

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5190**

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 10d (MCL 460.10d), as amended by 2008 PA 286.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10d. (1) If an electric utility serving less than
2 1,000,000 retail customers in this state as of May 1, 2000 issues
3 securitization bonds as allowed under this act, it ~~shall have~~ **HAS**
4 the same rights, duties, and obligations under this section as an
5 electric utility serving 1,000,000 or more retail customers in this
6 state as of May 1, 2000.

7 (2) The commission shall take the necessary steps to ensure
8 that all electrical power generating facilities in this state
9 comply with all rules, regulations, and standards of the federal
10 environmental protection agency regarding mercury emissions.

11 (3) A covered utility may apply to the commission to recover
12 enhanced security costs for an electric generating facility through
13 a security recovery factor. If the commission ~~action under~~
14 ~~subsection (5) is approval of~~ **APPROVES** a security recovery factor
15 **UNDER SUBSECTION (5)**, the covered utility may recover those
16 enhanced security costs.

17 (4) The commission shall require that notice of the
18 application filed under subsection (3) be published by the covered
19 utility within 30 days from the date the application was filed. The
20 initial hearing by the commission shall be held within 20 days of
21 the date the notice was published in newspapers of general
22 circulation in the service territory of the covered utility.

23 (5) The commission may issue an order approving, rejecting, or
24 modifying the security recovery factor. If the commission issues an
25 order approving a security recovery factor, that order shall be
26 issued within 120 days of the initial hearing required under

1 subsection (4). In determining the security recovery factor, the
2 commission shall only include costs that the commission determines
3 are reasonable and prudent and that are jurisdictionally assigned
4 to retail customers of the covered utility in this state. The costs
5 included shall be net of any proceeds that have been or will be
6 received from another source, including, but not limited to, any
7 applicable insurance settlements received by the covered utility or
8 any grants or other emergency relief from federal, state, or local
9 governmental agencies for the purpose of defraying enhanced
10 security costs. In its order, the commission shall designate a
11 period for recovery of enhanced security costs, including a
12 reasonable return on the unamortized balance, over a period not to
13 exceed 5 years. The security recovery factor shall not be less than
14 zero.

15 (6) No later than February 18, 2003, the commission shall by
16 order prescribe the form for the filing of an application for a
17 security recovery factor under subsection (3). If the commission or
18 its designee determines that a filing is incomplete, it shall
19 notify the covered utility within 10 days of the filing.

20 (7) Records or other information supplied by the covered
21 utility in an application for recovery of security costs under
22 subsection (3) that describe security measures, including, but not
23 limited to, emergency response plans, risk planning documents,
24 threat assessments, domestic preparedness strategies, and other
25 plans for responding to acts of terrorism are not subject to the
26 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and
27 shall be treated as confidential by the commission.

(9) AN ELECTRIC OR NATURAL GAS UTILITY SHALL NOT CHARGE A CUSTOMER TO HELP FUND THE LOW-INCOME AND ENERGY EFFICIENCY FUND. THE COMMISSION SHALL NOT INCLUDE THE LOW-INCOME AND ENERGY EFFICIENCY CHARGE IN AN AFFECTED UTILITY'S BASE RATES. BY FEBRUARY 1, 2012, THE COMMISSION SHALL COMMENCE ON ITS OWN MOTION A PROCEEDING FOR EACH AFFECTED UTILITY TO DETERMINE THE MANNER IN WHICH <<ALL MONEY IN THE LOW-INCOME AND ENERGY EFFICIENCY FUND, INCLUDING ANY UNSPENT FUNDS RETURNED BY GRANTEES, AND ALL MONEY BEING HELD IN ESCROW FOR THE LOW-INCOME AND ENERGY EFFICIENCY FUND WILL BE REFUNDED TO CUSTOMERS. THE REFUND SHALL BE ALLOCATED AMONG EACH RATE SCHEDULE PROPORTIONAL TO THE AMOUNT PAID BY EACH RATE SCHEDULE, EXCEPT THAT THE REFUND TO CUSTOMERS USING 10 MEGAWATTS OR MORE SHALL BE WITHIN AT LEAST 6.5% OF THE ACTUAL AMOUNT PAID AND ESCROWED BY THAT CUSTOMER. AS USED IN THIS SUBSECTION, "AFFECTED UTILITY" MEANS A REGULATED ELECTRIC OR NATURAL GAS UTILITY THAT WAS AUTHORIZED BY THE COMMISSION TO COLLECT IN RETAIL RATES AN AMOUNT THAT WAS DESIGNATED TO BE CONTRIBUTED TO THE LOW-INCOME AND ENERGY EFFICIENCY FUND, AND THAT SINCE JULY 21, 2011 HAS BEEN HOLDING THAT COLLECTED AMOUNT IN ESCROW.

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House Bill No. 5190 as amended December 15, 2011

~~<(10)>~~ (9) As used in this section:

(a) "Act of terrorism" means a willful and deliberate act that is all of the following:

(i) An act that would be a violent felony under the laws of this state, whether or not committed in this state.

(ii) An act that the person knows or has reason to know is dangerous to human life.

(iii) An act that is intended to intimidate or coerce a civilian population or influence or affect the conduct of government or a unit of government through intimidation or coercion.

(b) "Covered utility" means an electric utility with 1,000,000 or more retail customers in this state as of May 1, 2000 or an electric utility subject to the rate provisions of commission orders in case numbers U-11181-R and U-12204.

(c) "Enhanced security costs" means reasonable and prudent costs of new and enhanced security measures incurred before January 1, 2006 for an electric generating facility by a covered utility that are required by federal or state regulatory security requirements issued after September 11, 2001 or determined to be necessary by the commission to provide reasonable security from an act of terrorism. Enhanced security costs include increases in the cost of insurance that are attributable to an increased terror related risk and the costs of maintaining or restoring electric service as the result of an act of terrorism.

(d) "Security recovery factor" means an unbundled charge for all retail customers, except for customers of alternative electric suppliers, to recover enhanced security costs that have been

1 approved by the commission.