

HOUSE BILL No. 6128

May 23, 2002, Introduced by Rep. Kowall 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 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,"

(MCL 460.1 to 460.10cc) by adding sections 9, 9a, 9b, 9c, 9d, 9e, 9f, and 9g.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 9. (1) SECTIONS 9 THROUGH 9G SHALL BE KNOWN AND MAY BE
2 CITED AS THE "NATURAL GAS CUSTOMER CHOICE ACT".

3 (2) THE PURPOSE OF SECTIONS 9 THROUGH 9G IS TO DO ALL OF THE
4 FOLLOWING:

5 (A) TO ENSURE THAT ALL RETAIL CUSTOMERS IN THIS STATE HAVE A
6 CHOICE OF NATURAL GAS SUPPLIERS.

7 (B) TO ALLOW AND ENCOURAGE THE COMMISSION TO FOSTER COMPETI-
8 TION IN THIS STATE IN THE PROVISION OF NATURAL GAS SUPPLY AND
9 MAINTAIN REGULATION OF NATURAL GAS SUPPLY FOR CUSTOMERS WHO CON-
10 TINUE TO CHOOSE SUPPLY FROM INCUMBENT NATURAL GAS UTILITIES.

11 (C) TO ENCOURAGE THE ENTRANCE INTO THE MARKETPLACE OF RELI-
12 ABLE ALTERNATIVE NATURAL GAS SUPPLIERS.

13 (D) TO ENSURE THAT ALL PERSONS IN THIS STATE ARE AFFORDED
14 SAFE, RELIABLE NATURAL GAS AT A REASONABLE RATE.

15 (E) TO IMPROVE THE OPPORTUNITIES FOR ECONOMIC DEVELOPMENT IN
16 THIS STATE AND TO PROMOTE FINANCIALLY HEALTHY AND COMPETITIVE
17 UTILITIES IN THIS STATE.

18 (F) TO AUTHORIZE THE COMMISSION TO ESTABLISH A FUNDING MECH-
19 ANISM FOR NATURAL GAS UTILITIES AND ALTERNATIVE GAS SUPPLIERS TO
20 CARRY OUT AN EDUCATIONAL CHOICE PROGRAM FOR CUSTOMERS.

21 (3) AS USED IN SECTIONS 9 THROUGH 9G:

22 (A) "ALTERNATIVE GAS SUPPLIER" MEANS A PERSON PARTICIPATING
23 IN A NATURAL GAS UTILITY'S CUSTOMER CHOICE PROGRAM SELLING NATU-
24 RAL GAS AT UNREGULATED RATES TO RETAIL CUSTOMERS IN THIS STATE.
25 ALTERNATIVE GAS SUPPLIER DOES NOT INCLUDE A PERSON WHO PHYSICALLY
26 DELIVERS NATURAL GAS DIRECTLY TO RETAIL CUSTOMERS IN THIS STATE

1 OR WHOSE RATES ARE REGULATED BY THE COMMISSION. AN ALTERNATIVE
2 GAS SUPPLIER IS NOT A PUBLIC UTILITY.

3 (B) "COMMISSION" MEANS THE MICHIGAN PUBLIC SERVICE COMMIS-
4 SION IN THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES.

5 (C) "FUND" MEANS THE COMPLAINT ADJUDICATION AND CONTESTED
6 CASE RESOLUTION EXPENSE FUND CREATED IN SECTION 9E.

7 (D) "NATURAL GAS UTILITY" MEANS AN INVESTOR-OWNED BUSINESS
8 ENGAGED IN THE SALE AND DISTRIBUTION OF NATURAL GAS WITHIN THIS
9 STATE WHOSE RATES ARE REGULATED BY THE COMMISSION.

10 SEC. 9A. (1) THE COMMISSION MAY ISSUE ORDERS ESTABLISHING
11 THE RATES, TERMS, AND CONDITIONS OF SERVICE THAT ALLOW THE RETAIL
12 CUSTOMERS OF A NATURAL GAS UTILITY OR PROVIDER TO CHOOSE AN
13 ALTERNATIVE GAS SUPPLIER.

