

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1499**

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 10d (MCL 460.10d), as added by 2000 PA 141.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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1 Sec. 10d. (1) ~~Unless~~ EXCEPT AS OTHERWISE PROVIDED UNDER
2 SUBSECTION (3) OR UNLESS otherwise reduced by the commission
3 under subsection ~~(4)~~ (5), the commission shall establish the
4 residential rates for each electric utility with 1,000,000 or
5 more retail customers in this state as of May 1, 2000 that will
6 result in a 5% rate reduction from the rates that were authorized
7 or in effect on May 1, 2000. Notwithstanding any other provision
8 of law or commission order, rates for each electric utility with
9 1,000,000 or more retail customers established under this subsec-
10 tion become effective on ~~the effective date of the amendatory~~
11 ~~act that added this section~~ JUNE 5, 2000 and remain in effect
12 until December 31, 2003 and all other electric retail rates of an
13 electric utility with 1,000,000 or more retail customers autho-
14 rized or in effect as of May 1, 2000 shall remain in effect until
15 December 31, 2003. ~~, unless otherwise reduced by the commission~~
16 ~~under subsection (4).~~

17 (2) On and after December 31, 2003, rates for an electric
18 utility with 1,000,000 or more retail customers in this state as
19 of May 1, 2000 shall not be increased until the earlier of
20 December 31, 2013 or until the commission determines, after
21 notice and hearing, that the utility meets the market test under
22 section 10f and has completed the transmission expansion provided
23 for in the plan required under section 10v. The rates for com-
24 mercial or manufacturing customers of an electric utility with
25 1,000,000 or more retail customers with annual peak demands of
26 less than 15 kilowatts shall not be increased before January 1,
27 2005. There shall be no cost shifting from customers with capped

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1 rates to customers without capped rates as a result of this
2 section. In no event shall residential rates be increased before
3 January 1, 2006 above the rates established under subsection
4 (1).

5 (3) SUBSECTIONS (1) AND (2) DO NOT APPLY TO RATES OR CHARGES
6 AUTHORIZED BY THE COMMISSION UNDER SUBSECTION (13).

7 (4) ~~-(3)-~~ Beginning January 1, 2004, annual return of and on
8 capital expenditures in excess of depreciation levels incurred
9 during and before the time period described in subsection (2),
10 and expenses incurred as a result of changes in taxes, laws, or
11 other state or federal governmental actions incurred by electric
12 utilities during the period described in subsection (2), shall be
13 accrued and deferred for recovery. After notice and hearing, the
14 commission shall determine the amount of reasonable and prudent
15 costs, if any, to be recovered and the recovery period, which
16 shall not exceed 5 years, and shall not commence until after the
17 expiration of the period described in subsection (2).

18 (5) ~~-(4)-~~ If the commission authorizes an electric utility
19 to use securitization financing under section 10i, any savings
20 resulting from securitization shall be used to reduce retail
21 electric rates from those authorized or in effect as of May 1,
22 2000 as required under subsection (1). A rate reduction under
23 this subsection shall not be less than the 5% required under sub-
24 section (1). The financing order may provide that a utility
25 shall only issue securitization bonds in an amount equal to or
26 less than requested by the utility, but the commission shall not
27 preclude the issuance of an amount of securitization bonds

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1 sufficient to fund the rate reduction required under ~~section~~
2 ~~10d(1)~~ SUBSECTION (1).

3 (6) ~~-(5)-~~ Except for savings assigned to the low-income and
4 energy efficiency fund ~~pursuant to~~ UNDER subsection ~~-(6)-~~ (7),
5 securitization savings greater than those used to achieve the 5%
6 rate reduction under subsection (1) shall be allocated by the
7 commission to further rate reductions or to reduce the level of
8 any charges authorized by the commission to recover an electric
9 utility's stranded costs. The commission shall allocate approved
10 securitization, transition, stranded, and other related charges
11 and credits in a manner that does not result in a reallocation of
12 cost responsibility among the different customer classes.

13 (7) ~~-(6)-~~ If securitization savings exceed the amount needed
14 to achieve a 5% rate reduction for all customers, then, for a
15 period of 6 years, 100% of the excess savings, up to 2% of the
16 electric utility's commercial and industrial revenues, shall be
17 allocated to the low-income and energy efficiency fund adminis-
18 tered by the commission. The commission shall establish stan-
19 dards for the use of the fund to provide shut-off and other pro-
20 tection for low-income customers and to promote energy efficiency
21 by all customer classes. The commission shall issue a report to
22 the legislature and the governor every 2 years regarding the
23 effectiveness of the fund.

