

SENATE BILL No. 479

May 5, 2005, Introduced by Senator PATTERSON and referred to the Committee on Local, Urban and State Affairs.

A bill to amend 1939 PA 3, entitled

"An act to provide for the regulation and control of public utilities and other services affected with a public interest within this state; to provide for alternative energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit certain rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to create a fund; to provide for a restructuring of the manner in which energy is provided in this state; to encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to allow for the securitization of stranded costs; to reduce rates; to provide for appeals; to provide appropriations; to declare the effect and purpose of this act; to prescribe remedies and penalties; and to repeal acts and parts of acts,"

by amending section 6m (MCL 460.6m), as added by 1982 PA 304.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6m. (1) The utility consumer representation fund is
2 created as a special fund. The state treasurer shall be the
3 custodian of the fund and shall maintain a separate account of the
4 money in the fund. The money in the fund shall be invested in the
5 bonds, notes, and other evidences of indebtedness issued or insured
6 by the United States government and its agencies, and in prime
7 commercial paper. The state treasurer shall release money from the
8 fund, including interest earned, in the manner and at the time
9 directed by the board.

10 (2) Except as provided in subsection (6), each energy utility
11 which has applied to the public service commission for the
12 initiation of an energy cost recovery proceeding shall remit to the
13 fund prior to or upon filing its initial application for such a
14 proceeding, and on or before the first anniversary of that
15 application, an amount of money determined by the board in the
16 following manner:

17 (a) In the case of an energy utility company serving at least
18 100,000 customers in this state, an amount which bears to
19 \$300,000.00, multiplied by a factor as provided in subsection (4),
20 the same proportion as the company's jurisdictional 1981 total
21 operating revenues, as stated in its annual report, bear to the
22 jurisdictional 1981 total operating revenues of all energy utility
23 companies serving at least 100,000 customers in this state. This
24 amount shall be made available by the board for use by the attorney
25 general for the purposes described in subsection (17).

26 (b) In the case of an energy utility company serving at least

1 100,000 residential customers in this state, an amount which bears
2 to \$300,000.00, multiplied by a factor as provided in subsection
3 (4), the same proportion as the company's jurisdictional 1981 gross
4 revenues from residential tariff sales bear to the jurisdictional
5 1981 gross revenues from residential tariff sales of all energy
6 utility companies serving at least 100,000 residential customers in
7 this state. This amount shall be used for grants under subsection
8 (11).

9 (3) Payments made by an energy utility under subsection (2)(a)
10 shall be operating expenses of the utility which the public service
11 commission shall permit the utility to charge to its customers.
12 Payments made by a utility under subsection (2)(b) shall be
13 operating expenses of the utility which the public service
14 commission shall permit the utility to charge to its residential
15 customers.

16 (4) For purposes of subsection (2), the factor shall be set by
17 the board at a level not to exceed the percentage increase in the
18 index known as the consumer price index for urban wage earners and
19 clerical workers, select areas, all items indexed, for the Detroit
20 standard metropolitan statistical area, compiled by the bureau of
21 labor statistics of the United States department of labor, or any
22 successor agency, which has occurred between January 1981 and
23 January of the year in which the payment is required to be made. In
24 the event that more than 1 such index is compiled, the index
25 yielding the largest payment shall be the maximum allowable factor.
26 The board shall advise utilities of the factor.

27 (5) On or before the second and succeeding anniversaries of

1 its initial application for an energy cost recovery proceeding, an
2 energy utility shall remit to the board amounts equal to 5/6 of the
3 amounts required under subsection (2).

4 (6) The remittance requirements of this section shall not
5 apply to an energy utility organized as a cooperative corporation
6 ~~pursuant to UNDER~~ sections 98 to 109 of ~~Act No. 327 of the Public~~
7 ~~Acts of 1931, being sections 450.98 to 450.109 of the Michigan~~
8 ~~Compiled Laws 1931 PA 327, MCL 450.98 TO 450.109~~, and grants from
9 the fund shall not be used to participate in an energy cost
10 recovery proceeding primarily affecting such a utility.