14 (2) THE ORDERS ISSUED BY THE COMMISSION BEFORE THE EFFECTIVE
15 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION THAT ALLOWED
16 CUSTOMERS TO CHOOSE AN ALTERNATIVE GAS SUPPLIER ARE IN COMPLIANCE
17 WITH THIS ACT.

18 SEC. 9B. (1) THE COMMISSION SHALL ISSUE ORDERS ESTABLISHING
19 A LICENSING PROCEDURE FOR ALL ALTERNATIVE GAS SUPPLIERS PARTICI-
20 PATING IN ANY NATURAL GAS CUSTOMER CHOICE PROGRAM APPROVED BY THE
21 COMMISSION. AN ALTERNATIVE GAS SUPPLIER SHALL NOT DO BUSINESS IN
22 THIS STATE WITHOUT FIRST RECEIVING A LICENSE UNDER THIS ACT.

23 (2) AN ALTERNATIVE GAS SUPPLIER SHALL MAINTAIN AN OFFICE
24 WITHIN THIS STATE.

25 (3) THE COMMISSION SHALL ASSURE THAT AN ALTERNATIVE GAS SUP-
26 PLIER DOING BUSINESS IN THIS STATE HAS THE NECESSARY FINANCIAL,

1 MANAGERIAL, AND TECHNICAL CAPABILITIES AND REQUIRE THE SUPPLIER
2 TO MAINTAIN RECORDS THAT THE COMMISSION CONSIDERS NECESSARY.

3 (4) THE COMMISSION SHALL REQUIRE AN ALTERNATIVE GAS SUPPLIER
4 TO COLLECT AND REMIT TO LOCAL UNITS OF GOVERNMENT ALL APPLICABLE
5 USERS, SALES, AND USE TAXES IF THE NATURAL GAS UTILITY IS NOT
6 DOING SO ON BEHALF OF THE SUPPLIER.

7 SEC. 9C. (1) THE COMMISSION SHALL ISSUE ORDERS TO ENSURE
8 THAT CUSTOMERS IN THIS STATE ARE NOT SWITCHED TO ANOTHER NATURAL
9 GAS SUPPLIER OR BILLED FOR ANY SERVICES WITHOUT THE CUSTOMER'S
10 CONSENT.

11 (2) THE COMMISSION SHALL ISSUE ORDERS TO ENSURE THAT A NATU-
12 RAL GAS UTILITY OR AN ALTERNATIVE GAS SUPPLIER DOES NOT SOLICIT
13 OR ENTER INTO CONTRACTS WITH CUSTOMERS IN THIS STATE IN A MIS-
14 LEADING, FRAUDULENT, OR DECEPTIVE MANNER.

15 SEC. 9D. (1) EXCEPT FOR A VIOLATION UNDER SECTION 9C AND AS
16 OTHERWISE PROVIDED UNDER THIS SECTION, UPON A COMPLAINT OR ON THE
17 COMMISSION'S OWN MOTION, IF THE COMMISSION FINDS, AFTER NOTICE
18 AND HEARING, THAT A NATURAL GAS UTILITY OR AN ALTERNATIVE GAS
19 SUPPLIER HAS NOT COMPLIED WITH THIS ACT OR AN ORDER ISSUED UNDER
20 THIS ACT, THE COMMISSION SHALL ORDER REMEDIES AND PENALTIES AS
21 NECESSARY TO MAKE WHOLE A CUSTOMER OR OTHER PERSON WHO HAS SUFF-
22 FERED DAMAGES AS A RESULT OF THE VIOLATION, INCLUDING, BUT NOT
23 LIMITED TO, 1 OR MORE OF THE FOLLOWING:

24 (A) ORDER THE NATURAL GAS UTILITY OR ALTERNATIVE GAS SUP-
25 PLIER TO PAY A FINE FOR THE FIRST OFFENSE OF NOT LESS THAN
26 \$1,000.00 OR MORE THAN \$20,000.00. FOR A SECOND OFFENSE, THE
27 COMMISSION SHALL ORDER THE PERSON TO PAY A FINE OF NOT LESS THAN

1 \$2,000.00 OR MORE THAN \$40,000.00. FOR A THIRD AND ANY
2 SUBSEQUENT OFFENSE, THE COMMISSION SHALL ORDER THE PERSON TO PAY
3 A FINE OF NOT LESS THAN \$5,000.00 OR MORE THAN \$50,000.00.

