

HOUSE BILL No. 5660

May 17, 2016, Introduced by Reps. Price, Howrylak and McBroom 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 sections 6l and 6m (MCL 460.6l and 460.6m), section 6l as amended by 2000 PA 141 and section 6m as amended by 2014 PA 170.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6l. (1) For purposes of implementing sections **6A**, 6h, 6i,
2 6j, ~~and 6k~~, **AND 6S**, this section and section 6m shall provide means
3 of insuring equitable representation of the interests of energy
4 utility customers.

5 (2) As used in this section and section 6m:

6 (a) "Annual receipts" means the payments received by the fund
7 under section 6m(2)(a) and (b) during a calendar year.

8 (b) "Board" means the utility consumer participation board
9 created under subsection (3).

10 (C) **"COMMISSION" MEANS THE MICHIGAN PUBLIC SERVICE COMMISSION.**

11 (D) ~~(e)~~"Department" means the department of ~~management and~~
12 ~~budget~~.**LICENSING AND REGULATORY AFFAIRS.**

13 (E) ~~(d)~~"Energy cost recovery proceeding" means any proceeding
14 to establish or implement a gas cost recovery clause or a power
15 supply cost recovery clause as provided in sections 6h, 6i, 6j, or
16 6k, to set gas cost recovery factors ~~pursuant to~~**UNDER** section
17 6h(17), or to set power supply cost recovery factors ~~pursuant to~~
18 **UNDER** section 6j(18).

19 (F) ~~(e)~~"Energy utility" means each electric or gas company
20 regulated by the ~~public service~~ commission.

21 (G) ~~(f)~~"Fund" means the utility consumer representation fund
22 created in section 6m.

23 (H) ~~(g)~~"Household" means a single-family home, duplex, mobile
24 home, seasonal dwelling, farm home, cooperative, condominium, or
25 apartment ~~which~~**THAT** has normal household facilities such as a
26 bathroom, individual cooking facilities, and kitchen sink
27 facilities. Household does not include a penal or corrective

1 institution, or a motel, hotel, or other similar structure if used
2 as a transient dwelling.

3 (I) ~~(h)~~-"Jurisdictional" means subject to rate regulation by
4 the ~~Michigan public service commission~~.

5 (J) ~~(i)~~-"Net grant proceeds" means the annual receipts of the
6 fund less the amounts reserved for the attorney general's use and
7 the amounts expended for board expenses and operation.

8 (K) ~~(j)~~-"Residential energy utility consumer" or "consumer"
9 means a customer of an energy utility who receives utility service
10 for use within an individual household or an improvement reasonably
11 appurtenant to and normally associated with an individual
12 household.

13 (L) ~~(k)~~-"Residential tariff sales" means those sales by an
14 energy utility ~~which~~-**THAT** are subject to residential tariffs on
15 file with the commission.

16 (M) ~~(l)~~-"Utility consuming industry" means a person, sole
17 proprietorship, partnership, association, corporation, or other
18 entity ~~which~~-**THAT** receives utility service ordinarily and primarily
19 for use in connection with the manufacture, sale, or distribution
20 of goods or the provision of services, but does not include a
21 nonprofit organization representing residential utility customers.

22 (3) The utility consumer participation board is created within
23 the department and shall exercise its powers and duties under this
24 act independently of the department. The procurement and related
25 management functions of the ~~commission~~-**BOARD** shall be performed
26 under the direction and supervision of the department. The board
27 shall consist of 5 members appointed by the governor, 1 of whom

1 shall be chosen from 1 or more lists of qualified persons submitted
2 by the attorney general.

3 (4) For the purposes of subsection (5) only, "utility" means
4 an electric or gas company located in or outside of this state.

5 (5) Each member of the board shall meet the following
6 requirements:

7 (a) Shall be an advocate for the interests of residential
8 utility consumers, as demonstrated by the member's knowledge of and
9 support for consumer interests and concerns in general or
10 specifically related to utility matters.

