

Act No. 170  
Public Acts of 2014  
Approved by the Governor  
June 17, 2014  
Filed with the Secretary of State  
June 17, 2014  
EFFECTIVE DATE: June 17, 2014

**STATE OF MICHIGAN  
97TH LEGISLATURE  
REGULAR SESSION OF 2014**

Introduced by Rep. Shirkey

# **ENROLLED HOUSE BILL No. 5612**

AN ACT 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 section 6m (MCL 460.6m), as added by 1982 PA 304.

*The People of the State of Michigan enact:*

Sec. 6m. (1) The utility consumer representation fund is created as a special fund. The state treasurer shall be the custodian of the fund and shall maintain a separate account of the money in the fund. The money in the fund shall be invested in the bonds, notes, and other evidences of indebtedness issued or insured by the United States government and its agencies, and in prime commercial paper. The state treasurer shall release money from the fund, including interest earned, in the manner and at the time directed by the board.

(2) Except as provided in subsection (6), each energy utility that has applied to the public service commission for the initiation of an energy cost recovery proceeding shall remit to the fund before or upon filing its initial application for that proceeding, and on or before the first anniversary of that application, an amount of money determined by the board in the following manner:

(a) In the case of an energy utility company serving at least 100,000 customers in this state, an amount that bears to \$300,000.00, multiplied by a factor as provided in subsection (4), the same proportion as the company's jurisdictional 1981 total operating revenues, as stated in its annual report, bear to the jurisdictional 1981 total operating revenues of all energy utility companies serving at least 100,000 customers in this state. This amount shall be made available by the board for use by the attorney general for the purposes described in subsection (17).

(b) In the case of an energy utility company serving at least 100,000 residential customers in this state, an amount that bears to \$300,000.00, multiplied by a factor as provided in subsection (4), the same proportion as the company's jurisdictional 1981 gross revenues from residential tariff sales bear to the jurisdictional 1981 gross revenues from residential tariff sales of all energy utility companies serving at least 100,000 residential customers in this state. This amount shall be used for grants under subsection (11).

(3) Payments made by an energy utility under subsection (2)(a) are operating expenses of the utility that the public service commission shall permit the utility to charge to its customers. Payments made by a utility under subsection (2)(b) are operating expenses of the utility that the public service commission shall permit the utility to charge to its residential customers.

(4) For purposes of subsection (2), the factor shall be set by the board at a level not to exceed the percentage increase in the index known as the consumer price index for urban wage earners and clerical workers, select areas, all items indexed, for the Detroit standard metropolitan statistical area, compiled by the bureau of labor statistics of the United States department of labor, or any successor agency, that has occurred between January 1981 and January of the year in which the payment is required to be made. In the event that more than 1 such index is compiled, the index yielding the largest payment shall be the maximum allowable factor. The board shall advise utilities of the factor.

(5) On or before the second and succeeding anniversaries of its initial application for an energy cost recovery proceeding, an energy utility shall remit to the board amounts equal to 5/6 of the amounts required under subsection (2).

(6) The remittance requirements of this section do not apply to an energy utility organized as a cooperative corporation under sections 98 to 109 of 1931 PA 327, MCL 450.98 to 450.109, and grants from the fund shall not be used to participate in an energy cost recovery proceeding primarily affecting such a utility.

(7) In the event of a dispute between the board and an energy utility about the amount of payment due, the utility shall pay the undisputed amount and, if the utility and the board cannot agree, the board may initiate civil action in the circuit court for Ingham county for recovery of the disputed amount. The commission shall not accept or take action on an application for an energy cost recovery proceeding from an energy utility subject to this section that has not fully paid undisputed remittances required by this section.

(8) The commission shall not accept or take action on an application for an energy cost recovery proceeding from an energy utility subject to this section until 30 days after it has been notified by the board or the director of the energy administration, if section 6/(13) is applicable, that the board or the director is ready to process grant applications, will transfer funds payable to the attorney general immediately upon the receipt of those funds, and will within 30 days approve grants and remit funds to qualified grant applicants.

(9) The board may accept a gift or grant from any source to be deposited in the fund if the conditions or purposes of the gift or grant are consistent with this section.

(10) The costs of operation and expenses incurred by the board in performing its duties under this section and section 6/, including remuneration to board members, shall be paid from the fund. A maximum of 5% of the annual receipts of the fund may be budgeted and used to pay expenses other than grants made under subsection (11).

(11) The net grant proceeds shall finance a grant program from which the board may award to an applicant an amount that the board determines shall be used for the purposes set forth in this section.