4 (B) ORDER A REFUND TO THE CUSTOMER OF ANY EXCESS CHARGES.

5 (C) ORDER ANY OTHER REMEDIES THAT WOULD MAKE WHOLE A CUS-
6 TOMER OR PERSON HARMED, INCLUDING, BUT NOT LIMITED TO, PAYMENT OF
7 REASONABLE ATTORNEY FEES.

8 (D) REVOKE THE LICENSE OF THE ALTERNATIVE GAS SUPPLIER.

9 (E) ISSUE CEASE AND DESIST ORDERS.

10 (2) UPON A COMPLAINT OR THE COMMISSION'S OWN MOTION, THE
11 COMMISSION MAY CONDUCT A CONTESTED CASE TO REVIEW ALLEGATIONS OF
12 A VIOLATION UNDER SECTION 9C.

13 (3) IF THE COMMISSION FINDS THAT A PERSON HAS VIOLATED SEC-
14 TION 9C, THE COMMISSION SHALL ORDER REMEDIES AND PENALTIES TO
15 PROTECT CUSTOMERS AND OTHER PERSONS WHO HAVE SUFFERED DAMAGES AS
16 A RESULT OF THE VIOLATION, INCLUDING, BUT NOT LIMITED TO, 1 OR
17 MORE OF THE FOLLOWING:

18 (A) ORDER THE NATURAL GAS UTILITY OR ALTERNATIVE GAS SUP-
19 PLIER TO PAY A FINE FOR THE FIRST OFFENSE OF NOT LESS THAN
20 \$20,000.00 OR MORE THAN \$30,000.00. FOR A SECOND AND ANY SUBSE-
21 QUENT OFFENSE, THE COMMISSION SHALL ORDER THE PERSON TO PAY A
22 FINE OF NOT LESS THAN \$30,000.00 OR MORE THAN \$50,000.00. IF THE
23 COMMISSION FINDS THAT THE SECOND OR ANY OF THE SUBSEQUENT
24 OFFENSES WERE KNOWINGLY MADE IN VIOLATION OF SECTION 9C, THE COM-
25 MISSION SHALL ORDER THE PERSON TO PAY A FINE OF NOT MORE THAN
26 \$70,000.00. EACH UNAUTHORIZED ACTION MADE IN VIOLATION OF
27 SECTION 9C SHALL BE A SEPARATE OFFENSE UNDER THIS SECTION.

1 (B) ORDER A PERSON WHO VIOLATED SECTION 9C TO REFUND TO THE
2 CUSTOMER ANY AMOUNT GREATER THAN THE CUSTOMER WOULD HAVE PAID TO
3 THE CUSTOMER'S CHOSEN SUPPLIER.

4 (C) ORDER A PERSON WHO VIOLATED SECTION 9C TO REIMBURSE AN
5 AUTHORIZED SUPPLIER AN AMOUNT EQUAL TO THE AMOUNT PAID BY THE
6 CUSTOMER THAT SHOULD HAVE BEEN PAID TO THE CUSTOMER'S CHOSEN
7 SUPPLIER.

8 (D) ORDER THE REFUND OF ANY AMOUNTS PAID BY THE CUSTOMER FOR
9 UNAUTHORIZED SERVICES.

10 (E) ORDER A PORTION BETWEEN 10% TO 50% OF THE FINE ORDERED
11 UNDER SUBDIVISION (A) BE PAID DIRECTLY TO THE CUSTOMER WHO SUFFERED THE VIOLATION UNDER SECTION 9C.