11 (b) Shall not be, or shall not have been within the 5 years
12 preceding appointment, a member of a governing body of, or employed
13 in a managerial or professional or consulting capacity by a utility
14 or an association representing utilities; an enterprise or
15 professional practice ~~which~~**THAT** received over \$1,500.00 in the
16 year preceding the appointment as a supplier of goods or services
17 to a utility or association representing utilities; or an
18 organization representing employees of such a utility, association,
19 enterprise, or professional practice, or an association which
20 represents such an organization.

21 (c) Shall not have, or shall not have had within 1 year
22 preceding appointment, a financial interest exceeding \$1,500.00 in
23 a utility, an association representing utilities, or an enterprise
24 or professional practice which received over \$1,500.00 in the year
25 preceding the appointment as a supplier of goods or services to a
26 utility or association representing utilities.

27 (d) Shall not be an officer or director of an applicant for a

1 grant under section 6m.

2 (e) Shall not be a member of the immediate family of ~~a person~~
3 **AN INDIVIDUAL** who would be ineligible under ~~subdivisions~~
4 **SUBDIVISION** (a), (b), (c), or (d).

5 (6) The members of the board shall be appointed for 2-year
6 terms beginning with the first day of a legislative session in an
7 odd-numbered year and ending on the day before the first day of the
8 legislative session in the next odd-numbered year or when the
9 members' successors are appointed, whichever occurs later. The
10 governor shall not appoint a member to the board for a term
11 commencing after the governor's term of office has ended. A vacancy
12 shall be filled in the same manner as the original appointment. If
13 the vacancy is created other than by expiration of a term, the
14 member shall be appointed for the balance of the unexpired term of
15 the member to be succeeded.

16 (7) The governor shall remove a member of the board if that
17 member is absent for any reason from either 3 consecutive board
18 meetings or more than 50% of the meetings held by the board in a
19 calendar year. However, ~~a person~~**AN INDIVIDUAL** who is removed due
20 to absenteeism is eligible for reappointment to fill a vacancy
21 ~~which~~**THAT** occurs in the board membership. The governor also shall
22 remove a member of the board if the member is subsequently
23 determined to be ineligible under subsection (5).

24 (8) The board shall hold bimonthly meetings and additional
25 meetings as necessary. A quorum consists of 3 members. A majority
26 vote of the members appointed and serving is necessary for a
27 decision. At its first meeting following the appointment of new

1 members, or as soon as possible after the first meeting, the board
2 shall elect biennially from its membership a chairperson and a
3 vice-chairperson.

4 (9) The board shall not act directly to represent the
5 interests of residential utility consumers except through
6 administration of the fund and grant program under this section.

7 (10) The business which the board may perform shall be
8 conducted at a public meeting of the board held in compliance with
9 the open meetings act, ~~Act No. 267 of the Public Acts of 1976,~~
10 ~~being sections 15.261 to 15.275 of the Michigan Compiled Laws. 1976~~
11 **PA 267, MCL 15.261 TO 15.275.** Public notice of the time, date, and
12 place of the meeting shall be given in the manner required by ~~Act~~
13 ~~No. 267 of the Public Acts of 1976.~~ **THE OPEN MEETINGS ACT, 1976 PA**
14 **267, MCL 15.261 TO 15.275.**

15 (11) A writing prepared, owned, used, in the possession of, or
16 retained by the board in the performance of an official function
17 shall be made available to the public in compliance with the
18 freedom of information act, ~~Act No. 442 of the Public Acts of 1976,~~
19 ~~being sections 15.231 to 15.246 of the Michigan Compiled Laws. 1976~~
20 **PA 442, MCL 15.231 TO 15.246.**

21 (12) A member of the board may be reimbursed for actual and
22 necessary expenses, including travel expenses to and from each
23 meeting held by the board, incurred in discharging the member's
24 duties under this section and section 6m. In addition to expense
25 reimbursement, a board member may receive remuneration from the
26 board of \$100.00 per meeting attended, not to exceed \$1,000.00 in a
27 calendar year. These limits shall be adjusted proportionately to an

1 adjustment in the remittance amounts under section 6m(4) to allow
2 for changes in the cost of living.

