

# HOUSE BILL No. 6522

November 13, 2002, Introduced by Rep. Bradstreet 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,"

by amending sections 10 and 10a (MCL 460.10 and 460.10a), as added by 2000 PA 141.

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

1       Sec. 10. (1) Sections 10 through ~~10bb~~ 10CC shall be known  
2 and may be cited as the "customer choice and electricity reli-  
3 ability act".

4       (2) The purpose of sections 10a through ~~10bb~~ 10CC is to do  
5 all of the following:

6       (a) To ensure that all retail customers in this state of  
7 electric power have a choice of electric suppliers.

8       (b) To allow and encourage the Michigan public service com-  
9 mission to foster competition in this state in the provision of  
10 electric supply and maintain regulation of electric supply for  
11 customers who continue to choose supply from incumbent electric  
12 utilities.

13       (c) To encourage the development and construction of mer-  
14 chant plants, which will diversify the ownership of electric gen-  
15 eration in this state.

16       (d) To ensure that all persons in this state are afforded  
17 safe ~~—~~ AND reliable electric power at a reasonable rate.

18       (e) To improve the opportunities for economic development in  
19 this state and to promote financially healthy and competitive  
20 utilities in this state.

21       (3) Subsection (2) does not apply after December 31, 2003.

22       Sec. 10a. (1) ~~No later than January 1, 2002, the~~ THE com-  
23 mission shall issue orders establishing the rates, terms, and  
24 conditions of service that allow all retail customers of an elec-  
25 tric utility or provider to choose an alternative electric  
26 supplier. The orders shall provide for full recovery of a

1 utility's net stranded costs and implementation costs as  
2 determined by the commission.

3 (2) The commission shall issue orders establishing a licens-  
4 ing procedure for all alternative electric suppliers. ~~To ensure~~  
5 ~~adequate service to customers in this state, the~~ THE commission  
6 shall require that an alternative electric supplier maintain an  
7 office within ~~Michigan, shall assure that an alternative elec-~~  
8 ~~tric supplier has~~ THIS STATE, HAVE the necessary financial, man-  
9 agerial, and technical capabilities, ~~shall require that an~~  
10 ~~alternative electric supplier~~ maintain records ~~which~~ THAT the  
11 commission considers necessary, and ~~shall ensure an alternative~~  
12 ~~electric supplier's accessibility~~ MAKE THOSE RECORDS ACCESSIBLE  
13 to the commission, ~~to~~ consumers, and ~~to~~ electric utilities in  
14 this state. The ~~commission also shall require~~ alternative  
15 electric suppliers ~~to agree that they will~~ SHALL collect and  
16 remit to local units of government all applicable users, sales,  
17 and use taxes. An alternative electric supplier is not required  
18 to obtain any certificate, license, or authorization from the  
19 commission other than as required by this act.

20 (3) The commission shall issue orders to ensure that custom-  
21 ers in this state are not switched to another supplier or billed  
22 for any services without the customer's consent.

23 (4) ~~Within 180 days after the effective date of the amenda-~~  
24 ~~tory act that added this section, the~~ THE commission shall  
25 establish a code of conduct that shall apply to all electric  
26 utilities. The code of conduct shall include, but is not limited  
27 to, measures to prevent cross-subsidization, information sharing,

1 and preferential treatment, between a utility's regulated and  
2 unregulated services, whether those services are provided by the  
3 utility or the utility's affiliated entities. The code of con-  
4 duct established under this subsection shall also be applicable  
5 to electric utilities and alternative electric suppliers consis-  
6 tent with section 10, this section, and sections 10b through  
7 ~~10bb~~ 10CC.

8 (5) The orders issued by the commission before ~~the effec-~~  
9 ~~tive date of the amendatory act that added this section~~ JUNE 5,  
10 2000 that allow customers of an electric utility to choose an  
11 alternative electric supplier, including orders that determine  
12 and authorize recovery of net stranded costs and implementation  
13 costs and that confirm any voluntary commitments of electric  
14 utilities, are in compliance with this act and enforceable by the  
15 commission. An electric utility that has not had voluntary com-  
16 mitments to provide customer choice previously approved by orders  
17 of the commission shall file a restructuring plan to allow cus-  
18 tomers to choose an alternative electric supplier no later than  
19 the date ordered by the commission. The plan shall propose a  
20 methodology to determine the electric utility's net stranded  
21 costs and implementation costs.

