

# HOUSE BILL No. 4708

June 7, 2017, Introduced by Reps. Reilly, Kelly, Glenn, Lucido, Runestad, Cole, Howell, Robinson and Dianda and referred to the Committee on Energy Policy.

A bill 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 10a (MCL 460.10a), as amended by 2016 PA 341.

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

1       Sec. 10a. (1) The commission shall issue orders establishing  
2 the rates, terms, and conditions of service that allow retail  
3 customers to take service from an alternative electric supplier.

4 The orders ~~shall~~ **MUST** do all of the following:

5       (a) Except as otherwise provided in this section, provide that  
6 no more than 10% of an electric utility's average weather-adjusted  
7 retail sales for the preceding calendar year may take service from  
8 an alternative electric supplier at any time.

9       (b) Set forth procedures necessary to allocate the amount of  
10 load that will be allowed to be served by alternative electric  
11 suppliers, through the use of annual energy allotments awarded on a  
12 calendar year basis. If the sales of a utility are less in a  
13 subsequent year or if the energy usage of a customer receiving  
14 electric service from an alternative electric supplier exceeds its  
15 annual energy allotment for that facility, that customer shall not  
16 be forced to purchase electricity from a utility, but may purchase  
17 electricity from an alternative electric supplier for that facility  
18 during that calendar year.

19       (c) Notwithstanding any other provision of this section,  
20 provide that, if the commission determines that less than 10% of an  
21 electric utility's average weather-adjusted retail sales for the  
22 preceding calendar year is taking service from alternative electric  
23 suppliers, the commission shall set as a cap on the weather-  
24 adjusted retail sales that may take service from an alternative  
25 electric supplier, for the current calendar year and 5 subsequent  
26 calendar years, the percentage amount of weather-adjusted retail  
27 sales for the preceding calendar year rounded up to the nearest

1 whole percentage. If the cap is not adjusted for 6 consecutive  
2 calendar years, the cap shall return to 10% in the calendar year  
3 following that sixth consecutive calendar year. If a utility that  
4 serves less than 200,000 customers in this state has not had any  
5 load served by an alternative electric supplier in the preceding 4  
6 years, the commission shall adjust the cap in accordance with this  
7 provision for no more than 2 consecutive calendar years.

8 (d) Notwithstanding any other provision of this section,  
9 customers seeking to expand usage at a facility that has been  
10 continuously served through an alternative electric supplier since  
11 April 1, 2008 ~~shall be permitted to~~ **MAY** purchase electricity from  
12 an alternative electric supplier for both the existing and any  
13 expanded load at that facility as well as any new facility  
14 constructed or acquired after October 6, 2008 that is similar in  
15 nature if the customer owns more than 50% of the new facility.

16 **(E) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A**  
17 **PUBLIC SCHOOL MAY PURCHASE ALL OR ANY PORTION OF ITS ELECTRICITY**  
18 **FROM AN ALTERNATIVE ELECTRIC SUPPLIER, REGARDLESS OF WHETHER THE**  
19 **SALES EXCEED 10% OF THE SERVING ELECTRIC UTILITY'S AVERAGE WEATHER-**  
20 **ADJUSTED RETAIL SALES. A PUBLIC SCHOOL PURCHASING ELECTRICITY FROM**  
21 **AN ALTERNATIVE ELECTRIC SUPPLIER UNDER THIS SUBDIVISION DOES NOT**  
22 **COUNT TOWARD THE 10% LIMIT SET FORTH IN SUBDIVISION (A). AS USED IN**  
23 **THIS SUBDIVISION, "PUBLIC SCHOOL" MEANS THAT TERM AS DEFINED IN**  
24 **SECTION 5 OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.5.**

25 **(F) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A**  
26 **PUBLIC SCHOOL ACADEMY OR NONPUBLIC SCHOOL MAY PURCHASE ALL OR ANY**  
27 **PORTION OF ITS ELECTRICITY FROM AN ALTERNATIVE ELECTRIC SUPPLIER,**