3 ~~—— (13) Until the board certifies that it is operating and ready~~
4 ~~to perform all duties under this act, the director of the energy~~
5 ~~administration created by executive directives 1976-2 and 1976-5~~
6 ~~shall serve as temporary administrator of the fund and exercise all~~
7 ~~duties and powers of the board.~~

8 Sec. 6m. (1) The utility consumer representation fund is
9 created as a special fund. The state treasurer shall be the
10 custodian of the fund and shall maintain a separate account of the
11 money in the fund. The money in the fund shall be invested in the
12 bonds, notes, and other evidences of indebtedness issued or insured
13 by the United States government and its agencies, and in prime
14 commercial paper. The state treasurer shall release money from the
15 fund, including interest earned, in the manner and at the time
16 directed by the board.

17 (2) Except as provided in subsection (6), each energy utility
18 that has applied to the public service commission for the
19 initiation of an energy cost recovery proceeding shall remit to the
20 fund before or upon filing its initial application for that
21 proceeding, and on or before the first anniversary of that
22 application, an amount of money determined by the board in the
23 following manner:

24 (a) In the case of an energy utility company serving at least
25 100,000 customers in this state, an amount that bears to
26 \$300,000.00, multiplied by a factor as provided in subsection (4),
27 the same proportion as the company's jurisdictional 1981 total

1 operating revenues, as stated in its annual report, bear to the
2 jurisdictional 1981 total operating revenues of all energy utility
3 companies serving at least 100,000 customers in this state. This
4 amount shall be made available by the board for use by the attorney
5 general for the purposes described in subsection (17).

6 (b) In the case of an energy utility company serving at least
7 100,000 residential customers in this state, an amount that bears
8 to \$300,000.00, multiplied by a factor as provided in subsection
9 (4), the same proportion as the company's jurisdictional 1981 gross
10 revenues from residential tariff sales bear to the jurisdictional
11 1981 gross revenues from residential tariff sales of all energy
12 utility companies serving at least 100,000 residential customers in
13 this state. This amount shall be used for grants under subsection
14 (11).

15 (3) Payments made by an energy utility under subsection (2)(a)
16 are operating expenses of the utility that the public service
17 commission shall permit the utility to charge to its customers.
18 Payments made by a utility under subsection (2)(b) are operating
19 expenses of the utility that the ~~public service~~ commission shall
20 permit the utility to charge to its residential customers.

21 (4) For purposes of subsection (2), the factor shall be set by
22 the board at a level not to exceed the percentage increase in the
23 index known as the consumer price index for urban wage earners and
24 clerical workers, select areas, all items indexed, for the Detroit
25 standard metropolitan statistical area, compiled by the ~~bureau of~~
26 ~~labor statistics~~ **BUREAU OF LABOR STATISTICS** of the United States
27 ~~department of labor,~~ **DEPARTMENT OF LABOR**, or any successor agency,

1 that has occurred between January 1981 and January of the year in
2 which the payment is required to be made. In the event that more
3 than 1 such index is compiled, the index yielding the largest
4 payment shall be the maximum allowable factor. The board shall
5 advise utilities of the factor.

6 (5) On or before the second and succeeding anniversaries of
7 its initial application for an energy cost recovery proceeding, an
8 energy utility shall remit to the board amounts equal to 5/6 of the
9 amounts required under subsection (2).

10 (6) The remittance requirements of this section do not apply
11 to an energy utility organized as a cooperative corporation under
12 sections 98 to 109 of 1931 PA 327, MCL 450.98 to 450.109, and
13 grants from the fund shall not be used to participate in an energy
14 cost recovery proceeding primarily affecting such a utility.

