

# HOUSE BILL No. 5733

June 13, 2012, Introduced by Rep. Horn and referred to the Committee on Energy and Technology.

A bill to amend 1939 PA 3, entitled

"An act to provide for the regulation and control of public and certain private 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 the title and sections 10, and 10a (MCL 460.10 and

460.10a), the title as amended by 2005 PA 190 and sections 10 and 10a as amended by 2008 PA 286.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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TITLE

An act to provide for the regulation and control of public and certain private 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.

Sec. 10. (1) Sections 10 through 10bb shall be known and may be cited as the ~~"customer choice and"~~ "electricity reliability act".

1           (2) The purpose of sections 10a through 10bb is to do all of  
2 the following:

3 ~~(a) To ensure that all retail customers in this state of~~  
4 ~~electric power have a choice of electric suppliers.~~

5           **(A)** ~~(b)~~—To allow and encourage the Michigan public service  
6 commission to ~~foster competition in this state in the provision of~~  
7 ~~electric supply and~~ maintain regulation of electric supply for  
8 customers who continue to choose supply from incumbent electric  
9 utilities.

10 ~~(c) To encourage the development and construction of merchant~~  
11 ~~plants which will diversify the ownership of electric generation in~~  
12 ~~this state.~~

13           **(B)** ~~(d)~~—To ensure that all persons in this state are afforded  
14 safe, reliable electric power at a reasonable rate.

15           **(C)** ~~(e)~~—To improve the opportunities for economic development  
16 in this state and to promote financially healthy and competitive  
17 utilities in this state.

18           **(D)** ~~(f)~~—To maintain, foster, and encourage robust, reliable,  
19 and economic generation, distribution, and transmission systems to  
20 provide this state's electric suppliers and generators an  
21 opportunity to access regional sources of generation and wholesale  
22 power markets and to ensure a reliable supply of electricity in  
23 this state.

24           Sec. 10a. ~~(1) The commission shall issue orders establishing~~  
25 ~~the rates, terms, and conditions of service that allow all retail~~  
26 ~~customers of an electric utility or provider to choose an~~  
27 ~~alternative electric supplier. The orders shall do all of the~~

1 following:

2 ~~—— (a) Provide that no more than 10% of an electric utility's~~  
3 ~~average weather adjusted retail sales for the preceding calendar~~  
4 ~~year may take service from an alternative electric supplier at any~~  
5 ~~time.~~

6 ~~—— (b) Set forth procedures necessary to administer and allocate~~  
7 ~~the amount of load that will be allowed to be served by alternative~~  
8 ~~electric suppliers, through the use of annual energy allotments~~  
9 ~~awarded on a calendar year basis, and shall provide, among other~~  
10 ~~things, that existing customers who are taking electric service~~  
11 ~~from an alternative electric supplier at a facility on the~~  
12 ~~effective date of the amendatory act that added this subdivision~~  
13 ~~shall be given an allocated annual energy allotment for that~~  
14 ~~service at that facility, that customers seeking to expand usage at~~  
15 ~~a facility served through an alternative electric supplier will be~~  
16 ~~given next priority, with the remaining available load, if any,~~  
17 ~~allocated on a first come first served basis. The procedures shall~~  
18 ~~also provide how customer facilities will be defined for the~~  
19 ~~purpose of assigning the annual energy allotments to be allocated~~  
20 ~~under this section. The commission shall not allocate additional~~  
21 ~~annual energy allotments at any time when the total annual energy~~  
22 ~~allotments for the utility's distribution service territory is~~  
23 ~~greater than 10% of the utility's weather adjusted retail sales in~~  
24 ~~the calendar year preceding the date of allocation. If the sales of~~  
25 ~~a utility are less in a subsequent year or if the energy usage of a~~  
26 ~~customer receiving electric service from an alternative electric~~  
27 ~~supplier exceeds its annual energy allotment for that facility,~~