1 REGARDLESS OF WHETHER THE SALES EXCEED 10% OF THE SERVING ELECTRIC  
2 UTILITY'S AVERAGE WEATHER-ADJUSTED RETAIL SALES. A PUBLIC SCHOOL  
3 ACADEMY OR NONPUBLIC SCHOOL PURCHASING ELECTRICITY FROM AN  
4 ALTERNATIVE ELECTRIC SUPPLIER UNDER THIS SUBDIVISION DOES NOT COUNT  
5 TOWARD THE 10% LIMIT SET FORTH IN SUBDIVISION (A). AS USED IN THIS  
6 SUBDIVISION, "PUBLIC SCHOOL ACADEMY" AND "NONPUBLIC SCHOOL" MEAN  
7 THOSE TERMS AS DEFINED IN SECTION 5 OF THE REVISED SCHOOL CODE,  
8 1976 PA 451, MCL 380.5.

9 (G) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A  
10 STATE PUBLIC UNIVERSITY, COMMUNITY COLLEGE, OR INDEPENDENT  
11 NONPROFIT DEGREE-GRANTING COLLEGE OR UNIVERSITY LOCATED IN THIS  
12 STATE MAY PURCHASE ALL OR ANY PORTION OF ITS ELECTRICITY FROM AN  
13 ALTERNATIVE ELECTRIC SUPPLIER, REGARDLESS OF WHETHER THE SALES  
14 EXCEED 10% OF THE SERVING ELECTRIC UTILITY'S AVERAGE WEATHER-  
15 ADJUSTED RETAIL SALES. A STATE PUBLIC UNIVERSITY, COMMUNITY  
16 COLLEGE, OR INDEPENDENT NONPROFIT DEGREE-GRANTING COLLEGE OR  
17 UNIVERSITY PURCHASING ELECTRICITY FROM AN ALTERNATIVE ELECTRIC  
18 SUPPLIER UNDER THIS SUBDIVISION DOES NOT COUNT TOWARD THE 10% LIMIT  
19 SET FORTH IN SUBDIVISION (A). AS USED IN THIS SUBDIVISION:

20 (i) "COMMUNITY COLLEGE" MEANS THAT TERM AS DEFINED IN SECTION  
21 1311B OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1311B.

22 (ii) "STATE PUBLIC UNIVERSITY" MEANS THAT TERM AS DEFINED IN  
23 SECTION 1311B OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL  
24 380.1311B.

25 (H) ~~(e)~~ Provide that for an existing facility that is  
26 receiving 100% of its electric service from an alternative electric  
27 supplier on or after ~~the effective date of the amendatory act that~~

~~added section 6t, APRIL 20, 2017,~~ the owner of that facility may purchase electricity from an alternative electric supplier, regardless of whether the sales exceed 10% of the servicing electric utility's average weather-adjusted retail sales, for both the existing electric choice load at that facility and any expanded load arising after ~~the effective date of the amendatory act that added section 6t APRIL 20, 2017~~ at that facility as well as any new facility that is similar in nature to the existing facility, that is constructed or acquired by the customer on a site contiguous to the existing site or on a site that would be contiguous to an existing site in the absence of an existing public right-of-way, and the customer owns more than 50% of that facility. This subdivision does not authorize or permit an existing facility being served by an electric utility on standard tariff service on ~~the effective date of the amendatory act that added section 6t APRIL 20, 2017~~ to be served by an alternative electric supplier.

