

Act No. 142
Public Acts of 2000
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**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

Introduced by Senator Dunaskiss

ENROLLED SENATE BILL No. 1253

AN ACT 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 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 therein 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 rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to provide for a restructuring of rates for certain utilities; to encourage the utilization of resource recovery facilities; to provide for appeals; to provide appropriations; to declare the effect of this act; to prescribe penalties; and to repeal all acts contrary to this act," (MCL 460.1 to 460.8) by adding sections 10h, 10i, 10j, 10k, 10l, 10m, 10n, 10o, and 10z.

The People of the State of Michigan enact:

Sec. 10h. As used in this act:

(a) "Assignee" means an individual, corporation, or other legally recognized entity to which an interest in securitization property is transferred.

(b) "Commission" means the Michigan public service commission in the department of consumer and industry services.

(c) "Electric utility" means that term as defined in section 2 of the electric transmission line certification act, 1995 PA 30, MCL 460.562.

(d) "Financing order" means an order of the commission approving the issuance of securitization bonds and the creation of securitization charges and any corresponding utility rate reductions.

(e) "Financing party" means a holder of securitization bonds, including trustees, collateral agents, and other persons acting for the benefit of the holder.

(f) "Nonbypassable charge" means a charge in a financing order payable by a customer to an electric utility or its assignees or successors regardless of the identity of the customer's electric generation supplier.

(g) "Qualified costs" means an electric utility's regulatory assets as determined by the commission, adjusted by the applicable portion of related investment tax credits, plus any costs that the commission determines that the electric utility would be unlikely to collect in a competitive market, including, but not limited to, retail open access implementation costs and the costs of a commission approved restructuring, buyout or buy-down of a power purchase contract, together with the costs of issuing, supporting, and servicing securitization bonds and any costs of retiring and refunding the electric utility's existing debt and equity securities in connection with the issuance of securitization bonds. Qualified costs include taxes related to the recovery of securitization charges.

(h) "Securitization bonds" means bonds, debentures, notes, certificates of participation, certificates of a beneficial interest, certificates of ownership, or other evidences of indebtedness that are issued by an electric utility, its successors, or an assignee under a financing order, that have a term of not more than 15 years, and that are secured by

or payable from securitization property. If certificates of participation, certificates of beneficial interest, or certificates of ownership are issued, references in this act to principal, interest, or premium shall refer to comparable amounts under those certificates.

(i) "Securitization charges" means nonbypassable amounts to be charged for the use or availability of electric services, approved by the commission under a financing order to fully recover qualified costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in the financing order.

(j) "Securitization property" means the property described in section 10j.

Sec. 10i. (1) Upon the application of an electric utility, if the commission finds that the net present value of the revenues to be collected under the financing order is less than the amount that would be recovered over the remaining life of the qualified costs using conventional financing methods and that the financing order is consistent with the standards in subsection (2), the commission shall issue a financing order to allow the utility to recover qualified costs.

(2) In a financing order, the commission shall ensure all of the following:

(a) That the proceeds of the securitization bonds are used solely for the purposes of the refinancing or retirement of debt or equity.

(b) That securitization provides tangible and quantifiable benefits to customers of the electric utility.

(c) That the expected structuring and expected pricing of the securitization bonds will result in the lowest securitization charges consistent with market conditions and the terms of the financing order.

(d) That the amount securitized does not exceed the net present value of the revenue requirement over the life of the proposed securitization bonds associated with the qualified costs sought to be securitized.

(3) The financing order shall detail the amount of qualified costs to be recovered and the period over which the securitization charges are to be recovered, not to exceed 15 years.

(4) A financing order is effective in accordance with its terms, and the financing order, together with the securitization charges authorized in the order, shall be irrevocable and not subject to reduction, impairment, or adjustment by further action of the commission, except as provided under section 10k(3).

