

HOUSE BILL No. 5889

September 12, 2012, Introduced by Reps. Price, Shirkey and McMillin 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 sections 10h and 10i (MCL 460.10h and 460.10i), as added by 2000 PA 142.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10h. As used in this act:

2 (a) "Assignee" means an individual, corporation, or other
3 legally recognized entity to which an interest in securitization
4 property is transferred.

5 (b) "Commission" means the Michigan public service commission.
6 ~~in the department of consumer and industry services.~~

7 (c) "Electric utility" means that term as defined in section 2
8 of the electric transmission line certification act, 1995 PA 30,
9 MCL 460.562.

10 (d) "Financing order" means an order of the commission
11 approving the issuance of securitization bonds and the creation of
12 securitization charges and any corresponding utility rate
13 reductions.

14 (e) "Financing party" means a holder of securitization bonds,
15 including trustees, collateral agents, and other persons acting for
16 the benefit of the holder.

17 (f) "Nonbypassable charge" means a charge in a financing order
18 payable by a customer **RECEIVING STANDARD TARIFF SERVICE** to an
19 electric utility or its assignees or successors. ~~regardless of the~~
20 ~~identity of the customer's electric generation supplier.~~

21 (g) "Qualified costs" means an electric utility's ~~regulatory~~
22 ~~assets as determined by the commission, adjusted by the applicable~~
23 ~~portion of related investment tax credits, plus any costs that the~~
24 ~~commission determines that the electric utility would be unlikely~~
25 ~~to collect in a competitive market, including, but not limited to,~~
26 ~~retail open access implementation costs and the costs of a~~

1 ~~commission approved restructuring, buyout or buy down of a power~~
2 ~~purchase contract, INVESTMENT IN WATER AND AIR POLLUTION CONTROL~~
3 **EQUIPMENT**, together with the costs of issuing, supporting, and
4 servicing securitization bonds and any costs of retiring and
5 refunding the electric utility's existing debt and equity
6 securities in connection with the issuance of securitization bonds.
7 Qualified costs include taxes related to the recovery of
8 securitization charges.

9 (h) "Securitization bonds" means bonds, debentures, notes,
10 certificates of participation, certificates of a beneficial
11 interest, certificates of ownership, or other evidences of
12 indebtedness that are issued by an electric utility, its
13 successors, or an assignee under a financing order, that have a
14 term of not more than 15 years, and that are secured by or payable
15 from securitization property. If certificates of participation,
16 certificates of **A** beneficial interest, or certificates of ownership
17 are issued, references in this act to principal, interest, or
18 premium shall refer to comparable amounts under those certificates.

19 (i) "Securitization charges" means nonbypassable amounts to be
20 charged for the use or availability of electric services, approved
21 by the commission under a financing order to fully recover
22 qualified costs, that shall be collected by an electric utility,
23 its successors, an assignee, or other collection agents as provided
24 for in the financing order.

25 (j) "Securitization property" means the property described in
26 section 10j.

27 **(K) "STANDARD TARIFF SERVICE" MEANS THAT TERM AS DEFINED IN**

1 SECTION 10A.

2 (l) "WATER AND AIR POLLUTION CONTROL EQUIPMENT" MEANS THAT TERM
3 AS DEFINED IN SECTION 3 OF THE ECONOMIC DEVELOPMENT CORPORATIONS
4 ACT, 1974 PA 338, MCL 125.1603.

