

SENATE BILL No. 1128

September 26, 2018, Introduced by Senator COLBECK 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 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 powers and duties of certain state governmental officers and entities; 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 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 460.11) by adding section 10gg.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 10GG. (1) A UTILITY CUSTOMER MAY CHOOSE BETWEEN THE
2 PLACEMENT OR USE OF A TRADITIONAL METER OR AN ADVANCED METER
3 REGARDLESS OF THE UTILITY THAT PROVIDES SERVICE TO THAT CUSTOMER. A
4 UTILITY SHALL HONOR THE DIRECTION OF ANY CUSTOMER WITH AN ADVANCED
5 METER WHO CHOOSES TO INSTEAD BE SERVICED BY A TRADITIONAL METER OR
6 TO NOT ACCEPT NEW ADVANCED METER FUNCTIONALITY, INCLUDING IN
7 SITUATIONS WHEN A CUSTOMER HAD NOT PREVIOUSLY OPTED OUT OF THAT
8 PLACEMENT OR USE.

9 (2) A UTILITY SHALL NOT DO ANY OF THE FOLLOWING:

10 (A) MAKE THE PROVISION OF ANY PORTION OF UTILITY SERVICE TO A
11 CUSTOMER CONTINGENT ON THE CUSTOMER RECEIVING SERVICE THROUGH ANY
12 METER OR SIMILAR DEVICE OTHER THAN A TRADITIONAL METER. A UTILITY
13 MAY PROHIBIT A CUSTOMER WITH A TRADITIONAL METER FROM PARTICIPATING
14 IN CERTAIN TIME-OF-DAY TARIFF DISCOUNTS.

15 (B) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IMPOSE ANY
16 FEE OR DISINCENTIVE ON A CUSTOMER FOR OPTING OUT OF OR NOT CHOOSING
17 THE INSTALLATION OR USE OF AN ADVANCED METER, THE INSTALLATION OR
18 USE OF A HUB METER, OR THE ACCEPTANCE OR USE OF AN ADVANCED METER
19 FUNCTION.

20 (C) INSTALL AN ADVANCED METER OR UPGRADE THE FUNCTIONALITY OF
21 AN EXISTING ADVANCED METER AFTER THE EFFECTIVE DATE OF THE
22 AMENDATORY ACT THAT ADDED THIS SECTION UNLESS THE CUSTOMER HAS BEEN
23 PROPERLY NOTIFIED AND HAS NOT OPTED OUT OF THE INSTALLATION OR
24 UPGRADE. IF A CUSTOMER HAS NOT OPTED OUT OF THE INSTALLATION OR
25 UPGRADE, AN ON-SITE UTILITY WORKER OR HIS OR HER AGENT SHALL
26 NEVERTHELESS NOT INSTALL AN ADVANCED METER OR UPGRADE THE
27 FUNCTIONALITY OF THE ADVANCED METER IF THE CUSTOMER HAS POSTED A

1 SIGN ON THE CURRENT METER FORBIDDING THE INSTALLATION OR UPGRADE OF
2 AN ADVANCED METER OR THE CUSTOMER VERBALLY INFORMS THE WORKER AT
3 THE TIME OF INSTALLATION NOT TO INSTALL OR UPGRADE THE ADVANCED
4 METER.

5 (3) A UTILITY SHALL NOTIFY A CUSTOMER IN WRITING OF THE
6 UTILITY'S DESIRE TO INSTALL AN ADVANCED METER AT THE CUSTOMER'S
7 ADDRESS OR TO UPGRADE THE FUNCTIONALITY OF A PREVIOUSLY INSTALLED
8 ADVANCED METER. THE UTILITY SHALL SEND THE NOTICE BY FIRST-CLASS
9 MAIL SEPARATE FROM ANY BILLING MAILING. THE UTILITY SHALL KEEP A
10 COPY OF EACH MAILED NOTICE ON FILE FOR REVIEW BY THE CUSTOMER OR
11 THE COMMISSION. EACH NOTICE MUST DO ALL OF THE FOLLOWING:

12 (A) INCLUDE THE CUSTOMER'S NAME, SERVICE ADDRESS, AND
13 ANTICIPATED DATE OF INSTALLATION.

14 (B) STATE THE UTILITY'S DESIRE TO INSTALL AN ADVANCED METER OR
15 CHANGE THE METER'S FUNCTIONALITY AT THE CUSTOMER'S ADDRESS, AS WELL
16 AS TO FULLY DESCRIBE THE FUNCTIONALITY OF THE ADVANCED METER, ITS
17 METHOD OF COMMUNICATION, AND FREQUENCY OF DATA COMMUNICATION.