24 (8) ~~-(7)-Until~~ EXCEPT AS PROVIDED UNDER SUBSECTION (3),
25 UNTIL the end of the period described in subsection (2), the com-
26 mission shall not authorize any fees or charges that will cause

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1 the residential rate reduction required under subsection (1) to
2 be less than 5%.

3 (9) ~~—(8)—~~ If an electric utility serving less than 1,000,000
4 retail customers in this state as of May 1, 2000 issues securiti-
5 zation bonds as allowed under this act, it shall have the same
6 rights, duties, and obligations under this section as an electric
7 utility serving 1,000,000 or more retail customers in this state
8 as of May 1, 2000.

9 (10) ~~—(9)—~~ The ~~public service~~ commission shall take the
10 necessary steps to ensure that all electrical power generating
11 facilities in this state comply with all rules, regulations, and
12 standards of the federal environmental protection agency regard-
13 ing mercury emissions.

14 (11) A COVERED UTILITY MAY APPLY TO THE COMMISSION TO
15 RECOVER ENHANCED SECURITY COSTS FOR AN ELECTRIC GENERATING FACIL-
16 ITY THROUGH A SECURITY RECOVERY FACTOR. IF THE COMMISSION ACTION
17 UNDER SUBSECTION (13) IS APPROVAL OF A SECURITY RECOVERY FACTOR,
18 THE COVERED UTILITY MAY RECOVER THOSE ENHANCED SECURITY COSTS.

19 (12) THE COMMISSION SHALL REQUIRE THAT NOTICE OF THE APPLI-
20 CATION FILED UNDER SUBSECTION (11) BE PUBLISHED BY THE COVERED
21 UTILITY WITHIN 30 DAYS FROM THE DATE THE APPLICATION WAS FILED.
22 THE INITIAL HEARING BY THE COMMISSION SHALL BE HELD WITHIN
23 20 DAYS OF THE DATE THE NOTICE WAS PUBLISHED IN NEWSPAPERS OF
24 GENERAL CIRCULATION IN THE SERVICE TERRITORY OF THE COVERED
25 UTILITY.

26 (13) THE COMMISSION MAY ISSUE AN ORDER APPROVING, REJECTING,
27 OR MODIFYING THE SECURITY RECOVERY FACTOR. IF THE COMMISSION

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1 ISSUES AN ORDER APPROVING A SECURITY RECOVERY FACTOR, THAT ORDER
2 SHALL BE ISSUED WITHIN 120 DAYS OF THE INITIAL HEARING REQUIRED
3 UNDER SUBSECTION (12). IN DETERMINING THE SECURITY RECOVERY
4 FACTOR, THE COMMISSION SHALL ONLY INCLUDE COSTS THAT THE COMMIS-
5 SION DETERMINES ARE REASONABLE AND PRUDENT AND THAT ARE JURISDIC-
6 TIONALLY ASSIGNED TO RETAIL CUSTOMERS OF THE COVERED UTILITY IN
7 THIS STATE. THE COSTS INCLUDED SHALL BE NET OF ANY PROCEEDS THAT
8 HAVE BEEN OR WILL BE RECEIVED FROM ANOTHER SOURCE, INCLUDING, BUT
9 NOT LIMITED TO, ANY APPLICABLE INSURANCE SETTLEMENTS RECEIVED BY
10 THE COVERED UTILITY OR ANY GRANTS OR OTHER EMERGENCY RELIEF FROM
11 FEDERAL, STATE, OR LOCAL GOVERNMENTAL AGENCIES FOR THE PURPOSE OF
12 DEFRAYING ENHANCED SECURITY COSTS. IN ITS ORDER, THE COMMISSION
13 SHALL DESIGNATE A PERIOD FOR RECOVERY OF ENHANCED SECURITY COSTS,
14 INCLUDING A REASONABLE RETURN ON THE UNAMORTIZED BALANCE, OVER A
15 PERIOD NOT TO EXCEED 5 YEARS. THE SECURITY RECOVERY FACTOR SHALL
16 NOT BE LESS THAN ZERO.