(I) ~~(f)~~ Notwithstanding any other provision of this section, any customer operating an iron ore mining facility, iron ore processing facility, or both, located in the Upper Peninsula of this state, may purchase all or any portion of its electricity from an alternative electric supplier, regardless of whether the sales exceed 10% of the serving electric utility's average weather-adjusted retail sales, if that customer is in compliance with the terms of a settlement agreement requiring it to facilitate construction of a new power plant located in the Upper Peninsula of this state. A customer described in this subdivision and the alternative electric supplier that provides electric service to

1 that customer are not subject to the requirements contained in ~~the~~  
2 ~~amendatory act that added section 6t-2016 PA 341~~ and any  
3 administrative regulations adopted under that amendatory act. The  
4 commission's orders establishing rates, terms, and conditions of  
5 retail access service issued before ~~the effective date of the~~  
6 ~~amendatory act that added section 6t-2016 PA 341~~ **APRIL 20, 2017** remain in  
7 effect with regard to retail open access provided under this  
8 subdivision.

9 **(J)** ~~(g)~~ Provide that a customer on an enrollment queue waiting  
10 to take retail open access service as of December 31, 2015 shall  
11 continue on the queue and an electric utility shall add a new  
12 customer to the queue if the customer's prospective alternative  
13 electric supplier submits an enrollment request to the electric  
14 utility. A customer shall be removed from the queue by notifying  
15 the electric utility electronically or in writing.

16 **(K)** ~~(h)~~ Require each electric utility to file with the  
17 commission not later than January 15 of each year a rank-ordered  
18 queue of all customers awaiting retail open access service under  
19 subdivision ~~(g)~~ **(J)**. The filing must include the estimated amount  
20 of electricity used by each customer awaiting retail open access  
21 service under subdivision ~~(g)~~ **(J)**. All customer-specific  
22 information contained in the filing under this subdivision is  
23 exempt from release under the freedom of information act, 1976 PA  
24 442, MCL 15.231 to 15.246, and the commission shall treat that  
25 information as confidential information. The commission may release  
26 aggregated information as part of its annual report as long as  
27 individual customer information or data are not released.

1           (1) ~~(i)~~ Provide that if the prospective alternative electric  
2 supplier of a customer next on the queue awaiting retail open  
3 access service is notified after ~~the effective date of the~~  
4 ~~amendatory act that added section 6t~~ **APRIL 20, 2017** that less than  
5 10% of an electric utility's average weather-adjusted retail sales  
6 for the preceding calendar year are taking service from an  
7 alternative electric supplier and that the amount of electricity  
8 needed to serve the customer's electric load is available under the  
9 10% allocation, the customer may take service from an alternative  
10 electric supplier. The customer's prospective alternative electric  
11 supplier shall notify the electric utility within 5 business days  
12 after being notified whether the customer will take service from an  
13 alternative electric supplier. If the customer's prospective  
14 alternative electric supplier fails to notify the utility within 5  
15 business days or if the customer chooses not to take retail open  
16 access service, the customer shall be removed from the queue of  
17 those awaiting retail open access service. The customer may  
18 subsequently be added to the queue as a new customer under the  
19 provisions of subdivision ~~(g)~~. **(J)**. A customer that elects to take  
20 service from an alternative electric supplier under this  
21 subdivision ~~shall~~ **MUST** become service-ready under rules established  
22 by the commission and the utility's approved retail open access  
23 service tariffs.

24           **(M)** ~~(j)~~ Provide that the commission shall ensure if a customer  
25 is notified that the customer's service from an alternative  
26 electric supplier will be terminated or restricted as a result of  
27 the alternative electric supplier limiting service in this state,

1 the customer has 60 days to acquire service from a different  
2 alternative electric supplier. If the customer is a public entity,  
3 the time to acquire services from a different alternative electric  
4 supplier ~~shall~~**MUST** not be less than 180 days.

5 (N) ~~(K)~~ Provide that as a condition of licensure, an  
6 alternative electric supplier meets all of the requirements of this  
7 act.