22 (6) This act does not prohibit or limit the right of a  
23 person to obtain self-service power, and it does not impose a  
24 transition, implementation, exit fee, or any other similar charge  
25 on self-service power. A person using self-service power is not  
26 an electric supplier, electric utility, or a person conducting an

1 electric utility business. As used in this subsection,

2 "self-service power" means any of the following:

3 (a) Electricity generated and consumed at an industrial site  
4 or contiguous industrial site or single commercial establishment  
5 or single residence without the use of an electric utility's  
6 transmission and distribution system.

7 (b) Electricity generated primarily by the use of by-product  
8 fuels, including waste water solids, and the electricity is con-  
9 sumed as part of a contiguous facility, with the use of an elec-  
10 tric utility's transmission and distribution system, but only if  
11 the point or points of receipt of the power within the facility  
12 are not greater than 3 miles distant from the point of  
13 generation.

14 (c) A site or facility with load existing on ~~the effective~~  
15 ~~date of the amendatory act that added this section~~ JUNE 5, 2000  
16 that is divided by an inland body of water or by a public high-  
17 way, road, or street but that otherwise meets this definition  
18 meets the contiguous requirement of this subdivision regardless  
19 of whether self-service power was being generated on ~~the effec-~~  
20 ~~tive date of the amendatory act that added this section~~ JUNE 5,  
21 2000.

22 (d) A commercial or industrial facility or single residence  
23 that meets the requirements of subdivision (a) or (b) meets this  
24 definition whether or not the generation facility is owned by an  
25 entity different from the owner of the commercial or industrial  
26 site or single residence.

(7) This act does not prohibit or limit the right of a person to engage in affiliate wheeling and does not impose a transition, implementation, exit fee, or any other similar charge on a person engaged in affiliate wheeling. As used in this section:

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

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

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

(ii) Capable of being supplied by a person's cogeneration capacity within this state that has had since January 1, 1996 a rated capacity of 15 megawatts or less, was placed in service before December 31, 1975, and has been in continuous service

1 since that date. A person engaging in affiliate wheeling is not  
2 an electric supplier, an electric utility, or conducting an elec-  
3 tric utility business when a person engages in affiliate  
4 wheeling.

5 (8) The rights of parties to existing contracts and agree-  
6 ments in effect as of January 1, 2000 between electric utilities  
7 and qualifying facilities, including the right to have the  
8 charges recovered from the customers of an electric utility, or  
9 its successor, shall not be abrogated, increased, or diminished  
10 by this act, nor shall the receipt of any proceeds of the securi-  
11 tization bonds by an electric utility be a basis for any regula-  
12 tory disallowance. Further, any securitization or financing  
13 order issued by the commission that relates to a qualifying  
14 facility's power purchase contract shall fully consider that  
15 qualifying facility's legal and financial interests.

16 ~~(9) The commission shall, after a contested case proceed-~~  
17 ~~ing, issue annually an order approving for each electric utility~~  
18 ~~a true-up adjustment to reconcile any overcollections or under-~~  
19 ~~collections of the preceding 12 months to ensure the recovery of~~  
20 ~~all amounts of net stranded costs. The rates for customers~~  
21 ~~remaining with an incumbent electric utility will not be affected~~  
22 ~~by the true-up process under this subsection. The commission~~  
23 ~~shall review the electric utility's stranded cost recovery~~  
24 ~~charges and securitization charges implemented for the preceding~~  
25 ~~12 months, and adjust the stranded cost recovery charge, by way~~  
26 ~~of supplemental surcharges or credits, to allow the netting of~~  
27 ~~stranded costs.~~

1       (9) ~~(10)~~ The commission shall consider the reasonableness  
2 and appropriateness of various methods to determine net stranded  
3 costs, including, but not limited to, all of the following:

4       (a) Evaluating the relationship of market value to the net  
5 book value of generation assets and purchased power contracts.

6       (b) Evaluating net stranded costs based on the market price  
7 of power in relation to prices assumed by the commission in prior  
8 orders.

9       (c) Any other method the commission considers appropriate.

10       ~~(11) The true-up adjustment adopted under subsection (9)~~  
11 ~~shall not result in a modification to the securitization charge.~~  
12 ~~The commission shall not adjust or change in any manner securiti-~~  
13 ~~zation charges authorized by the commission in a financing order~~  
14 ~~issued under section 10i as a result of its review and any action~~  
15 ~~taken under subsection (9).~~

16       (10) ~~(12)~~ After the time period described in section  
17 10d(2), the rates for retail customers that remain with or leave  
18 and later return to the incumbent electric utility shall be  
19 determined in the same manner as the rates were determined before  
20 the effective date of this section.