18 (C) IF THE ADVANCED METER THE CUSTOMER WOULD BE RECEIVING IS A
19 HUB METER, EXPLAIN HOW A HUB METER DIFFERS FROM OTHER METERS.

20 (D) STATE THE CUSTOMER'S ABILITY TO CHOOSE A TRADITIONAL METER
21 OR NONHUB METER AND THE CUSTOMER'S RIGHTS UNDER THIS SECTION.

22 (E) CLEARLY EXPLAIN THE PROCESS FOR A CUSTOMER TO OPT OUT OF
23 THE INSTALLATION OF AN ADVANCED METER OR HUB METER OR THE USE OF AN
24 ADVANCED METER FUNCTION.

25 (4) THE COMMISSION SHALL PROMULGATE UTILITY CUSTOMER METER
26 CHOICE AND OPT-OUT PROCEDURES THAT ARE COMPOSED OF SIMPLE, EASY-TO-
27 UNDERSTAND STEPS THAT AN AVERAGE CUSTOMER CAN EASILY UNDERSTAND

1 THAT DO NOT PLACE ANY UNDUE BURDEN ON THE CUSTOMER. AFTER BEING
2 NOTIFIED UNDER SUBSECTION (3), CUSTOMERS MUST BE PROVIDED WITH AT
3 LEAST 45 DAYS TO COMMUNICATE WITH THE UTILITY THEIR DESIRE TO OPT
4 OUT, WITH A CLEAR DEADLINE LISTED ON THE NOTICE. OPT-OUT PROCEDURES
5 MUST BE FREE OF CHARGE OTHER THAN THE COST OF REGULAR MAILING. AN
6 OPT-OUT PROCEDURE OR PROCESS MUST BE NARROW IN CONSTRUCTION SO AS
7 TO INFORM THE UTILITY OF THE CUSTOMER'S INTENTIONS AND NOT BE MADE
8 CONTINGENT UPON OR CONTAIN LANGUAGE THAT WOULD REQUIRE THE CUSTOMER
9 TO GIVE UP ANY RIGHTS OR MAKE ANY OTHER ANCILLARY AGREEMENTS. A
10 CUSTOMER THAT DOES NOT OPT OUT WHEN FIRST NOTIFIED DOES NOT GIVE UP
11 ANY RIGHTS OR OPTIONS GRANTED TO THAT CUSTOMER UNDER THIS SECTION.

12 (5) WITHIN 30 DAYS AFTER RECEIVING A CUSTOMER'S DIRECTION THAT
13 AN ADVANCED METER, HUB METER, OR NEW FUNCTIONALITY BE REMOVED FROM
14 THE CUSTOMER'S RESIDENCE OR BUSINESS, A UTILITY SHALL ACCOMMODATE
15 THE CUSTOMER AND, LIMITED TO ACTUAL COSTS, CHARGE A FEE NOT TO
16 EXCEED \$150.00 FOR THE INSTALLATION OF THE NEW METER. HOWEVER, A
17 UTILITY SHALL NOT CHARGE A FEE TO REMOVE AN ADVANCED METER IF THE
18 UTILITY INSTALLED THE ADVANCED METER IN VIOLATION OF THE NOTICE
19 REQUIREMENTS IN THIS SECTION, INSTALLED THE ADVANCED METER OR
20 UPGRADED THE FUNCTIONALITY OF THE ADVANCED METER IN VIOLATION OF
21 SUBSECTION (2)(C), OR INSTALLED THE ADVANCED METER BEFORE THE
22 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION. A
23 UTILITY SHALL NOT CHARGE A MONTHLY FEE FOR USING A TRADITIONAL
24 METER UNLESS THE CUSTOMER IS OFFERED THE OPPORTUNITY, BUT IS
25 UNWILLING, TO READ AND REPORT THE CUSTOMER'S USAGE UNDER SUBSECTION
26 (6). ANY MONTHLY FEE FOR USING A TRADITIONAL METER MUST NOT EXCEED
27 \$5.00 PER MONTH.