(12) The board shall create and make available to applicants an application form. Each applicant shall indicate on the application how the applicant meets the eligibility requirements provided for in this section and how the applicant proposes to use a grant from the fund to participate in 1 or more proceedings as authorized in subsection (17) that have been or are expected to be filed. The board shall receive an application requesting a grant from the fund only from a nonprofit organization or a unit of local government in this state. The board shall consider only applications for grants containing proposals that are consistent with subsections (17) and (18) and that serve the interests of residential utility consumers. For purposes of making grants, the board may consider protection of the environment, energy conservation, the creation of employment and a healthy economy in the state, and the maintenance of adequate energy resources. The board shall not consider an application that primarily benefits the applicant or a service provided or administered by the applicant. The board shall not consider an application from a nonprofit organization if 1 of the organization's principal interests or unifying principles is the welfare of a utility or its investors or employees, or the welfare of 1 or more businesses or industries, other than farms not owned or operated by a corporation, that receive utility service ordinarily and primarily for use in connection with the profit-seeking manufacture, sale, or distribution of goods or services. Mere ownership of securities by a nonprofit organization or its members does not disqualify an application submitted by that organization.

(13) The board shall encourage the representation of the interests of identifiable types of residential utility consumers whose interests may differ, including various social and economic classes and areas of the state, and if necessary, may make grants to more than 1 applicant whose applications are related to a similar issue to achieve this type of representation. In addition, the board shall consider and balance the following criteria in determining whether to make a grant to an applicant:

(a) Evidence of the applicant's competence, experience, and commitment to advancing the interests of residential utility consumers.

(b) In the case of a nongovernmental applicant, the extent to which the applicant is representative of or has a previous history of advocating the interests of citizens, especially residential utility consumers.

(c) The anticipated effect of the proposal contained in the application on residential utility consumers, including the immediate and long-term impacts of the proposal.

(d) Evidence demonstrating the potential for continuity of effort and the development of expertise in relation to the proposal contained in the application.

(e) The uniqueness or innovativeness of an applicant's position or point of view, and the probability and desirability of that position or point of view prevailing.

(14) As an alternative to choosing between 2 or more applications that have similar proposals, the board may invite 2 or more of the applicants to file jointly and award a grant to be managed cooperatively.

(15) The board shall make disbursements pursuant to a grant in advance of an applicant's proposed actions as set forth in the application if necessary to enable the applicant to initiate, continue, or complete the proposed actions.

(16) Any notice to utility customers and the general public of hearings or other state proceedings in which grants from the fund may be used shall contain a notice of the availability of the fund and the address of the board.

(17) The annual receipts and interest earned, less administrative costs, may be used only for participation in administrative and judicial proceedings under sections 6h, 6i, 6j, and 6k, in federal administrative and judicial proceedings that directly affect the energy costs paid by Michigan energy utilities, and in cost allocation and rate design proceedings initiated under section 11(3). Amounts that have been in the fund more than 12 months may be retained in the fund for future grants, or may be returned to energy utility companies or used to offset their future remittances in proportion to their previous remittances to the fund, as the board determines will best serve the interests of consumers.

(18) The following conditions shall apply to all grants from the fund:

(a) Disbursements from the fund may be used only to advocate the interests of energy utility customers or classes of energy utility customers, and not for representation of merely individual interests.

(b) The board shall attempt to maintain a reasonable relationship between the payments from a particular energy utility and the benefits to consumers of that utility.

(c) The board shall coordinate the funded activities of grant recipients with those of the attorney general to avoid duplication of effort, to promote supplementation of effort, and to maximize the number of hearings and proceedings with intervenor participation.

(19) A recipient of a grant under subsection (11) may use the grant only for the advancement of the proposed action approved by the board, including, but not limited to, costs of staff, hired consultants and counsel, and research.

(20) A recipient of a grant under subsection (11) shall file a report with the board within 90 days following the end of the year or a shorter period for which the grant is made. The report shall be made in a form prescribed by the board and is subject to audit by the board. The report shall include the following information:

(a) An account of all grant expenditures made by the grant recipient. Expenditures shall be reported within the following categories:

(i) Employee and contract for services costs.

(ii) Costs of materials and supplies.

(iii) Filing fees and other costs required to effectively represent residential utility consumers as provided in this section.

(b) Any additional information concerning uses of the grant required by the board.

(21) The attorney general shall file a report with the house and senate committees on appropriations within 90 days following the end of each fiscal year. The report shall include the following information:

(a) An account of all expenditures made by the attorney general of funds received under this section. Expenditures shall be reported within the following categories:

(i) Employee and contract for services costs.

(ii) Costs of materials and supplies.

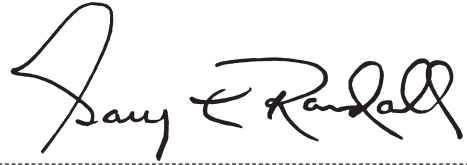
(iii) Filing fees and other costs required to effectively represent utility consumers as provided in this section.

(b) Any additional information concerning uses of the funds received under this section required by the committees.

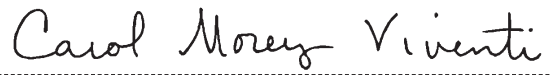
(22) On or before July 1 of each calendar year, the board shall submit a detailed report to the legislature regarding the discharge of duties and responsibilities under this section and section 6l during the preceding calendar year.

(23) By October 13, 1985, and at 3-year intervals thereafter, a senate committee chosen by the majority leader of the senate and a house committee chosen by the speaker of the house of representatives shall review the relationship between costs and benefits resulting from this section and sections 6h through 6l, and may recommend changes to the legislature.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor