contract for the purchase of  
7 renewable energy credits under this subdivision shall be executed  
8 after a competitive bidding process conducted pursuant to  
9 guidelines issued by the commission. An affiliate of the provider  
10 may submit a proposal in response to a request for proposals,  
11 subject to the code of conduct under section 10a(4) of 1939 PA 3,  
12 MCL 460.10a, and the sanctions for violation thereof under section  
13 10c of 1939 PA 3, MCL 460.10c. Ownership of renewable energy  
14 systems by affiliates of the provider resulting from renewable  
15 energy contracts executed under this subdivision do not count  
16 toward the provider's new renewable energy systems ownership limit  
17 under subdivision (a). If a provider selects a bid other than the  
18 least price conforming bid from a qualified bidder, the provider  
19 shall promptly notify the commission. The commission shall  
20 determine under section 21 whether the provider had good cause for  
21 selecting that bid. If the commission determines that the provider  
22 did not have good cause, the commission shall disapprove the  
23 contract.

24 (3) The allocation formula in subsection (2) does not apply to  
25 either of the following:

26 (a) Renewable energy credits that are transferred to the  
27 provider pursuant to section 19(4).

1 (b) Renewable energy credits that are produced or obtained by  
2 the provider from renewable energy systems for which recovery in  
3 electric rates was approved as of the effective date of this act,  
4 including renewable energy credits resulting from biomass co-firing  
5 of, or use of industrial thermal energy in, electric generation  
6 facilities in existence on the effective date of this act, except  
7 to the extent the number of megawatt hours of electricity annually  
8 generated by biomass co-firing or industrial thermal energy exceeds  
9 the number of megawatt hours generated during the 1-year period  
10 immediately preceding the effective date of this act.

11 (4) For purposes of subsection (2), the method of procuring  
12 the renewable energy credits generated from a renewable energy  
13 system that uses water released from a pumped storage facility  
14 shall be considered to be the method of procuring the renewable  
15 energy used to pump the water into the facility.

16 (5) A provider may submit a contract entered into pursuant to  
17 subsection (2) to the commission for review and approval. If the  
18 commission approves the contract, it shall be considered to be  
19 consistent with the provider's renewable energy portfolio plan.

20 Sec. 19. (1) A renewable energy system that is the source of  
21 renewable energy credits used to satisfy the requirements of  
22 section 13 shall be either located outside of this state in the  
23 retail electric customer service territory of any provider that is  
24 not an alternative electric supplier or located anywhere in this  
25 state. For the purposes of this subsection, retail electric  
26 customer service territories shall be considered to be those  
27 recognized by the commission on January 1, 2008 together with any

1 expansions of retail electric customer service territory that may  
2 be recognized by the commission after January 1, 2008 for purposes  
3 of 1939 PA 3, MCL 460.1 to 460.10cc. The commission may also expand  
4 a service territory for the purposes of this subsection if a lack  
5 of transmission lines limits the ability to obtain sufficient  
6 renewable energy from renewable energy systems that meet the  
7 location requirement of this subsection.

8 (2) The requirements of subsection (1) do not apply if 1 or  
9 more of the following requirements are met:

10 (a) The renewable energy system is a wind turbine or wind farm  
11 and the electricity generated from the wind, or the renewable  
12 energy credits associated with that electricity, is being purchased  
13 under a contract in effect on January 1, 2008. If electricity and  
14 associated renewable energy credits purchased under such a contract  
15 are used by a provider to meet renewable energy portfolio  
16 requirements established after January 1, 2008 by the legislature  
17 of the state in which the wind turbine or wind farm is located, the  
18 provider may, for the purpose of meeting the renewable energy  
19 portfolio standard under this act, obtain, by any means authorized  
20 under section 17(1), up to the same number of replacement renewable  
21 energy credits from any other wind farm or wind farms located in  
22 that state.

23 (b) The renewable energy system is a wind turbine or wind farm  
24 that was under construction and owned by a provider on January 1,  
25 2008.

26 (c) The renewable energy system is a wind farm, at least 1 of  
27 the wind turbines meets the requirements of subsection (1), and the

1 remaining wind turbines are within 15 miles of a wind turbine that  
2 is part of that wind farm and that meets the requirements of  
3 subsection (1), as determined by the commission.

4 (d) Before January 1, 2008, a provider that serves not more  
5 than 75,000 retail electric customers in this state filed an  
6 application for a certificate of authority for the renewable energy  
7 system with a state regulatory commission in another state that is  
8 also served by that provider. However, renewable energy credits  
9 shall not be granted for electricity generated using more than 10.0  
10 megawatts of nameplate capacity of the renewable energy system.

11 (e) Electricity generated from the renewable energy system is  
12 sold by a not-for-profit entity located in Indiana or Wisconsin to  
13 a municipally owned electric utility in this state or cooperative  
14 electric utility in this state under a contract in effect on  
15 January 1, 2008, and the electricity is not being used to meet  
16 another state's portfolio standard for renewable energy.

17 (f) Electricity generated from the renewable energy system is  
18 sold by a not-for-profit entity located in Ohio to a municipally  
19 owned electric utility in this state under a contract approved by  
20 resolution of the governing body of the municipally owned electric  
21 utility by January 1, 2008, and the electricity is not being used  
22 to meet another state's portfolio standard for renewable energy.  
23 However, renewable energy credits shall not be granted for  
24 electricity generated using more than 13.4 megawatts of nameplate  
25 capacity of the renewable energy system.

26 (3) Renewable energy from industrial cogeneration shall not  
27 constitute more than 1/10 of the renewable energy portfolio

1 required by this act.

2 (4) If a provider obtains renewable energy for resale to  
3 retail or wholesale customers under an agreement under PURPA,  
4 ownership of the associated renewable energy credits shall be as  
5 provided by the PURPA agreement. If the PURPA agreement does not  
6 provide for ownership of the renewable energy credits, then:

7 (a) Except to the extent that a separate agreement governs  
8 under subdivision (b), for the duration of the PURPA agreement, for  
9 every 5 renewable energy credits associated with the renewable  
10 energy, ownership of 4 of the renewable energy credits shall be  
11 considered to be transferred to the provider with the renewable  
12 energy, and ownership of 1 renewable energy credit shall be  
13 considered to remain with the qualifying cogeneration facility or  
14 qualifying small power production facility.

15 (b) If a separate agreement in effect on January 1, 2008  
16 provides for the ownership of the renewable attributes of the  
17 generated electricity, the separate agreement shall govern until  
18 January 1, 2013 or until expiration of the separate agreement,  
19 whichever occurs first.

20 (5) If an investor-owned electric utility with less than  
21 20,000 customers, a municipally owned electric utility, or  
22 cooperative electric utility obtains all or substantially all of  
23 its electricity for resale under a power purchase agreement or  
24 agreements in existence on the effective date of this act,  
25 ownership of any associated renewable energy credits shall be  
26 considered to be transferred to the provider purchasing the  
27 electricity. The number of renewable energy credits associated with

1 the purchased electricity shall be determined by multiplying the  
2 total number of renewable energy credits associated with the total  
3 power supply of the seller during the term of the agreement by a  
4 fraction, the numerator of which is the amount of energy purchased  
5 under the agreement or agreements and the denominator of which is  
6 the total power supply of the seller during the term of the  
7 agreement. This subsection does not apply unless 1 or more of the  
8 following occur:

9 (a) The seller and the provider purchasing the electricity  
10 agree that this subsection applies.

11 (b) For a seller that is an independent investor-owned  
12 electric utility whose retail electric rates are regulated by the  
13 commission, the commission reduces the number of renewable energy  
14 credits required under the renewable energy portfolio standard for  
15 the seller by the number of renewable energy credits to be  
16 transferred to the provider purchasing the electricity under this  
17 subsection.