1 ~~that customer shall not be forced to purchase electricity from a~~  
2 ~~utility, but may purchase electricity from an alternative electric~~  
3 ~~supplier for that facility during that calendar year.~~

4 (1) BEGINNING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT  
5 ADDED THIS SENTENCE, ALL OF THE FOLLOWING APPLY TO ELECTRIC SERVICE  
6 IN THIS STATE:

7 (A) A CUSTOMER WHO RECEIVES ELECTRIC GENERATION SERVICE FROM  
8 AN ELECTRIC UTILITY ON THE EFFECTIVE DATE OF THE AMENDATORY ACT  
9 THAT ADDED THIS SENTENCE SHALL CONTINUE TO RECEIVE ELECTRIC  
10 GENERATION SERVICE FROM THAT ELECTRIC UTILITY AND IS NOT ELIGIBLE  
11 TO RECEIVE ELECTRIC GENERATION SERVICE FROM AN ALTERNATIVE ELECTRIC  
12 SUPPLIER. ANY CUSTOMER WHO BECOMES A CUSTOMER AFTER THE EFFECTIVE  
13 DATE OF THE AMENDATORY ACT THAT ADDED THIS SENTENCE IS ENTITLED TO  
14 RECEIVE STANDARD TARIFF SERVICE AND IS NOT ELIGIBLE TO RECEIVE  
15 ELECTRIC GENERATION SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER.

16 (B) A CUSTOMER WHO RECEIVES ELECTRIC GENERATION SERVICE FROM  
17 AN ALTERNATIVE ELECTRIC SUPPLIER ON THE EFFECTIVE DATE OF THE  
18 AMENDATORY ACT THAT ADDED THIS SENTENCE MAY SUBSEQUENTLY PROVIDE  
19 NOTICE TO AN ELECTRIC UTILITY OF THE CUSTOMER'S DESIRE TO RECEIVE  
20 STANDARD TARIFF SERVICE FROM THE ELECTRIC UTILITY DURING OR AT THE  
21 CONCLUSION OF THE TERM OF ITS EXISTING CONTRACT WITH THE  
22 ALTERNATIVE ELECTRIC SUPPLIER. IF A CUSTOMER ELECTS TO RECEIVE  
23 STANDARD TARIFF SERVICE FROM AN ELECTRIC UTILITY UNDER THIS  
24 SUBDIVISION, THE CUSTOMER IS NO LONGER ELIGIBLE TO RECEIVE ELECTRIC  
25 GENERATION SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER.

26 (C) A CUSTOMER WHO RECEIVES ELECTRIC GENERATION SERVICE FROM  
27 AN ALTERNATIVE ELECTRIC SUPPLIER ON THE EFFECTIVE DATE OF THE

1 AMENDATORY ACT THAT ADDED THIS SENTENCE AND ENTERS INTO A NEW  
2 CONTRACT WITH AN ALTERNATIVE ELECTRIC SUPPLIER AT THE CONCLUSION OF  
3 THE TERM OF ITS EXISTING CONTRACT SHALL NO LONGER HAVE THE RIGHT TO  
4 RECEIVE STANDARD TARIFF SERVICE FROM THE ELECTRIC UTILITY.

5 (D) ~~(e)~~—Notwithstanding any other provision of this section,  
6 customers seeking to expand usage at a facility that has been  
7 continuously served through an alternative electric supplier since  
8 April 1, 2008 shall be permitted to purchase electricity from an  
9 alternative electric supplier for both the existing and any  
10 expanded load at that facility as well as any new facility  
11 constructed or acquired after the effective date of the amendatory  
12 act that added this subdivision that is similar in nature if the  
13 customer owns more than 50% of the new facility.