12 (F) AFTER SUBTRACTING ANY AMOUNT ORDERED UNDER
13 SUBDIVISION (E), ORDER 25% OF THE REMAINING FINE ORDERED UNDER
14 SUBDIVISION (A) TO BE PAID INTO THE COMPLAINT ADJUDICATION AND
15 RESOLUTION EXPENSE FUND CREATED IN SECTION 9E.

16 (G) IF ALTERNATIVE GAS SUPPLIER LICENSED UNDER THIS ACT VIOLATES SECTION 9C, REVOKE THE LICENSE.

17 (H) ISSUE CEASE AND DESIST ORDERS.

18 (4) NOTWITHSTANDING SUBSECTION (3), A FINE SHALL NOT BE
19 IMPOSED FOR A VIOLATION OF SECTION 9C(1) IF THE SUPPLIER SHOWS
20 THAT THE VIOLATION WAS AN UNINTENTIONAL AND BONA FIDE ERROR THAT
21 OCCURRED NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY
22 ADOPTED TO AVOID THE ERROR. EXAMPLES OF A BONA FIDE ERROR
23 INCLUDE CLERICAL, CALCULATION, COMPUTER MALFUNCTION, PROGRAMMING,
24 OR PRINTING ERRORS. AN ERROR IN LEGAL JUDGMENT WITH RESPECT TO A
25 SUPPLIER'S OBLIGATIONS UNDER SECTION 9C(1) IS NOT A BONA FIDE
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27

1 ERROR. THE SUPPLIER HAS THE BURDEN OF PROVING THAT A VIOLATION
2 OF SECTION 9C(1) WAS AN UNINTENTIONAL AND BONA FIDE ERROR.

3 (5) IF THE COMMISSION FINDS THAT A PARTY'S POSITION IN A
4 COMPLAINT FILED UNDER SUBSECTION (2) IS FRIVOLOUS, THE COMMISSION
5 SHALL AWARD TO A PREVAILING PARTY ITS COSTS, INCLUDING REASONABLE
6 ATTORNEY FEES, AGAINST A NONPREVAILING PARTY AND ITS ATTORNEY.

7 SEC. 9E. (1) THE COMPLAINT ADJUDICATION AND CONTESTED CASE
8 RESOLUTION EXPENSE FUND IS CREATED WITHIN THE DEPARTMENT OF
9 TREASURY.

10 (2) THE FUND SHALL BE ADMINISTERED BY THE COMMISSION.

11 (3) MONEY IN THE FUND AT THE CLOSE OF THE FISCAL YEAR SHALL
12 NOT LAPSE TO THE GENERAL FUND.

13 (4) THE STATE TREASURER SHALL CREDIT TO THE FUND ASSESSED
14 FINES AS PROVIDED UNDER SECTION 9D(3)(F) AND AS OTHERWISE PRO-
15 VIDED BY LAW.

16 (5) MONEY IN THE FUND SHALL BE USED BY THE COMMISSION FOR
17 ALL OF THE FOLLOWING PURPOSES:

18 (A) TO PAY FOR INDEPENDENT HEARING OFFICERS TO PRESIDE OVER
19 CUSTOMER COMPLAINT CASES PENDING BEFORE THE COMMISSION.

20 (B) TO PAY FOR TEMPORARY ADMINISTRATIVE PERSONNEL TO ASSIST
21 IN THE PREPARATION OF PROPOSALS FOR DECISION OR OTHER RECOMMENDA-
22 TIONS TO THE COMMISSION IN CUSTOMER COMPLAINT CASES.

23 (C) TO EMPLOY EXPERT WITNESSES AND OTHER CONSULTANTS IN
24 CRITICAL AREAS, INCLUDING AUDITORS, ENGINEERS, ECONOMISTS, AND
25 INFORMATION TECHNOLOGY SPECIALISTS, TO SUPPLEMENT EXISTING COM-
26 MISSION RESOURCES AS NECESSARY FOR THE COMMISSION TO COMPLETE
27 CONTESTED CASES IN A TIMELY MANNER.