15 (7) In the event of a dispute between the board and an energy
16 utility about the amount of payment due, the utility shall pay the
17 undisputed amount and, if the utility and the board cannot agree,
18 the board may initiate civil action in the circuit court for Ingham
19 ~~county~~ COUNTY for recovery of the disputed amount. The commission
20 shall not accept or take action on an application for an energy
21 cost recovery proceeding from an energy utility subject to this
22 section that has not fully paid undisputed remittances required by
23 this section.

24 (8) The commission shall not accept or take action on an
25 application for an energy cost recovery proceeding from an energy
26 utility subject to this section until 30 days after it has been
27 notified by the board ~~or the director of the energy administration,~~

1 ~~if section 6/(13) is applicable,~~ that the board or the director is
2 ready to process grant applications, will transfer funds payable to
3 the attorney general immediately upon the receipt of those funds,
4 and will within 30 days approve grants and remit funds to qualified
5 grant applicants.

6 (9) The board may accept a gift or grant from any source to be
7 deposited in the fund if the conditions or purposes of the gift or
8 grant are consistent with this section.

9 (10) The costs of operation and expenses incurred by the board
10 in performing its duties under this section and section 6/,
11 including remuneration to board members, shall be paid from the
12 fund. A maximum of 5% of the annual receipts of the fund may be
13 budgeted and used to pay expenses other than grants made under
14 subsection (11).

15 (11) The net grant proceeds shall finance a grant program from
16 which the board may award to an applicant an amount that the board
17 determines shall be used for the purposes set forth in this
18 section.

19 (12) The board shall create and make available to applicants
20 an application form. Each applicant shall indicate on the
21 application how the applicant meets the eligibility requirements
22 provided for in this section and how the applicant proposes to use
23 a grant from the fund to participate in 1 or more proceedings as
24 authorized in subsection (17) that have been or are expected to be
25 filed. The board shall receive an application requesting a grant
26 from the fund only from a nonprofit organization or a unit of local
27 government in this state. The board shall consider only

1 applications for grants containing proposals that are consistent
2 with subsections (17) and (18) and that serve the interests of
3 residential utility consumers. For purposes of making grants, the
4 board may consider protection of the environment, energy
5 conservation, the creation of employment and a healthy economy in
6 the state, and the maintenance of adequate energy resources. The
7 board shall not consider an application that primarily benefits the
8 applicant or a service provided or administered by the applicant.
9 The board shall not consider an application from a nonprofit
10 organization if 1 of the organization's principal interests or
11 unifying principles is the welfare of a utility or its investors or
12 employees, or the welfare of 1 or more businesses or industries,
13 other than farms not owned or operated by a corporation, that
14 receive utility service ordinarily and primarily for use in
15 connection with the profit-seeking manufacture, sale, or
16 distribution of goods or services. Mere ownership of securities by
17 a nonprofit organization or its members does not disqualify an
18 application submitted by that organization.

19 (13) The board shall encourage the representation of the
20 interests of identifiable types of residential utility consumers
21 whose interests may differ, including various social and economic
22 classes and areas of the state, and if necessary, may make grants
23 to more than 1 applicant whose applications are related to a
24 similar issue to achieve this type of representation. In addition,
25 the board shall consider and balance the following criteria in
26 determining whether to make a grant to an applicant:

27 (a) Evidence of the applicant's competence, experience, and

1 commitment to advancing the interests of residential utility
2 consumers.

3 (b) In the case of a nongovernmental applicant, the extent to
4 which the applicant is representative of or has a previous history
5 of advocating the interests of citizens, especially residential
6 utility consumers.

7 (c) The anticipated effect of the proposal contained in the
8 application on residential utility consumers, including the
9 immediate and long-term impacts of the proposal.

10 (d) Evidence demonstrating the potential for continuity of
11 effort and the development of expertise in relation to the proposal
12 contained in the application.

13 (e) The uniqueness or innovativeness of an applicant's
14 position or point of view, and the probability and desirability of
15 that position or point of view prevailing.