18 Sec. 21. If, after the effective date of this act, a provider  
19 whose rates are regulated by the commission enters a renewable  
20 energy contract or a contract to purchase renewable energy credits  
21 alone, the commission shall determine whether the contract provides  
22 reasonable terms and conditions that will ensure a favorable  
23 economic outcome for the provider and its customers. In making this  
24 determination, the commission shall consider the contract price and  
25 term. If the contract is a renewable energy contract, the  
26 commission shall also consider at least all of the following:

27 (a) The cost to the provider and its customers of the impacts

1 of accounting treatment of debt and associated equity requirements  
2 imputed by credit rating agencies and lenders attributable to the  
3 renewable energy contract. The commission shall use standard rating  
4 agency, lender, and accounting practices for electric utilities in  
5 determining these costs, unless the impacts for the provider are  
6 known.

7 (b) The life-cycle cost of the renewable energy contract to  
8 the provider and customers including costs, after expiration of the  
9 renewable energy contract, of maintaining the same renewable energy  
10 output in megawatt hours, whether by purchases from the  
11 marketplace, by extension or renewal of the renewable energy  
12 contract, or by the provider purchasing the renewable energy system  
13 and continuing its operation.

14 (c) Provider and customer price and cost risks if the  
15 renewable energy systems supporting the renewable energy contract  
16 move from contracted pricing to market-based pricing after  
17 expiration of the renewable energy contract.

18 Sec. 23. (1) The commission shall establish a renewable energy  
19 credit certification and tracking program. The certification and  
20 tracking program may be contracted to and performed by a third  
21 party through a system of competitive bidding. The renewable energy  
22 credit certification and tracking program shall include all of the  
23 following:

24 (a) A process to certify renewable energy systems, including  
25 all existing renewable energy systems operating on the effective  
26 date of this act, as eligible to receive renewable energy credits.

27 (b) Certification that the operator of a renewable energy

1 system is in compliance with state and federal law applicable to  
2 the operation of the renewable energy system when certification is  
3 granted. If a renewable energy system becomes noncompliant with  
4 state or federal law, renewable energy credits shall not be granted  
5 for renewable energy generated by that renewable energy system  
6 during the period of noncompliance.

7 (c) A method for the transferability of credits.

8 (d) Determining the date that a renewable energy credit is  
9 valid for transfer under this act.

10 (e) A method for ensuring that each renewable energy credit  
11 traded and sold under this act is properly accounted for under this  
12 act.

13 (2) A renewable energy credit purchased from a renewable  
14 energy system in this state is not required to be used in this  
15 state.

16 (3) Except as provided in section 19(4), 1 renewable energy  
17 credit shall be granted to the owner of a renewable energy system  
18 for each megawatt hour of electricity generated from the renewable  
19 energy system subject to all of the following:

20 (a) If a renewable energy system uses both a renewable energy  
21 resource and a nonrenewable energy resource to generate  
22 electricity, the number of renewable energy credits granted shall  
23 be based on the percentage of the electricity generated from the  
24 renewable energy resource.

25 (b) Renewable energy credits shall not be granted for  
26 renewable energy generated from an incinerator to the extent that  
27 the renewable energy was generated by operating the incinerator in

1 excess of its boilerplate capacity on January 1, 2008.

2 (c) Renewable energy credits shall not be granted for the  
3 generation of renewable energy, such as wind energy, used to pump  
4 water into a pumped storage facility or to fill other energy  
5 storage facilities, but shall be granted for renewable energy  
6 generated upon release from a pumped storage facility or other  
7 energy storage facility. However, the number of renewable energy  
8 credits shall be calculated based on the number of megawatt hours  
9 of renewable energy used to fill a pumped storage facility or other  
10 energy storage facility, not the number of megawatt hours actually  
11 generated by discharge from the energy storage facility.

12 (d) Renewable energy credits shall not be granted for  
13 renewable energy whose renewable attributes are used by a provider  
14 in a commission-approved voluntary renewable energy program.