5 Sec. 10i. (1) Upon the application of an electric utility, if
6 the commission finds that the net present value of the revenues to
7 be collected under the financing order is less than the amount that
8 would be recovered over the remaining life of the qualified costs
9 using conventional financing methods and that the financing order
10 is consistent with the standards in subsection (2), the commission
11 shall issue a financing order to allow the utility to recover
12 qualified costs. **AN ELECTRIC UTILITY THAT HAS MORE THAN 1,000,000**
13 **RETAIL ELECTRIC CUSTOMERS IN THIS STATE ON JANUARY 1, 2012 SHALL**
14 **APPLY FOR A FINANCING ORDER TO FINANCE ALL NEW WATER AND AIR**
15 **POLLUTION CONTROL EQUIPMENT REQUIRED BY ANY RULE OR REGULATION**
16 **ADOPTED BY THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY OR THE**
17 **MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY THAT IS INSTALLED**
18 **AFTER THE EFFECTIVE DATE OF THE 2012 AMENDATORY ACT THAT AMENDED**
19 **THIS SECTION.**

20 (2) In a financing order, the commission shall ensure all of
21 the following:

22 (a) That the proceeds of the securitization bonds are used
23 solely for the purposes of the refinancing or retirement of debt or
24 equity.

25 (b) That securitization provides tangible and quantifiable
26 benefits to customers of the electric utility.

27 (c) That the expected structuring and expected pricing of the

1 securitization bonds will result in the lowest securitization
2 charges consistent with market conditions and the terms of the
3 financing order.

4 (d) That the amount securitized does not exceed the net
5 present value of the revenue requirement over the life of the
6 proposed securitization bonds associated with the qualified costs
7 sought to be securitized.

8 **(E) THAT A CUSTOMER TAKING SERVICE FROM AN ALTERNATIVE**
9 **ELECTRIC SUPPLIER WHEN SECURITIZATION BONDS FOR NEW WATER AND AIR**
10 **POLLUTION CONTROL EQUIPMENT ARE ISSUED AND CONTINUING TO TAKE**
11 **SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER THROUGH THE TERM OF**
12 **THE SECURITIZATION BONDS WILL NOT BE ASSESSED ANY CHARGE RELATING**
13 **TO THOSE BONDS.**

14 (3) The financing order shall detail the amount of qualified
15 costs to be recovered and the period over which the securitization
16 charges are to be recovered, not to exceed 15 years, **AND ALLOCATE**
17 **THE COSTS TO RATE CLASSES AS PRODUCTION COSTS.**

18 (4) A financing order is effective in accordance with its
19 terms, and the financing order, together with the securitization
20 charges authorized in the order, shall be irrevocable and not
21 subject to reduction, impairment, or adjustment by further action
22 of the commission, except as provided under section 10k(3).

23 (5) Stocks, bonds, notes, or other evidence of indebtedness
24 issued under a financing order of the commission shall be binding
25 in accordance with their terms notwithstanding that the order of
26 the commission is later vacated, modified, or otherwise held to be
27 invalid in whole or in part.

1 (6) The commission shall after an expedited contested case
2 proceeding issue a financing order or an order rejecting the
3 application for a financing order no later than 90 days after the
4 electric utility files its application.

5 (7) A financing order is only subject to rehearing by the
6 commission on the motion of the applicant for securitization.

7 (8) Notwithstanding any other provision of law, a financing
8 order may be reviewed by the court of appeals upon a filing by a
9 party to the commission proceeding within 30 days after the
10 financing order is issued. All appeals of a financing order shall
11 be heard and determined as expeditiously as possible with lawful
12 precedence over other matters. Review on appeal shall be based
13 solely on the record before the commission and briefs to the court
14 and shall be limited to whether the financing order conforms to the
15 constitution and laws of this state and the United States and is
16 within the authority of the commission under this act.

17 (9) At the request of an electric utility, the commission may
18 adopt a financing order providing for retiring and refunding
19 securitization bonds if the commission finds that the future
20 securitization charges required to service the new securitization
21 bonds, including transaction costs, will be less than the future
22 securitization charges required to service the securitization bonds
23 being refunded. On the retirement of the refunded securitization
24 bonds, the commission shall adjust the related securitization
25 charges accordingly.

26 (10) The commission shall have the authority to retain
27 financial or legal services to assist in issuance of a financing

1 order and to require the electric utility to pay the cost of the
2 services. The payments shall be included as qualified costs defined
3 in section 10h(g).