(6) INDEPENDENT HEARING OFFICERS SHALL BE APPOINTED BY THE COMMISSION. THE COMMISSION'S APPOINTMENT OF AN INDEPENDENT HEARING OFFICER SHALL BE FOR A TERM OF 6 MONTHS, WHICH MAY BE RENEWED FOR ADDITIONAL TERMS AS DETERMINED BY THE COMMISSION. EACH PERSON APPOINTED AS AN INDEPENDENT HEARING OFFICER SHALL MEET ALL OF THE FOLLOWING CRITERIA:

(A) THE PERSON SHALL BE AN ATTORNEY LICENSED TO PRACTICE LAW IN THIS STATE.

(B) THE PERSON SHALL HAVE AT LEAST 3 YEARS' EXPERIENCE IN THE RESOLUTION OF UTILITY CUSTOMER DISPUTES.

(C) THE PERSON SHALL NOT HAVE ANY DIRECT FINANCIAL INTEREST IN A PUBLIC UTILITY, AN ALTERNATIVE ENERGY SUPPLIER AS DEFINED IN SECTION 10G(A), OR AN ALTERNATIVE GAS SUPPLIER IN THIS STATE.

(D) DURING THE TERM OF AN APPOINTMENT, AN INDEPENDENT HEARING OFFICER OR ANY OTHER ATTORNEY IN THE INDEPENDENT HEARING OFFICER'S LAW FIRM SHALL NOT REPRESENT OR OTHERWISE RECEIVE MONEY FROM A COMPLAINANT, A PUBLIC UTILITY, AN ALTERNATIVE ENERGY SUPPLIER AS DEFINED IN SECTION 10G(A), OR AN ALTERNATIVE GAS SUPPLIER IN THIS STATE IN RETURN FOR THE PERFORMANCE OF LEGAL SERVICES.

(7) THE COMMISSION'S CHIEF ADMINISTRATIVE LAW JUDGE SHALL ASSIGN CUSTOMER COMPLAINT CASES TO INDEPENDENT HEARING OFFICERS ON A CASE-BY-CASE APPOINTMENT BASIS AND SHALL SUPERVISE THE HANDLING OF ALL CASES ADJUDICATED BY INDEPENDENT HEARING OFFICERS.

SEC. 9F. (1) BEFORE JANUARY 1, 2004, THE COMMISSION SHALL ESTABLISH A FUNDING MECHANISM FOR NATURAL GAS UTILITIES AND

1 ALTERNATIVE GAS SUPPLIERS TO CARRY OUT AN EDUCATIONAL CHOICE
2 PROGRAM FOR CUSTOMERS TO DO ALL OF THE FOLLOWING:

3 (A) INFORM CUSTOMERS OF THE CHANGES IN THE PROVISION OF NAT-
4 URAL GAS SERVICE, INCLUDING, BUT NOT LIMITED TO, THE AVAILABILITY
5 OF ALTERNATIVE GAS SUPPLIERS.

6 (B) PROVIDE ASSISTANCE TO CUSTOMERS IN UNDERSTANDING AND
7 USING THE INFORMATION TO MAKE REASONABLY INFORMED CHOICES ABOUT
8 WHICH SERVICE TO PURCHASE AND FROM WHOM TO PURCHASE IT.

9 (2) THE COMMISSION MAY COMBINE THE FUNDING MECHANISM AND
10 EDUCATIONAL CHOICE PROGRAM ESTABLISHED BY THIS SECTION WITH THE
11 FUNDING MECHANISM AND EDUCATIONAL CHOICE PROGRAM ESTABLISHED BY
12 SECTION 10R(2).

13 SEC. 9G. THE COMMISSION MAY IMPLEMENT THIS ACT THROUGH THE
14 PROMULGATION OF RULES OR THE ISSUANCE OF ORDERS.