14 (E) ~~(d)~~—Notwithstanding any other provision of this section,  
15 any customer operating an iron ore mining facility, iron ore  
16 processing facility, or both, located in the Upper Peninsula of  
17 this state, shall be permitted to purchase all or any portion of  
18 its electricity from an alternative electric supplier. ~~, regardless~~  
19 ~~of whether the sales exceed 10% of the serving electric utility's~~  
20 ~~average weather-adjusted retail sales.~~

21 (2) The commission shall issue orders establishing a licensing  
22 procedure for all alternative electric suppliers. To ensure  
23 adequate service to customers in this state, the commission shall  
24 require that an alternative electric supplier maintain an office  
25 within this state, shall assure that an alternative electric  
26 supplier has the necessary financial, managerial, and technical  
27 capabilities, shall require that an alternative electric supplier

1 maintain records which the commission considers necessary, and  
2 shall ensure an alternative electric supplier's accessibility to  
3 the commission, to consumers, and to electric utilities in this  
4 state. The commission also shall require alternative electric  
5 suppliers to agree that they will collect and remit to local units  
6 of government all applicable users, sales, and use taxes. An  
7 alternative electric supplier is not required to obtain any  
8 certificate, license, or authorization from the commission other  
9 than as required by this act.

10 (3) The commission shall issue orders to ensure that customers  
11 in this state are not switched to another supplier or billed for  
12 any services without the customer's consent.

13 (4) No later than December 2, 2000, the commission shall  
14 establish a code of conduct that shall apply to all electric  
15 utilities. The code of conduct shall include, but is not limited  
16 to, measures to prevent cross-subsidization, information sharing,  
17 and preferential treatment, between a utility's regulated and  
18 unregulated services, whether those services are provided by the  
19 utility or the utility's affiliated entities. The code of conduct  
20 established under this subsection shall also be applicable to  
21 electric utilities and alternative electric suppliers consistent  
22 with section 10, this section, and sections 10b through 10cc.

23 (5) An electric utility may offer its customers an appliance  
24 service program. Except as otherwise provided by this section, the  
25 utility shall comply with the code of conduct established by the  
26 commission under subsection (4). ~~As used in this section,~~  
27 ~~"appliance service program" or "program" means a subscription~~

1 ~~program for the repair and servicing of heating and cooling systems~~  
2 ~~or other appliances.~~

3 (6) A utility offering a program under subsection (5) shall do  
4 all of the following:

5 (a) Locate within a separate department of the utility or  
6 affiliate within the utility's corporate structure the personnel  
7 responsible for the day-to-day management of the program.

8 (b) Maintain separate books and records for the program,  
9 access to which shall be made available to the commission upon  
10 request.

11 (c) Not promote or market the program through the use of  
12 utility billing inserts, printed messages on the utility's billing  
13 materials, or other promotional materials included with customers'  
14 utility bills.

15 (7) All costs directly attributable to an appliance service  
16 program allowed under subsection (5) shall be allocated to the  
17 program as required by this subsection. The direct and indirect  
18 costs of employees, vehicles, equipment, office space, and other  
19 facilities used in the appliance service program shall be allocated  
20 to the program based upon the amount of use by the program as  
21 compared to the total use of the employees, vehicles, equipment,  
22 office space, and other facilities. The cost of the program shall  
23 include administrative and general expense loading to be determined  
24 in the same manner as the utility determines administrative and  
25 general expense loading for all of the utility's regulated and  
26 unregulated activities. A subsidy by a utility does not exist if  
27 costs allocated as required by this subsection do not exceed the



1 revenue of the program.

2 (8) A utility may include charges for its appliance service  
3 program on its monthly billings to its customers if the utility  
4 complies with all of the following requirements:

5 (a) All costs associated with the billing process, including  
6 the postage, envelopes, paper, and printing expenses, are allocated  
7 as required under subsection (7).

8 (b) A customer's regulated utility service is not terminated  
9 for nonpayment of the appliance service program portion of the  
10 bill.

11 (c) Unless the customer directs otherwise in writing, a  
12 partial payment by a customer is applied first to the bill for  
13 regulated service.