(5) Stocks, bonds, notes, or other evidence of indebtedness issued under a financing order of the commission shall be binding in accordance with their terms notwithstanding that the order of the commission is later vacated, modified, or otherwise held to be invalid in whole or in part.

(6) The commission shall after an expedited contested case proceeding issue a financing order or an order rejecting the application for a financing order no later than 90 days after the electric utility files its application.

(7) A financing order is only subject to rehearing by the commission on the motion of the applicant for securitization.

(8) Notwithstanding any other provision of law, a financing order may be reviewed by the court of appeals upon a filing by a party to the commission proceeding within 30 days after the financing order is issued. All appeals of a financing order shall be heard and determined as expeditiously as possible with lawful precedence over other matters. Review on appeal shall be based solely on the record before the commission and briefs to the court and shall be limited to whether the financing order conforms to the constitution and laws of this state and the United States and is within the authority of the commission under this act.

(9) At the request of an electric utility, the commission may adopt a financing order providing for retiring and refunding securitization bonds if the commission finds that the future securitization charges required to service the new securitization bonds, including transaction costs, will be less than the future securitization charges required to service the securitization bonds being refunded. On the retirement of the refunded securitization bonds, the commission shall adjust the related securitization charges accordingly.

(10) The commission shall have the authority to retain financial or legal services to assist in issuance of a financing order and to require the electric utility to pay the cost of the services. The payments shall be included as qualified costs defined in section 10h(g).

Sec. 10j. (1) Securitization property shall consist of the rights and interests of an electric utility, or its successor, under a financing order, including without limitation all of the following:

(a) The right to impose, collect, and receive securitization charges authorized in the financing order in an amount necessary to provide the full recovery of all qualified costs.

(b) The right under the financing order to obtain periodic adjustments of securitization charges under section 10k(3).

(c) All revenue, collections, payments, money, and proceeds arising out of the rights and interests described under this subsection.

(2) Securitization property shall constitute a present property right even though the imposition and collection of securitization charges depends on the further acts of the electric utility or others that have not yet occurred. The rights of an electric utility to securitization property before its sale to any assignee shall be considered a property interest in a contract. The financing order shall remain in effect and the securitization property shall continue to exist until the commission approved securitization bonds and expenses related to the bonds have been paid in full.

Sec. 10k. (1) The interest of an assignee or pledgee in securitization property and in the revenues and collections arising from that property are not subject to setoff, counterclaim, surcharge, or defense by the electric utility or any

other person or in connection with the bankruptcy of the electric utility or any other entity. A financing order shall remain in effect and unabated notwithstanding the bankruptcy of the electric utility, its successors, or assignees.

(2) A financing order shall include terms ensuring that the imposition and collection of securitization charges authorized in the order are a nonbypassable charge.

(3) A financing order shall include a mechanism requiring that securitization charges be reviewed and adjusted by the commission at least annually, within 45 days of the anniversary date of the issuance of the securitization bonds, to correct any overcollections or undercollections of the preceding 12 months and to ensure the expected recovery of amounts sufficient to timely provide all payments of debt service and other required amounts and charges in connection with the securitization bonds.

Sec. 10l. (1) An agreement by an electric utility or assignee to transfer securitization property that expressly states that the transfer is a sale or other absolute transfer signifies that the transaction is a true sale and is not a secured transaction and that title, legal and equitable, has passed to the entity to which the securitization property is transferred.

(2) A true sale under this section applies regardless of whether the purchaser has any recourse against the seller, or any other term of the parties' agreement, including the seller's retention of an equity interest in the securitization property, the fact that the electric utility acts as a collector of securitization charges relating to the securitization property, or the treatment of the transfer as a financing for tax, financial reporting, or other purposes.

Sec. 10m. (1) A valid and enforceable lien and security interest in securitization property may be created only by a financing order and the execution and delivery of a security agreement with a financing party in connection with the issuance of securitization bonds.