11 (7) In the event of a dispute between the board and an energy
12 utility about the amount of payment due, the utility shall pay the
13 undisputed amount and, if the utility and the board cannot agree,
14 the board may initiate civil action in the circuit court for Ingham
15 county for recovery of the disputed amount. The commission shall
16 not accept or take action on an application for an energy cost
17 recovery proceeding from an energy utility subject to this section
18 which has not fully paid undisputed remittances required by this
19 section.

20 (8) The commission shall not accept or take action on an
21 application for an energy cost recovery proceeding from an energy
22 utility subject to this section until 30 days after it has been
23 notified by the board or the director of the energy administration,
24 if section 6 / (13) is applicable, that the board or the director is
25 ready to process grant applications, will transfer funds payable to
26 the attorney general immediately upon the receipt of such funds,
27 and will within 30 days approve grants and remit funds to qualified

1 grant applicants.

2 (9) The board may accept a gift or grant from any source to be
3 deposited in the fund if the conditions or purposes of the gift or
4 grant are consistent with this section.

5 (10) The costs of operation and expenses incurred by the board
6 in performing its duties under this section and section 61,
7 including remuneration to board members, shall be paid from the
8 fund. A maximum of 5% of the annual receipts of the fund may be
9 budgeted and used to pay expenses other than grants made under
10 subsection (11).

11 (11) The net grant proceeds shall finance a grant program from
12 which the board may award to an applicant an amount which the board
13 determines shall be used for the purposes set forth in this
14 section.

15 (12) The board shall create and make available to applicants
16 an application form. Each applicant shall indicate on the
17 application how the applicant meets the eligibility requirements
18 provided for in this section and how the applicant proposes to use
19 a grant from the fund to participate in 1 or more proceedings as
20 authorized in subsection (17) which have been or are expected to be
21 filed. The board shall receive an application requesting a grant
22 from the fund only from a nonprofit organization or a unit of local
23 government in this state. The board shall consider only
24 applications for grants containing proposals which are in keeping
25 with subsections (17) and (18) and which serve the interests of
26 residential utility consumers. For purposes of making grants, the
27 board may consider protection of the environment, energy

1 conservation, the creation of employment and a healthy economy in
2 the state, and the maintenance of adequate energy resources. The
3 board shall not consider an application which primarily benefits
4 the applicant or a service provided or administered by the
5 applicant. The board shall not consider an application from a
6 nonprofit organization if 1 of the organization's principal
7 interests or unifying principles is the welfare of a utility or its
8 investors or employees, or the welfare of 1 or more businesses or
9 industries, other than farms not owned or operated by a
10 corporation, which receive utility service ordinarily and primarily
11 for use in connection with the profit-seeking manufacture, sale, or
12 distribution of goods or services. Mere ownership of securities by
13 a nonprofit organization or its members shall not disqualify an
14 application submitted by that organization.

15 (13) The board shall encourage the representation of the
16 interests of identifiable types of residential utility consumers
17 whose interests may differ, including various social and economic
18 classes and areas of the state, and if necessary, may make grants
19 to more than 1 applicant whose applications are related to a
20 similar issue to achieve this type of representation. In addition,
21 the board shall consider and balance the following criteria in
22 determining whether to make a grant to an applicant:

23 (a) Evidence of the applicant's competence, experience, and
24 commitment to advancing the interests of residential utility
25 consumers.

26 (b) In the case of a nongovernmental applicant, the extent to
27 which the applicant is representative of or has a previous history

1 of advocating the interests of citizens, especially residential
2 utility consumers.

3 (c) The anticipated effect of the proposal contained in the
4 application on residential utility consumers, including the
5 immediate and long-term impacts of the proposal.

6 (d) Evidence demonstrating the potential for continuity of
7 effort and the development of expertise in relation to the proposal
8 contained in the application.