15 (4) Subject to subsection (3), the following additional  
16 renewable energy credits, to be known as Michigan incentive  
17 renewable energy credits, shall be granted under the following  
18 circumstances:

19 (a) 2 renewable energy credits for each megawatt hour of  
20 electricity from solar power.

21 (b) 1/5 renewable energy credit for each megawatt hour of  
22 electricity generated from a renewable energy system, other than  
23 wind, at peak demand time as determined by the commission.

24 (c) 1/10 renewable energy credit for each megawatt hour of  
25 electricity generated from a renewable energy system constructed  
26 using equipment made in this state as determined by the commission.  
27 The additional credit under this subdivision is available for the

1 first 3 years after the renewable energy system first produces  
2 electricity on a commercial basis.

3 (d) 1/10 renewable energy credit for each megawatt hour of  
4 electricity from a renewable energy system constructed using a  
5 workforce composed of residents of this state as determined by the  
6 commission. The additional credit under this subdivision is  
7 available for the first 3 years after the renewable energy system  
8 first produces electricity on a commercial basis.

9 (5) A renewable energy credit expires when used by a provider  
10 to comply with its renewable energy portfolio standard. If not  
11 already used, a renewable energy credit automatically expires 3  
12 years after the generation of the electricity associated with the  
13 renewable energy credit. A renewable energy credit associated with  
14 the generation of electricity within 120 days after the start of a  
15 calendar year may be used to satisfy the prior year's renewable  
16 energy portfolio standard and expires when so used.

17 Sec. 29. (1) Concurrent with the submission of each report  
18 under section 33(1), the commission shall commence an annual  
19 proceeding, to be known as a renewable cost reconciliation, for  
20 each provider whose rates are regulated by the commission. The  
21 renewable cost reconciliation proceeding shall be conducted as a  
22 contested case pursuant to the administrative procedures act of  
23 1969, 1969 PA 306, MCL 24.201 to 24.328. Reasonable discovery shall  
24 be permitted before and during the reconciliation proceeding to  
25 assist in obtaining evidence concerning reconciliation issues  
26 including, but not limited to, the reasonableness and prudence of  
27 expenditures and the amounts collected pursuant to the revenue

1 recovery mechanism.

2 (2) At the renewable cost reconciliation, a provider may  
3 propose any necessary modifications of the revenue recovery  
4 mechanism to ensure the provider's recovery of its incremental cost  
5 of compliance with the renewable portfolio standard during the 20-  
6 year period described in section 7(3).

7 (3) The commission shall reconcile the pertinent revenues  
8 recorded and the allowance for the nonvolumetric revenue recovery  
9 mechanism with the amounts actually expensed and projected  
10 according to the provider's plan for compliance. The commission  
11 shall consider any issue regarding the reasonableness and prudence  
12 of expenses for which customers were charged in the relevant  
13 reconciliation period. In its order, the commission shall do all of  
14 the following:

15 (a) Make a determination of a provider's compliance with the  
16 renewable energy portfolio standard, subject to sections 15 and 25.

17 (b) Adjust the revenue recovery mechanism for the incremental  
18 costs of compliance. The commission shall ensure that the retail  
19 rate impacts under this renewable cost reconciliation revenue  
20 recovery mechanism do not exceed the maximum retail rate impacts  
21 specified under section 25. The commission shall ensure that the  
22 recovery mechanism is projected to maintain a minimum balance of  
23 accumulated reserve so that a regulatory asset does not accrue.

24 (c) Establish the price per megawatt hour for renewable  
25 capacity and renewable energy to be recovered through the power  
26 supply cost recovery clause under section 6j of 1939 PA 3, MCL  
27 460.6j, as outlined in section 27(2)(b)(iv).

1 (d) Adjust, if needed, the minimum balance of accumulated  
2 reserve funds established under section 7(5).