1 (6) A UTILITY SHALL ALLOW EACH CUSTOMER TO READ AND REPORT
2 THAT CUSTOMER'S SERVICE USAGE IF THE CUSTOMER REPORTS REASONABLY
3 ACCURATE USAGE ON A REGULAR BASIS. A UTILITY SHALL PROVIDE A
4 CUSTOMER WITH A PREADDRESSED ENVELOPE AND FORM UPON REQUEST OR
5 PERMIT A CUSTOMER TO REPORT METER READINGS ON A SECURE WEBSITE, BY
6 TELEPHONE, OR BY OTHER REASONABLE MEANS. AT LEAST ONCE EVERY 12
7 MONTHS, THE UTILITY SHALL OBTAIN AN ACTUAL METER READING OF A
8 CUSTOMER'S ENERGY USAGE TO VERIFY THE ACCURACY OF READINGS REPORTED
9 UNDER THIS SECTION. NOTWITHSTANDING THIS SUBSECTION, A
10 REPRESENTATIVE OF A UTILITY MAY MANUALLY READ A CUSTOMER'S METER ON
11 A REGULAR BASIS AS OTHERWISE PERMITTED BY LAW AND CORRECT A READING
12 AS NECESSARY. IF A CUSTOMER FAILS TO REPORT USAGE OR THE UTILITY
13 DOES NOT RECEIVE A CUSTOMER'S SERVICE USAGE ON TIME, THE UTILITY
14 MAY MANUALLY READ A CUSTOMER'S METER OR CHARGE THAT CUSTOMER BASED
15 ON AN ESTIMATE OF PRIOR ENERGY USE IN A MANNER APPROVED BY THE
16 COMMISSION. A CUSTOMER THAT INTENTIONALLY REPORTS INACCURATE
17 INFORMATION MAY BE ASSESSED A REASONABLE PENALTY UNDER RULES
18 PROMULGATED BY THE COMMISSION AND MAY BE SUBJECT TO ANY OTHER
19 PENALTIES PROVIDED BY LAW. AS USED IN THIS SUBSECTION:

20 (A) "INACCURATE INFORMATION" MEANS THE INTENTIONAL
21 UNDERREPORTING OF METER DATA IN AN EFFORT TO NOT PAY FOR PROVIDED
22 SERVICES. INACCURATE INFORMATION DOES NOT MEAN MINOR DIFFERENCES IN
23 READINGS BY LESS THAN 5% TO ACCOUNT FOR VARIATIONS BASED ON THE
24 TIME OF DAY THAT THE METER IS READ AND SIMILAR FACTORS.

25 (B) "REGULAR BASIS" MEANS ONCE PER BILLING CYCLE.

26 (7) THE COMMISSION SHALL CONSIDER THE ABILITY TO SELF-READ
27 METERS AS PART OF ANY PROCEEDING AND SHALL FULLY RECOGNIZE AND

1 VALUE THAT CUSTOMERS HAVE A LEGITIMATE INTEREST IN CONTROLLING
2 THIRD-PARTY EQUIPMENT PLACED ONTO THEIR PROPERTY THAT IS NOT
3 INHERENTLY NECESSARY AS A CONDITION TO RECEIVING SERVICE.

4 (8) A CUSTOMER'S ENERGY USE DATA AND INTERNET USER INFORMATION
5 ARE PRIVATE AND CONFIDENTIAL AND A UTILITY OR ITS AGENTS SHALL NOT
6 SELL, RENT, OR SHARE THAT DATA OR INFORMATION EXCEPT AS PROVIDED BY
7 COMPETENT COURT ORDER OR LAW. A UTILITY MAY REPORT DATA RELATING TO
8 ELECTRIC OR COMPRESSED NATURAL GAS VEHICLE FUELING TO THE
9 DEPARTMENT OF TREASURY. THE DEPARTMENT OF TREASURY SHALL USE THAT
10 INFORMATION STRICTLY FOR TAXATION PURPOSES AND SHALL NOT SHARE THAT
11 INFORMATION WITH LAW ENFORCEMENT WITHOUT A WARRANT, AND THAT
12 INFORMATION IS NOT SUBJECT TO DISCLOSURE UNDER THE FREEDOM OF
13 INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, EXCEPT FOR
14 AGGREGATE DATA USED FOR RESEARCH PURPOSES IN A NONIDENTIFYING
15 MANNER.

16 (9) A UTILITY SHALL ENSURE THAT ANY DATA FROM AN ADVANCED
17 METER COMMUNICATED BY NETWORKING TECHNOLOGY ARE SUFFICIENTLY
18 ENCRYPTED SO THAT THE DATA CANNOT BE INTERCEPTED BY A DEVICE OTHER
19 THAN A DEVICE USED BY THE UTILITY. A UTILITY SHALL NOT COMMUNICATE
20 BY NETWORKING TECHNOLOGY METER USE DATA THAT INCLUDES A CUSTOMER'S
21 NAME, SOCIAL SECURITY NUMBER, ADDRESS, OR OTHER IDENTIFYING
22 INFORMATION EXCEPT FOR AN INDEPENDENT AND UNIQUE CUSTOMER
23 IDENTIFICATION NUMBER THAT IS ASSIGNED BY THE UTILITY. THE UTILITY
24 SHALL ASSIGN A CUSTOMER IDENTIFICATION NUMBER IN A MANNER THAT
25 INCLUDES SAFEGUARDS TO PREVENT A DEVICE NOT OWNED BY THE UTILITY
26 FROM ASSOCIATING THE NUMBER WITH A PARTICULAR CUSTOMER OR ADDRESS.