9 (e) The uniqueness or innovativeness of an applicant's
10 position or point of view, and the probability and desirability of
11 that position or point of view prevailing.

12 (14) As an alternative to choosing between 2 or more
13 applications which have similar proposals, the board may invite 2
14 or more of the applicants to file jointly and award a grant to be
15 managed cooperatively.

16 (15) The board shall make disbursements pursuant to a grant in
17 advance of an applicant's proposed actions as set forth in the
18 application if necessary to enable the applicant to initiate,
19 continue, or complete the proposed actions.

20 (16) Any notice to utility customers and the general public of
21 hearings or other state proceedings in which grants from the fund
22 may be used shall contain a notice of the availability of the fund
23 and the address of the board.

24 (17) The annual receipts and interest earned, less
25 administrative costs, may be used only for participation in
26 administrative and judicial proceedings under sections 6h, 6i, 6j,
27 and 6k, and in federal administrative and judicial proceedings

1 which directly affect the energy costs paid by Michigan energy
2 utilities. Amounts which have been in the fund more than 12 months
3 may be retained in the fund for future grants, or may be returned
4 to energy utility companies or used to offset their future
5 remittances in proportion to their previous remittances to the
6 fund, as the board determines will best serve the interests of
7 consumers.

8 (18) The following conditions shall apply to all grants from
9 the fund:

10 (a) Disbursements from the fund may be used only to advocate
11 the interests of energy utility customers or classes of energy
12 utility customers, and not for representation of merely individual
13 interests.

14 (b) The board shall attempt to maintain a reasonable
15 relationship between the payments from a particular energy utility
16 and the benefits to consumers of that utility.

17 (c) The board shall coordinate the funded activities of grant
18 recipients with those of the attorney general to avoid duplication
19 of effort, to promote supplementation of effort, and to maximize
20 the number of hearings and proceedings with intervenor
21 participation.

22 (19) A recipient of a grant pursuant to subsection (11) may
23 use the grant only for the advancement of the proposed action
24 approved by the board, including, but not limited to, costs of
25 staff, hired consultants and counsel, and research.

26 (20) A recipient of a grant under subsection (11) shall file a
27 report with the board within 90 days following the end of the year

1 or a shorter period for which the grant is made. The report shall
2 be made in a form prescribed by the board and shall be subject to
3 audit by the board. The report shall include the following
4 information:

5 (a) An account of all grant expenditures made by the grant
6 recipient. Expenditures shall be reported within the following
7 categories:

8 (i) Employee and contract for services costs.

9 (ii) Costs of materials and supplies.

10 (iii) Filing fees and other costs required to effectively
11 represent residential utility consumers as provided in this
12 section.

13 (b) Any additional information concerning uses of the grant
14 required by the board.

15 (21) The attorney general shall file a report with the house
16 and senate committees on appropriations within 90 days following
17 the end of each fiscal year. The report shall include the following
18 information:

19 (a) An account of all expenditures made by the attorney
20 general of funds received under this section. Expenditures shall be
21 reported within the following categories:

22 (i) Employee and contract for services costs.

23 (ii) Costs of materials and supplies.

24 (iii) Filing fees and other costs required to effectively
25 represent utility consumers as provided in this section.

26 (b) Any additional information concerning uses of the funds
27 received under this section required by the committees.

1 (22) On or before July 1 of each calendar year, the board
2 shall submit a detailed report to the legislature regarding the
3 discharge of duties and responsibilities under this section and
4 section 6l during the preceding calendar year.

5 ~~—— (23) Three years after the effective date of this section, and~~
6 ~~at 3 year intervals thereafter, a senate committee chosen by the~~
7 ~~majority leader of the senate and a house committee chosen by the~~
8 ~~speaker of the house of representatives shall review the~~
9 ~~relationship between costs and benefits resulting from this section~~
10 ~~and sections 6h through 6l, and may recommend changes to the~~
11 ~~legislature.~~