3 (4) If a provider has recorded a regulatory liability in any  
4 given month during the 20-year period described in section 7(3),  
5 interest on the regulatory liability balance shall be accrued at  
6 the average short-term borrowing rate available to the provider  
7 during the appropriate period, and shall be used to fund  
8 incremental costs of compliance incurred in subsequent periods  
9 within the 20-year period described in section 7(3).

10 Sec. 31. (1) If a provider whose rates are regulated by the  
11 commission fails to meet the renewable energy portfolio standard by  
12 the applicable deadline under section 13, subject to sections 15  
13 and 25, both of the following apply:

14 (a) The provider shall purchase sufficient renewable energy  
15 credits to meet the renewable energy portfolio standard.

16 (b) The provider shall not recover from its ratepayers the  
17 cost of purchasing renewable energy credits under subdivision (a).

18 (2) The attorney general or any customer of a municipally  
19 owned electric utility or a cooperative electric utility that has  
20 elected to become member-regulated under the electric cooperative  
21 member-regulation act may commence a civil action for injunctive  
22 relief against a municipally owned electric utility or such a  
23 cooperative electric utility if the provider fails to meet the  
24 applicable requirements of this act.

25 (3) An action under subsection (2) shall be commenced in the  
26 circuit court for the circuit in which the principal office of the  
27 provider is located. An action shall not be filed under subsection

1 (2) unless the prospective plaintiff has given the prospective  
2 defendant and the commission at least 60 days' written notice of  
3 the prospective plaintiff's intent to sue, the basis for the suit,  
4 and the relief sought. Within 30 days after the prospective  
5 defendant receives written notice of the prospective plaintiff's  
6 intent to sue, the prospective defendant and plaintiff shall meet  
7 and make a good faith attempt to determine if there is a credible  
8 basis for the action. If both parties agree that there is a  
9 credible basis for the action, the prospective defendant shall take  
10 all reasonable steps necessary to comply with applicable  
11 requirements of this act within 90 days of the meeting.

12 (4) In issuing a final order in an action brought under  
13 subsection (2), the court may award costs of litigation, including  
14 reasonable attorney and expert witness fees, to the prevailing or  
15 substantially prevailing party.

16 (5) Upon a complaint of an alternative electric supplier's  
17 customer or the commission's own motion, the commission may conduct  
18 a contested case to review allegations that the alternative  
19 electric supplier has violated this act, including an order issued  
20 or rule promulgated under this act. If the commission finds, after  
21 notice and hearing, that an alternative electric supplier has  
22 violated this act, the commission shall do 1 or more of the  
23 following:

24 (a) Revoke the license of the alternative electric supplier.

25 (b) Issue a cease and desist order.

26 (c) Order the alternative electric supplier to pay a civil  
27 fine of not less than \$5,000.00 or more than \$50,000.00 for each

1 violation.

2       Sec. 33. (1) By a time determined by the commission, each  
3 provider shall submit to the commission an annual report that  
4 provides information relating to the actions taken by the provider  
5 to comply with the renewable energy portfolio standard. By that  
6 same time, a municipally owned electric utility shall submit a copy  
7 of the report to the governing body of the municipally owned  
8 electric utility, and a cooperative electric utility shall submit a  
9 copy of the report to its board of directors.

10       (2) Each annual report under subsection (1) shall include all  
11 of the following information:

12       (a) The amount of electricity and renewable energy credits  
13 that the provider generated or acquired from renewable energy  
14 systems during the reporting period and the amount of renewable  
15 energy credits that the provider acquired, sold, or traded during  
16 the reporting period.

17       (b) The capacity of each renewable energy system owned,  
18 operated, or controlled by the provider, the total amount of  
19 electricity generated by each renewable energy system during the  
20 reporting period, and the percentage of that total amount that was  
21 generated directly from renewable energy.

22       (c) Whether, during the reporting period, the provider began  
23 construction on, acquired, or placed into operation a renewable  
24 energy system.

25       (d) Expenditures made in the past year and anticipated future  
26 expenditures to comply with this act.

27       (e) Any other information that the commission determines

1 necessary.

