

# HOUSE BILL No. 6118

August 4, 2004, Introduced by Reps. Kolb, Meisner, Jamnick, Bieda, Tobocman, Gillard, Lipsey and Farrah 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 section 10d (MCL 460.10d), as amended by 2002 PA 609.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 10d. (1) Except as otherwise provided under  
2 subsection (3) or unless otherwise reduced by the commission  
3 under subsection (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  
10 subsection become effective on June 5, 2000 and remain in effect  
11 until December 31, 2003 and all other electric retail rates of an  
12 electric utility with 1,000,000 or more retail customers  
13 authorized or in effect as of May 1, 2000 shall remain in effect  
14 until December 31, 2003.

15       (2) On and after December 31, 2003, rates for an electric  
16 utility with 1,000,000 or more retail customers in this state as  
17 of May 1, 2000 shall not be increased until the earlier of  
18 December 31, 2013 or until the commission determines, after  
19 notice and hearing, that the utility meets the market test under  
20 section 10f and has completed the transmission expansion provided  
21 for in the plan required under section 10v. The rates for  
22 commercial or manufacturing customers of an electric utility with  
23 1,000,000 or more retail customers with annual peak demands of  
24 less than 15 kilowatts shall not be increased before January 1,  
25 2005. There shall be no cost shifting from customers with capped  
26 rates to customers without capped rates as a result of this  
27 section. In no event shall residential rates be increased before

1 January 1, 2006 above the rates established under subsection  
2 (1).

3 (3) Subsections (1) and (2) do not apply to rates or charges  
4 authorized by the commission under subsection (13).

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

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

27 (6) Except for savings assigned to the low-income and energy

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

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

22 (a) To provide shut-off and other protection for low-income  
23 customers.

24 (b) To create the Michigan energy bank for the future to  
25 promote energy efficiency. The program would be administered by  
26 the commission and would make loans and grants to qualified  
27 applicants to develop efficient energy sources, reduce energy

1 **use, and improve efficiency.**

2 (8) Except as provided under subsection (3), until the end of  
3 the period described in subsection (2), the commission shall not  
4 authorize any fees or charges that will cause the residential  
5 rate reduction required under subsection (1) to be less than 5%.

6 (9) If an electric utility serving less than 1,000,000 retail  
7 customers in this state as of May 1, 2000 issues securitization  
8 bonds as allowed under this act, it shall have the same rights,  
9 duties, and obligations under this section as an electric utility  
10 serving 1,000,000 or more retail customers in this state as of  
11 May 1, 2000.

12 (10) The commission shall take the necessary steps to ensure  
13 that all electrical power generating facilities in this state  
14 comply with all rules, regulations, and standards of the federal  
15 environmental protection agency regarding mercury emissions.

16 (11) A covered utility may apply to the commission to recover  
17 enhanced security costs for an electric generating facility  
18 through a security recovery factor. If the commission action  
19 under subsection (13) is approval of a security recovery factor,  
20 the covered utility may recover those enhanced security costs.

21 (12) The commission shall require that notice of the  
22 application filed under subsection (11) be published by the  
23 covered utility within 30 days from the date the application was  
24 filed. The initial hearing by the commission shall be held  
25 within 20 days of the date the notice was published in newspapers  
26 of general circulation in the service territory of the covered  
27 utility.

1       (13) The commission may issue an order approving, rejecting,  
2 or modifying the security recovery factor. If the commission  
3 issues an order approving a security recovery factor, that order  
4 shall be issued within 120 days of the initial hearing required  
5 under subsection (12). In determining the security recovery  
6 factor, the commission shall only include costs that the  
7 commission determines are reasonable and prudent and that are  
8 jurisdictionally assigned to retail customers of the covered  
9 utility in this state. The costs included shall be net of any  
10 proceeds that have been or will be received from another source,  
11 including, but not limited to, any applicable insurance  
12 settlements received by the covered utility or any grants or  
13 other emergency relief from federal, state, or local governmental  
14 agencies for the purpose of defraying enhanced security costs.  
15 In its order, the commission shall designate a period for  
16 recovery of enhanced security costs, including a reasonable  
17 return on the unamortized balance, over a period not to exceed 5  
18 years. The security recovery factor shall not be less than  
19 zero.

20       (14) ~~Within 60 days of the effective date of the amendatory~~  
21 ~~act that added this subsection, the~~ **The** commission shall by  
22 order prescribe the form for the filing of an application for a  
23 security recovery factor under subsection (11). If the  
24 commission or its designee determines that a filing is  
25 incomplete, it shall notify the covered utility within 10 days of  
26 the filing.

27       (15) Records or other information supplied by the covered

1 utility in an application for recovery of security costs under  
2 subsection (11) that describe security measures, including, but  
3 not limited to, emergency response plans, risk planning  
4 documents, threat assessments, domestic preparedness strategies,  
5 and other plans for responding to acts of terrorism are not  
6 subject to the freedom of information act, 1976 PA 442,  
7 MCL 15.231 to 15.246, and shall be treated as confidential by the  
8 commission.

9 (16) The commission shall issue protective orders as are  
10 necessary to protect the information found by the commission to  
11 be confidential under this section.

12 (17) As used in this section:

13 (a) "Act of terrorism" means a willful and deliberate act  
14 that is all of the following:

15 (i) An act that would be a violent felony under the laws of  
16 this state, whether or not committed in this state.

17 (ii) An act that the person knows or has reason to know is  
18 dangerous to human life.

19 (iii) An act that is intended to intimidate or coerce a  
20 civilian population or influence or affect the conduct of  
21 government or a unit of government through intimidation or  
22 coercion.

23 (b) "Covered utility" means an electric utility subject to  
24 the rate freeze provisions of subsection (1), the rate cap  
25 provisions of subsection (2), or the rate provisions of  
26 commission orders in case numbers U-11181-R and U-12204.

27 (c) "Enhanced security costs" means reasonable and prudent

1 costs of new and enhanced security measures incurred before  
2 January 1, 2006 for an electric generating facility by a covered  
3 utility that are required by federal or state regulatory security  
4 requirements issued after September 11, 2001 or determined to be  
5 necessary by the commission to provide reasonable security from  
6 an act of terrorism. Enhanced security costs include increases  
7 in the cost of insurance that are attributable to an increased  
8 terror related risk and the costs of maintaining or restoring  
9 electric service as the result of an act of terrorism.

10 (d) "Security recovery factor" means an unbundled charge for  
11 all retail customers, except for customers of alternative  
12 electric suppliers, to recover enhanced security costs that have  
13 been approved by the commission.