8 (2) The commission shall issue orders establishing a licensing  
9 procedure for all alternative electric suppliers. To ensure  
10 adequate service to customers in this state, the commission shall  
11 require that an alternative electric supplier maintain an office  
12 within this state, shall assure that an alternative electric  
13 supplier has the necessary financial, managerial, and technical  
14 capabilities, shall require that an alternative electric supplier  
15 maintain records that the commission considers necessary, and shall  
16 ensure an alternative electric supplier's accessibility to the  
17 commission, to consumers, and to electric utilities in this state.  
18 The commission also shall require alternative electric suppliers to  
19 agree that they will collect and remit to local units of government  
20 all applicable users, sales, and use taxes. An alternative electric  
21 supplier is not required to obtain any certificate, license, or  
22 authorization from the commission other than as required by this  
23 act.

24 (3) The commission shall issue orders to ensure that customers  
25 in this state are not switched to another supplier or billed for  
26 any services without the customer's consent.

27 (4) This act does not prohibit or limit the right of a person



1 to obtain self-service power and does not impose a transition,  
2 implementation, exit fee, or any other similar charge on self-  
3 service power. A person using self-service power is not an electric  
4 supplier, electric utility, or a person conducting an electric  
5 utility business. As used in this subsection, "self-service power"  
6 means any of the following:

7 (a) Electricity generated and consumed at an industrial site  
8 or contiguous industrial site or single commercial establishment or  
9 single residence without the use of an electric utility's  
10 transmission and distribution system.

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

17 (c) A site or facility with load existing on June 5, 2000 that  
18 is divided by an inland body of water or by a public highway, road,  
19 or street but that otherwise meets this definition meets the  
20 contiguous requirement of this subdivision regardless of whether  
21 self-service power was being generated on June 5, 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.

27 (5) This act does not prohibit or limit the right of a person

1 to engage in affiliate wheeling and does not impose a transition,  
2 implementation, exit fee, or any other similar charge on a person  
3 engaged in affiliate wheeling.

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

15 (7) A customer that elects to receive service from an  
16 alternative electric supplier may subsequently provide notice to  
17 the electric utility of the customer's desire to receive standard  
18 tariff service from the electric utility under procedures approved  
19 by the commission.

20 (8) The commission shall authorize rates that will ensure that  
21 an electric utility that offered retail open access service from  
22 2002 through October 6, 2008 fully recovers its restructuring costs  
23 and any associated accrued regulatory assets. This includes, but is  
24 not limited to, implementation costs, stranded costs, and costs  
25 authorized under section 10d(4) as it existed before October 6,  
26 2008, that have been authorized for recovery by the commission in  
27 orders issued before October 6, 2008. The commission shall approve

1 surcharges that will ensure full recovery of all such costs by  
2 October 6, 2013.

3 (9) As used in subsections (1) and (7):

4 (a) "Customer" means the building or facilities served through  
5 a single existing electric billing meter and does not mean the  
6 person, corporation, partnership, association, governmental body,  
7 or other entity owning or having possession of the building or  
8 facilities.

9 (b) "Standard tariff service" means, for each regulated  
10 electric utility, the retail rates, terms, and conditions of  
11 service approved by the commission for service to customers who do  
12 not elect to receive generation service from alternative electric  
13 suppliers.

14 (10) As used in this section:

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

24 (b) "Affiliate wheeling" means a person's use of direct access  
25 service where an electric utility delivers electricity generated at  
26 a person's industrial site to that person or that person's  
27 affiliate at a location, or general aggregated locations, within

1 this state that was either 1 of the following:

2 (i) For at least 90 days during the period from January 1,  
3 1996 to October 1, 1999, supplied by self-service power, but only  
4 to the extent of the capacity reserved or load served by self-  
5 service power during the period.

6 (ii) Capable of being supplied by a person's cogeneration  
7 capacity within this state that has had since January 1, 1996 a  
8 rated capacity of 15 megawatts or less, was placed in service  
9 before December 31, 1975, and has been in continuous service since  
10 that date. A person engaging in affiliate wheeling is not an  
11 electric supplier, an electric utility, or conducting an electric  
12 utility business when a person engages in affiliate wheeling.

13 Enacting section 1. This amendatory act takes effect 90 days  
14 after the date it is enacted into law.