14 (9) In marketing its appliance service program to the public,  
15 a utility shall do all of the following:

16 (a) The list of customers receiving regulated service from the  
17 utility shall be available to a provider of appliance repair  
18 service upon request within 2 business days. The customer list  
19 shall be provided in the same electronic format as such information  
20 is provided to the appliance service program. A new customer shall  
21 be added to the customer list within 1 business day of the date the  
22 customer requested to turn on service.

23 (b) Appropriately allocate costs as required under subsection  
24 (7) when personnel employed at a utility's call center provide  
25 appliance service program marketing information to a prospective  
26 customer.

27 (c) ~~Prior to~~ **BEFORE** enrolling a customer into the program, the

1 utility shall inform the potential customer of all of the  
2 following:

3 (i) That appliance service programs may be available from  
4 another provider.

5 (ii) That the appliance service program is not regulated by the  
6 commission.

7 (iii) That a new customer ~~shall have~~ **HAS** 10 days after  
8 enrollment to cancel his or her appliance service program contract  
9 without penalty.

10 (iv) That the customer's regulated rates and conditions of  
11 service provided by the utility are not affected by enrollment in  
12 the program or by the decision of the customer to use the services  
13 of another provider of appliance repair service.

14 (d) The utility name and logo may be used to market the  
15 appliance service program ~~provided that~~ **IF** the program is not  
16 marketed in conjunction with a regulated service. ~~To the extent~~  
17 ~~that~~ **IF** a program utilizes the utility's name and logo in marketing  
18 the program, the program shall include language on all material  
19 indicating that the program is not regulated by the commission.  
20 Costs shall not be allocated to the program for the use of the  
21 utility's name or logo.

22 (10) This section does not prohibit the commission from  
23 requiring a utility to include revenues from an appliance service  
24 program in establishing base rates. If the commission includes the  
25 revenues of an appliance service program in determining a utility's  
26 base rates, the commission shall also include all of the costs of  
27 the program as determined under this section.

1           (11) Except as otherwise provided in this section, the code of  
2 conduct with respect to an appliance service program shall not  
3 require a utility to form a separate affiliate or division to  
4 operate an appliance service program, impose further restrictions  
5 on the sharing of employees, vehicles, equipment, office space, and  
6 other facilities, or require the utility to provide other providers  
7 of appliance repair service with access to utility employees,  
8 vehicles, equipment, office space, or other facilities.

9           (12) This act does not prohibit or limit the right of a person  
10 to obtain self-service power and does not impose a transition,  
11 implementation, exit fee, or any other similar charge on self-  
12 service power. A person using self-service power is not an electric  
13 supplier, electric utility, or a person conducting an electric  
14 utility business. As used in this subsection, "self-service power"  
15 means any of the following:

16           (a) Electricity generated and consumed at an industrial site  
17 or contiguous industrial site or single commercial establishment or  
18 single residence without the use of an electric utility's  
19 transmission and distribution system.

20           (b) Electricity generated primarily by the use of by-product  
21 fuels, including waste water solids, which electricity is consumed  
22 as part of a contiguous facility, with the use of an electric  
23 utility's transmission and distribution system, but only if the  
24 point or points of receipt of the power within the facility are not  
25 greater than 3 miles distant from the point of generation.

26           (c) A site or facility with load existing on June 5, 2000 that  
27 is divided by an inland body of water or by a public highway, road,

1 or street but that otherwise meets this definition meets the  
2 contiguous requirement of this subdivision regardless of whether  
3 self-service power was being generated on June 5, 2000.

4 (d) A commercial or industrial facility or single residence  
5 that meets the requirements of subdivision (a) or (b) meets this  
6 definition whether or not the generation facility is owned by an  
7 entity different from the owner of the commercial or industrial  
8 site or single residence.

9 (13) This act does not prohibit or limit the right of a person  
10 to engage in affiliate wheeling and does not impose a transition,  
11 implementation, exit fee, or any other similar charge on a person  
12 engaged in affiliate wheeling.

13 ~~As used in this section:~~

14 ~~—— (a) "Affiliate" means a person or entity that directly, or~~  
15 ~~indirectly through 1 or more intermediates, controls, is controlled~~  
16 ~~by, or is under common control with another specified entity. As~~  
17 ~~used in this subdivision, "control" means, whether through an~~  
18 ~~ownership, beneficial, contractual, or equitable interest, the~~  
19 ~~possession, directly or indirectly, of the power to direct or to~~  
20 ~~cause the direction of the management or policies of a person or~~  
21 ~~entity or the ownership of at least 7% of an entity either directly~~  
22 ~~or indirectly.~~

23 ~~—— (b) "Affiliate wheeling" means a person's use of direct access~~  
24 ~~service where an electric utility delivers electricity generated at~~  
25 ~~a person's industrial site to that person or that person's~~  
26 ~~affiliate at a location, or general aggregated locations, within~~  
27 ~~this state that was either 1 of the following:~~

1 ~~—— (i) For at least 90 days during the period from January 1, 1996~~  
2 ~~to October 1, 1999, supplied by self-service power, but only to the~~  
3 ~~extent of the capacity reserved or load served by self-service~~  
4 ~~power during the period.~~

5 ~~—— (ii) Capable of being supplied by a person's cogeneration~~  
6 ~~capacity within this state that has had since January 1, 1996 a~~  
7 ~~rated capacity of 15 megawatts or less, was placed in service~~  
8 ~~before December 31, 1975, and has been in continuous service since~~  
9 ~~that date. A person engaging in affiliate wheeling is not an~~  
10 ~~electric supplier, an electric utility, or conducting an electric~~  
11 ~~utility business when a person engages in affiliate wheeling.~~

12 (14) The rights of parties to existing contracts and  
13 agreements in effect as of January 1, 2000 between electric  
14 utilities and qualifying facilities, including the right to have  
15 the charges recovered from the customers of an electric utility, or  
16 its successor, shall not be abrogated, increased, or diminished by  
17 this act, nor shall the receipt of any proceeds of the  
18 securitization bonds by an electric utility be a basis for any  
19 regulatory disallowance. Further, any securitization or financing  
20 order issued by the commission that relates to a qualifying  
21 facility's power purchase contract shall fully consider that  
22 qualifying facility's legal and financial interests.

23 (15) ~~A~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1), A**  
24 customer who elects to receive service from an alternative electric  
25 supplier may subsequently provide notice to the electric utility of  
26 the customer's desire to receive standard tariff service from the  
27 electric utility. The procedures in place for each electric utility

1 as of January 1, 2008 that set forth the terms pursuant to which a  
2 customer receiving service from an alternative electric supplier  
3 may return to full service from the electric utility are ratified  
4 and shall remain in effect and may be amended by the commission as  
5 needed. If an electric utility did not have the procedures in place  
6 as of January 1, 2008, the commission shall adopt those procedures.

7 (16) The commission shall authorize rates that will ensure  
8 that an electric utility that offered retail open access service  
9 from 2002 through ~~the effective date of the amendatory act that~~  
10 ~~added this subsection~~ **OCTOBER 6, 2008** fully recovers its  
11 restructuring costs and any associated accrued regulatory assets.  
12 This includes, but is not limited to, implementation costs,  
13 stranded costs, and costs authorized ~~pursuant to~~ **UNDER** section  
14 10d(4) as it existed ~~prior to the effective date of the amendatory~~  
15 ~~act that added this subsection,~~ **BEFORE OCTOBER 6, 2008**, that have  
16 been authorized for recovery by the commission in orders issued  
17 ~~prior to the effective date of the amendatory act that added this~~  
18 ~~subsection.~~ **BEFORE OCTOBER 6, 2008**. The commission shall approve  
19 surcharges that will ensure full recovery of all such costs ~~within~~  
20 ~~5 years of the effective date of the amendatory act that added this~~  
21 ~~subsection.~~ **BY OCTOBER 6, 2013**.

22 (17) As used in subsections (1) and (15):

23 (a) "Customer" means the building or facilities served through  
24 a single existing electric billing meter and does not mean the  
25 person, corporation, partnership, association, governmental body,  
26 or other entity owning or having possession of the building or  
27 facilities.

1 (b) "Standard tariff service" means, for each regulated  
2 electric utility, the retail rates, terms, and conditions of  
3 service approved by the commission for service to customers who do  
4 not elect to receive generation service from alternative electric  
5 suppliers.

6 (18) AS USED IN THIS SECTION:

7 (A) "AFFILIATE" MEANS A PERSON OR ENTITY THAT DIRECTLY, OR  
8 INDIRECTLY THROUGH 1 OR MORE INTERMEDIATES, CONTROLS, IS CONTROLLED  
9 BY, OR IS UNDER COMMON CONTROL WITH ANOTHER SPECIFIED ENTITY. AS  
10 USED IN THIS SUBDIVISION, "CONTROL" MEANS, WHETHER THROUGH AN  
11 OWNERSHIP, BENEFICIAL, CONTRACTUAL, OR EQUITABLE INTEREST, THE  
12 POSSESSION, DIRECTLY OR INDIRECTLY, OF THE POWER TO DIRECT OR TO  
13 CAUSE THE DIRECTION OF THE MANAGEMENT OR POLICIES OF A PERSON OR  
14 ENTITY OR THE OWNERSHIP OF AT LEAST 7% OF AN ENTITY EITHER DIRECTLY  
15 OR INDIRECTLY.

16 (B) "AFFILIATE WHEELING" MEANS A PERSON'S USE OF DIRECT ACCESS  
17 SERVICE WHERE AN ELECTRIC UTILITY DELIVERS ELECTRICITY GENERATED AT  
18 A PERSON'S INDUSTRIAL SITE TO THAT PERSON OR THAT PERSON'S  
19 AFFILIATE AT A LOCATION, OR GENERAL AGGREGATED LOCATIONS, WITHIN  
20 THIS STATE THAT WAS EITHER 1 OF THE FOLLOWING:

21 (i) FOR AT LEAST 90 DAYS DURING THE PERIOD FROM JANUARY 1, 1996  
22 TO OCTOBER 1, 1999, SUPPLIED BY SELF-SERVICE POWER, BUT ONLY TO THE  
23 EXTENT OF THE CAPACITY RESERVED OR LOAD SERVED BY SELF-SERVICE  
24 POWER DURING THE PERIOD.

25 (ii) CAPABLE OF BEING SUPPLIED BY A PERSON'S COGENERATION  
26 CAPACITY WITHIN THIS STATE THAT HAS HAD SINCE JANUARY 1, 1996 A  
27 RATED CAPACITY OF 15 MEGAWATTS OR LESS, WAS PLACED IN SERVICE

1 BEFORE DECEMBER 31, 1975, AND HAS BEEN IN CONTINUOUS SERVICE SINCE  
2 THAT DATE. A PERSON ENGAGING IN AFFILIATE WHEELING IS NOT AN  
3 ELECTRIC SUPPLIER, AN ELECTRIC UTILITY, OR CONDUCTING AN ELECTRIC  
4 UTILITY BUSINESS WHEN A PERSON ENGAGES IN AFFILIATE WHEELING.

5 (C) "APPLIANCE SERVICE PROGRAM" OR "PROGRAM" MEANS A  
6 SUBSCRIPTION PROGRAM FOR THE REPAIR AND SERVICING OF HEATING AND  
7 COOLING SYSTEMS OR OTHER APPLIANCES.