

HOUSE BILL No. 6358

August 23, 2006, Introduced by Reps. Proos and Nofs 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 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,"

(MCL 460.1 to 460.10cc) by adding section 6r.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 6R. (1) A PERSON SHALL NOT ACQUIRE, CONTROL, OR MERGE,
2 DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART, WITH A REGULATED
3 UTILITY NOR SHALL A REGULATED UTILITY SELL, ASSIGN, TRANSFER, OR
4 ENCUMBER ITS ASSETS TO ANOTHER PERSON WITHOUT FIRST COMPLYING WITH
5 THE REQUIREMENTS OF THIS SECTION. THIS SECTION DOES NOT APPLY
6 UNLESS THE ACQUISITION, TRANSFER, CONTROL, OR MERGER RESULTS IN A
7 PARTY OWNING, DIRECTLY OR INDIRECTLY, 10% OR MORE OF THE VOTING
8 SECURITIES OF THE REGULATED UTILITY.

9 (2) AFTER NOTICE AND HEARING, THE COMMISSION SHALL ISSUE AN
10 ORDER STATING WHAT CONSTITUTES ACQUISITION, TRANSFER, OR MERGER
11 ACTIVITIES THAT ARE SUBJECT TO THIS SECTION.

12 (3) THE COMMISSION SHALL PROMULGATE RULES CREATING PROCEDURES
13 FOR THE REVIEW PROCESS REQUIRED UNDER SUBSECTION (4) AND THE
14 MATERIALS NECESSARY FOR A FILING UNDER SUBSECTION (5).

15 (4) NOT LESS THAN 180 DAYS BEFORE THE EFFECTIVE DATE OF ANY
16 ACTION SUBJECT TO THIS SECTION, THE PARTY PROPOSING THE
17 ACQUISITION, TRANSFER, OR MERGER SHALL SUBMIT TO THE COMMISSION ALL
18 MATERIALS REQUIRED UNDER SUBSECTION (5). THE COMMISSION SHALL HAVE
19 120 DAYS FROM THE DATE THAT THE COMMISSION RECEIVES ALL OF THE
20 MATERIALS REQUIRED UNDER SUBSECTION (5) TO CONDUCT SUCH
21 INVESTIGATIONS AND HEARINGS TO DETERMINE THE IMPACT OF THE PROPOSED
22 ACTION. AT THE END OF THE 120-DAY PERIOD, THE COMMISSION SHALL
23 ISSUE AN ADVISORY OPINION AND FINDINGS ON WHETHER THE PROPOSED
24 ACQUISITION, TRANSFER, OR MERGER IS IN THE BEST INTEREST OF THE
25 RATEPAYERS OF THE REGULATED UTILITY AND WHAT IMPACT THE ACTION MAY
26 HAVE ON ENERGY SERVICE IN THIS STATE.

27 (5) ALL PARTIES TO AN ACQUISITION, TRANSFER OF CONTROL, OR

1 MERGER SUBJECT TO THIS SECTION SHALL PROVIDE THE COMMISSION ACCESS
2 TO ANY BOOKS, RECORDS, ACCOUNTS, DOCUMENTS, AND OTHER DATA AND
3 INFORMATION THAT IS NECESSARY TO EFFECTIVELY ASSESS UNDER
4 SUBSECTION (6) OR (7) THE IMPACT OF THE PROPOSED ACQUISITION,
5 TRANSFER, OR MERGER. THE COMMISSION'S REVIEW SHALL BE LIMITED TO
6 THE FACTORS LISTED UNDER SUBSECTIONS (6) AND (7). A PARTY MAY
7 WITHHOLD ANY INFORMATION THAT THE PARTY CAN SUBSTANTIATE AS NOT
8 BEING GERMANE TO THE COMMISSION'S REVIEW UNDER THIS SECTION.

9 (6) THE COMMISSION SHALL NOT ISSUE A FAVORABLE CONCLUSION OR
10 FINDING IF IT FINDS 1 OR MORE OF THE FOLLOWING:

11 (A) THE PROPOSED ACTION WOULD HAVE AN ADVERSE IMPACT ON THE
12 RATES OF THE CUSTOMERS AFFECTED BY THE ACQUISITION, TRANSFER, OR
13 MERGER.

14 (B) THE PROPOSED ACTION WOULD HAVE AN ADVERSE IMPACT ON THE
15 PROVISION OF SAFE, RELIABLE, AND ADEQUATE ENERGY SERVICE.

16 (C) THE ACTION WILL RESULT IN THE SUBSIDIZATION OF A
17 NONREGULATED ACTIVITY OF THE NEW ENTITY THROUGH THE RATES PAID BY
18 THE CUSTOMERS OF THE REGULATED UTILITY.

19 (7) IN ADDITION TO THE FACTORS LISTED UNDER SUBSECTION (6),
20 THE COMMISSION MAY ALSO CONSIDER ANY OF THE FOLLOWING:

21 (A) WHETHER THE ACTION WILL SIGNIFICANTLY IMPAIR THE REGULATED
22 UTILITY'S ABILITY TO RAISE NECESSARY CAPITAL OR TO MAINTAIN A
23 REASONABLE CAPITAL STRUCTURE.

24 (B) THE IMPACT THE ACTION WILL HAVE ON COMPETITION.

25 (C) WHETHER THE ACTION IS OTHERWISE INCONSISTENT WITH PUBLIC
26 POLICY AND INTEREST.

27 (8) AS USED IN THIS SECTION:

1 (A) "COMMISSION" MEANS THE MICHIGAN PUBLIC SERVICE COMMISSION.

2 (B) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, ASSOCIATION,
3 PARTNERSHIP, UTILITY, OR ANY OTHER LEGAL PRIVATE OR PUBLIC ENTITY.

4 (C) "REGULATED UTILITY" MEANS A UTILITY SUBJECT TO THE
5 JURISDICTION OF THE COMMISSION. REGULATED UTILITY DOES NOT INCLUDE
6 A TELECOMMUNICATION PROVIDER AS DEFINED IN THE MICHIGAN
7 TELECOMMUNICATIONS ACT, 1991 PA 179, MCL 484.2101 TO 484.2604, OR A
8 MOTOR CARRIER AS DEFINED IN THE MOTOR CARRIER ACT, 1933 PA 254, MCL
9 475.1 TO 479.43.