27 (10) A UTILITY SHALL NOT POST A CUSTOMER'S ENERGY USE DATA OR

1 BILL ON THE INTERNET, EXCEPT OVER A SECURED TRANSFER PROTOCOL OR
2 SIMILAR SECURED CONNECTION THAT USES 1 OR MORE ADDITIONAL SECURITY
3 MEASURES, SUCH AS A CUSTOMER-SELECTED PASSWORD, TO ENSURE THAT ONLY
4 THE CUSTOMER CAN ACCESS THE INFORMATION.

5 (11) A UTILITY SHALL NOT WIRELESSLY OR OTHERWISE REMOTELY SHUT
6 OFF SERVICE TO A CUSTOMER UNLESS BOTH OF THE FOLLOWING REQUIREMENTS
7 ARE MET:

8 (A) AT LEAST 48 HOURS BEFORE SHUTOFF, A UTILITY REPRESENTATIVE
9 VISITS THE PROPERTY TO WHICH THE SERVICE IS TO BE SHUT OFF,
10 VERIFIES THAT IT IS THE CORRECT ADDRESS, AND FOLLOWS ALL OTHER
11 SHUTOFF PROCEDURES REQUIRED BY LAW.

12 (B) THE UTILITY HAS A COMMISSION-APPROVED, COMPREHENSIVE
13 SECURITY PROGRAM THAT REASONABLY ENSURES THAT A CUSTOMER'S SERVICE
14 WILL BE SHUT OFF ONLY THROUGH AUTHORIZED ACCESS TO THE UTILITY'S
15 COMPUTER SYSTEM, THAT IS OPEN TO INSPECTION AND AUDIT BY THE
16 COMMISSION, AND THAT IS DESIGNED TO PREVENT UNINTENTIONAL SHUTOFF
17 DUE TO NETWORK HACKING OR TERRORISM. THE COMMISSION SHALL
18 COLLABORATE WITH THE DEPARTMENT OF STATE POLICE IN APPROVING OR
19 AUDITING THE SECURITY PROGRAM.

20 (12) AS USED IN THIS SECTION:

21 (A) "ADVANCED METER" MEANS A METER OR METERING DEVICE SYSTEM
22 THAT IS OWNED OR LEASED BY A UTILITY OR ITS AGENT AND THAT MEETS 1
23 OR MORE OF THE FOLLOWING REQUIREMENTS:

24 (i) IS NON-ANALOG IN NATURE.

25 (ii) IS A DEVICE THAT MEASURES, RECORDS, OR SENDS A CUSTOMER'S
26 UTILITY USAGE OR OTHER DATA BY USE OF RADIO WAVES OR BROADBAND OVER
27 POWER LINES.

1 (iii) ALLOWS FOR 2-WAY COMMUNICATION BETWEEN THE METER AND THE
2 UTILITY OR ITS AGENT.

3 (iv) ALLOWS FOR A UTILITY OR ITS AGENT TO CONTROL A CUSTOMER'S
4 THERMOSTAT, APPLIANCE, OR SERVICE.

5 (B) "HUB METER" MEANS AN ADVANCED METER THAT RECEIVES DATA
6 FROM OTHER CUSTOMERS' METERS AS A RESULT OF THE METER SERVING AS
7 PART OF A NETWORK FOR OTHER ADVANCED METERS IT COMMUNICATES WITH IN
8 A GIVEN AREA.

9 (C) "TRADITIONAL METER" MEANS AN ANALOG METER. A TRADITIONAL
10 METER IS NOT DESIGNED TO BE AND IS NOT CAPABLE OF TRANSMITTING
11 USAGE DATA BY USING RADIO WAVES OR BROADBAND OVER POWER LINES,
12 ALLOWING 2-WAY COMMUNICATION BETWEEN THE METER AND THE UTILITY OR
13 ITS AGENTS, OR ALLOWING A UTILITY OR ITS AGENTS TO CONTROL A
14 CUSTOMER'S THERMOSTAT, APPLIANCE, OR SERVICE. A TRADITIONAL METER
15 DOES NOT MEAN A DIGITAL METER OR AN ADVANCED METER THAT HAS CERTAIN
16 FUNCTIONALITY TURNED OFF OR DEACTIVATED.

17 (D) "UTILITY" MEANS A PERSON THAT SELLS NATURAL GAS,
18 ELECTRICITY, OR WATER TO RETAIL CUSTOMERS IN THIS STATE AND THAT
19 EITHER SELLS THE NATURAL GAS, ELECTRICITY, OR WATER AT RATES
20 REGULATED BY THE COMMISSION OR IS OWNED BY A MUNICIPALITY.