17 (14) WITHIN 60 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY
18 ACT THAT ADDED THIS SUBSECTION, THE COMMISSION SHALL BY ORDER
19 PRESCRIBE THE FORM FOR THE FILING OF AN APPLICATION FOR A SECUR-
20 ITY RECOVERY FACTOR UNDER SUBSECTION (11). IF THE COMMISSION OR
21 ITS DESIGNEE DETERMINES THAT A FILING IS INCOMPLETE, IT SHALL
22 NOTIFY THE COVERED UTILITY WITHIN 10 DAYS OF THE FILING.

23 (15) RECORDS OR OTHER INFORMATION SUPPLIED BY THE COVERED
24 UTILITY IN AN APPLICATION FOR RECOVERY OF SECURITY COSTS UNDER
25 SUBSECTION (11) THAT DESCRIBE SECURITY MEASURES, INCLUDING, BUT
26 NOT LIMITED TO, EMERGENCY RESPONSE PLANS, RISK PLANNING
27 DOCUMENTS, THREAT ASSESSMENTS, DOMESTIC PREPAREDNESS STRATEGIES,

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1 AND OTHER PLANS FOR RESPONDING TO ACTS OF TERRORISM ARE NOT
2 SUBJECT TO THE FREEDOM OF INFORMATION ACT, 1976 PA 442,
3 MCL 15.231 TO 15.246, AND SHALL BE TREATED AS CONFIDENTIAL BY THE
4 COMMISSION.

5 (16) THE COMMISSION SHALL ISSUE PROTECTIVE ORDERS AS ARE
6 NECESSARY TO PROTECT THE INFORMATION FOUND BY THE COMMISSION TO
7 BE CONFIDENTIAL UNDER THIS SECTION.

8 (17) AS USED IN THIS SECTION:

9 (A) "ACT OF TERRORISM" MEANS A WILLFUL AND DELIBERATE ACT
10 THAT IS ALL OF THE FOLLOWING:

11 (i) AN ACT THAT WOULD BE A VIOLENT FELONY UNDER THE LAWS OF
12 THIS STATE, WHETHER OR NOT COMMITTED IN THIS STATE.

13 (ii) AN ACT THAT THE PERSON KNOWS OR HAS REASON TO KNOW IS
14 DANGEROUS TO HUMAN LIFE.

15 (iii) AN ACT THAT IS INTENDED TO INTIMIDATE OR COERCE A
16 CIVILIAN POPULATION OR INFLUENCE OR AFFECT THE CONDUCT OF GOVERN-
17 MENT OR A UNIT OF GOVERNMENT THROUGH INTIMIDATION OR COERCION.

18 (B) "COVERED UTILITY" MEANS AN ELECTRIC UTILITY SUBJECT TO
19 THE RATE FREEZE PROVISIONS OF SUBSECTION (1), THE RATE CAP PROVI-
20 SIONS OF SUBSECTION (2), OR THE RATE PROVISIONS OF COMMISSION
21 ORDERS IN CASE NUMBERS U-11181-R AND U-12204.

22 (C) "ENHANCED SECURITY COSTS" MEANS REASONABLE AND PRUDENT
23 COSTS OF NEW AND ENHANCED SECURITY MEASURES INCURRED BEFORE
24 JANUARY 1, 2006 FOR AN ELECTRIC GENERATING FACILITY BY A COVERED
25 UTILITY THAT ARE REQUIRED BY FEDERAL OR STATE REGULATORY SECURITY
26 REQUIREMENTS ISSUED AFTER SEPTEMBER 11, 2001 OR DETERMINED TO BE
27 NECESSARY BY THE COMMISSION TO PROVIDE REASONABLE SECURITY FROM

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1 AN ACT OF TERRORISM. ENHANCED SECURITY COSTS INCLUDE INCREASES
2 IN THE COST OF INSURANCE THAT ARE ATTRIBUTABLE TO AN INCREASED
3 TERROR RELATED RISK AND THE COSTS OF MAINTAINING OR RESTORING
4 ELECTRIC SERVICE AS THE RESULT OF AN ACT OF TERRORISM.

5 (D) "SECURITY RECOVERY FACTOR" MEANS AN UNBUNDLED CHARGE FOR
6 ALL RETAIL CUSTOMERS, EXCEPT FOR CUSTOMERS OF ALTERNATIVE ELEC-
7 TRIC SUPPLIERS, TO RECOVER ENHANCED SECURITY COSTS THAT HAVE BEEN
8 APPROVED BY THE COMMISSION.