2 (3) Concurrent with the submission of each report under  
3 subsection (1), a municipally owned electric utility shall submit a  
4 summary of the report to its customers in their bills with a bill  
5 insert and to its governing body. Concurrent with the submission of  
6 each report under subsection (1), a cooperative electric utility  
7 shall submit a summary of the report to its members in a periodical  
8 issued by an association of rural electric cooperatives and to its  
9 board of directors. A municipally owned electric utility or  
10 cooperative electric provider shall make a copy of the report  
11 available at its office and shall post a copy of the report on its  
12 website. A summary under this section shall indicate that a copy of  
13 the report is available at the office or website.

14 (4) The commission shall monitor reports submitted under  
15 subsection (1) and ensure that actions taken under this act by  
16 providers serving customers in the same distribution territory do  
17 not create an unfair competitive advantage for any of those  
18 providers.

19 (5) Biennially, the commission shall submit to the legislature  
20 a report that does all of the following:

21 (a) Summarizes data collected under this section.

22 (b) Discusses the status of renewable energy in this state and  
23 the effect of this act on electricity prices.

24 (c) For each of the different types of renewable energy sold  
25 at retail in this state, specifies the difference between the cost  
26 of the renewable energy and the cost of electricity generated from  
27 conventional sources.

House Bill No. 5548 (H-4) as amended April 17, 2008

1 (d) Provides a comparison of the cost effectiveness of the  
2 methods of an [electric utility with 1,000,000 or more retail customers  
3 in this state as of January 1, 2008] obtaining renewable energy  
4 credits under the options described in section 17(2).

5 (e) Describes the impact of this act on employment in this  
6 state. The commission shall consult with other appropriate agencies  
7 of the department of labor and economic growth in the development  
8 of this information.

9 (f) Discuss how the commission is fulfilling the requirements  
10 of subsection (4).

11 (g) Makes any recommendations the commission may have  
12 concerning amendments to this act, including changes in the  
13 definition of renewable energy resource or renewable energy system  
14 to reflect environmentally preferable technology.

15 Sec. 35. (1) A person may file commercially or financially  
16 sensitive information or trade secrets with the commission under  
17 section 7 or 9, or with the commission or a third party contractor  
18 under section 23, confidentially. To be filed confidentially, the  
19 information shall be accompanied by an affidavit that sets forth  
20 both the reasons for the confidentiality and a public synopsis of  
21 the information.

22 (2) Information filed confidentially is exempt from the  
23 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and  
24 shall remain confidential, except under the terms of a mandatory  
25 protective order. If information is disclosed under a mandatory  
26 protective order, then the commission may use the information for  
27 the purpose for which it is required, but the information shall

1 remain confidential.

2 (3) There is a rebuttable presumption that any information  
3 filed confidentially under subsection (1) is commercially or  
4 financially sensitive information or trade secrets entitled to  
5 protection under subsection (1).

6 Sec. 37. (1) Within 60 days after the effective date of this  
7 act, the commission shall issue a temporary order implementing this  
8 act, including, but not limited to, all of the following:

9 (a) Formats of renewable energy portfolio plans for various  
10 categories of providers.

11 (b) Guidelines for requests for proposals under this act.

12 (2) Within 1 year after the effective date of this act, the  
13 commission shall promulgate rules to implement this act pursuant to  
14 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201  
15 to 24.328.

16 Enacting section 1. As provided in section 5 of 1846 RS 1, MCL  
17 8.5, this act is severable.

18 Enacting section 2. This act does not take effect unless all  
19 of the following bills of the 94th Legislature are enacted into  
20 law:

21 (a) House Bill No. 5383.

22 (b) House Bill No. 5524.

23 (c) House Bill No. 5525.

24 (d) House Bill No. 5549.

25 (e) House Bill No. 5972.

26 (f) House Bill No. 5973.

27 (g) House Bill No. 5974.

- 1 (h) House Bill No. 5975.
- 2 (i) House Bill No. 5976.
- 3 (j) House Bill No. 5977.