16 (14) As an alternative to choosing between 2 or more
17 applications that have similar proposals, the board may invite 2 or
18 more of the applicants to file jointly and award a grant to be
19 managed cooperatively.

20 (15) The board shall make disbursements pursuant to a grant in
21 advance of an applicant's proposed actions as set forth in the
22 application if necessary to enable the applicant to initiate,
23 continue, or complete the proposed actions.

24 (16) Any notice to utility customers and the general public of
25 hearings or other state proceedings in which grants from the fund
26 may be used shall contain a notice of the availability of the fund
27 and the address of the board.

1 (17) The annual receipts and interest earned, less
2 administrative costs, may be used only for participation in
3 administrative and judicial proceedings under sections **6A**, 6h, 6i,
4 6j, ~~and 6k~~, **AND 6S**, **AND** in federal administrative and judicial
5 proceedings that directly affect the energy costs paid by Michigan
6 energy utilities. ~~, and in cost allocation and rate design~~
7 ~~proceedings initiated under section 11(3)~~. Amounts that have been
8 in the fund more than 12 months may be retained in the fund for
9 future grants, or may be returned to energy utility companies or
10 used to offset their future remittances in proportion to their
11 previous remittances to the fund, as the board determines will best
12 serve the interests of consumers.

13 (18) The following conditions ~~shall~~ apply to all grants from
14 the fund:

15 (a) Disbursements from the fund may be used only to advocate
16 the interests of energy utility customers or classes of energy
17 utility customers, and not for representation of merely individual
18 interests.

19 (b) The board shall attempt to maintain a reasonable
20 relationship between the payments from a particular energy utility
21 and the benefits to consumers of that utility.

22 (c) The board shall coordinate the funded activities of grant
23 recipients with those of the attorney general to avoid duplication
24 of effort, to promote supplementation of effort, and to maximize
25 the number of hearings and proceedings with intervenor
26 participation.

27 (19) A recipient of a grant under subsection (11) may use the

1 grant only for the advancement of the proposed action approved by
2 the board, including, but not limited to, costs of staff, hired
3 consultants and counsel, and research.

4 (20) A recipient of a grant under subsection (11) shall file a
5 report with the board within 90 days following the end of the year
6 or a shorter period for which the grant is made. The report shall
7 be made in a form prescribed by the board and is subject to audit
8 by the board. The report shall include the following information:

9 (a) An account of all grant expenditures made by the grant
10 recipient. Expenditures shall be reported within the following
11 categories:

12 (i) Employee and contract for services costs.

13 (ii) Costs of materials and supplies.

14 (iii) Filing fees and other costs required to effectively
15 represent residential utility consumers as provided in this
16 section.

17 (b) Any additional information concerning uses of the grant
18 required by the board.

19 (21) The attorney general shall file a report with the house
20 and senate committees on appropriations within 90 days following
21 the end of each fiscal year. The report shall include the following
22 information:

23 (a) An account of all expenditures made by the attorney
24 general of ~~funds~~ **MONEY** received under this section. Expenditures
25 shall be reported within the following categories:

26 (i) Employee and contract for services costs.

27 (ii) Costs of materials and supplies.

1 (iii) Filing fees and other costs required to effectively
2 represent utility consumers as provided in this section.

3 (b) Any additional information concerning uses of the ~~funds~~
4 **MONEY** received under this section required by the committees.

5 (22) On or before July 1 of each calendar year, the board
6 shall submit a detailed report to the legislature regarding the
7 discharge of duties and responsibilities under this section and
8 section 6l during the preceding calendar year.

9 (23) By October 13, 1985, and at 3-year intervals thereafter,
10 a senate committee chosen by the majority leader of the senate and
11 a house committee chosen by the speaker of the house of
12 representatives shall review the relationship between costs and
13 benefits resulting from this section and sections 6h through 6l,
14 and may recommend changes to the legislature.