(2) The lien and security interest shall attach automatically from the time that value is received for the bonds and shall be a continuously perfected lien and security interest in the securitization property and all proceeds of the property, whether accrued or not, shall have priority in the order of filing when a financing statement has been filed with respect to the security interest in accordance with the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, and take precedence over any subsequent judicial and other lien creditor. In addition to the rights and remedies provided by this act, all rights and remedies with respect to a security interest provided by the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, shall apply to the securitization property.

(3) Transfer of an interest in securitization property to an assignee shall be perfected against all third parties, including subsequent judicial and other lien creditors, when a financing statement has been filed with respect to the transfer in accordance with the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102.

(4) The priority of a lien and security interest under this section is not impaired by any later modification of the financing order or by the commingling of funds arising from securitization charges with other funds, and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party. If securitization property has been transferred to an assignee, any proceeds of that property shall be held in trust for the assignee.

(5) In the event of default by the electric utility or its successors, in payment of revenues arising with respect to securitization property, the commission or a court of appropriate jurisdiction, upon the application of the financing party, and without limiting any other remedies available to the financing party, shall order the sequestration and payment to the financing party of revenues arising with respect to the securitization property. An order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor, or transferor of the property.

(6) Securitization property shall constitute an account as that term is defined under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102.

(7) For purposes of this act and the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, securitization property shall be in existence whether or not the revenue or proceeds in respect to the property have accrued and whether or not the value of the property right is dependent on the customers of an electric utility receiving service.

(8) Changes in the financing order or in the customer's securitization charges do not affect the validity, perfection, or priority of the security interest in the securitization property.

(9) The description of securitization property in a security agreement or other agreement or a financing statement is sufficient if it refers to this act and the financing order establishing the securitization property.

(10) This act shall control in any conflict between this act and any other law of this state regarding the attachment and perfection and the effect of perfection and priority of any security interest in securitization property.

(11) Notwithstanding the provisions of the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, the law of the state of Michigan shall govern the perfection and the effect of perfection and priority of any security interest in the securitization property.

Sec. 10n. (1) Securitization bonds are not a debt or obligation of the state and are not a charge on its full faith and credit or taxing power.

(2) The state pledges, for the benefit and protection of the financing parties and the electric utility, that it will not take or permit any action that would impair the value of securitization property, reduce or alter, except as allowed under section 10k(3), or impair the securitization charges to be imposed, collected, and remitted to financing parties, until the principal, interest and premium, and any other charges incurred and contracts to be performed in connection with the related securitization bonds have been paid and performed in full. Any party issuing securitization bonds is authorized to include this pledge in any documentation relating to those bonds.

Sec. 10o. (1) The acquisition, ownership, and disposition of any direct interest in any securitization bond shall not be taken into account in determining whether a person is subject to any income tax, single business tax, franchise tax, business activities tax, intangible property tax, excise tax, stamp tax, or any other tax imposed by this state or any agency or political subdivision of this state.

(2) Any successor to an electric utility, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding or pursuant to any merger or acquisition, sale or transfer, by operation of law, as a result of electric utility restructuring or otherwise, shall perform and satisfy all obligations of the electric utility under the amendatory act that added this section in the same manner and to the same extent as the electric utility, including, but not limited to, collecting and paying to the person entitled to revenues with respect to the securitization property.

(3) An assignee or financing party shall not be considered to be a public utility or person providing electric service solely by virtue of the transactions described in this act.

Sec. 10z. Effective on the date the first securitization bonds are issued under this act, if any provision of this act or portion of this act is held to be invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity or continuation of the amendatory act that added this section, or any part of those provisions, or any other provision of this act that is relevant to the issuance, administration, payment, retirement, or refunding of securitization bonds or to any actions of the electric utility, its successors, an assignee, a collection agent, or a financing party, which shall remain in full force and effect.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 937 of the 90th Legislature is enacted into law.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Jay E. Randall

Clerk of the House of Representatives.

Approved

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Governor.