

HOUSE BILL No. 6418

October 2, 2018, Introduced by Rep. Howrylak 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 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,"

by amending sections 6l and 6m (MCL 460.6l and 460.6m), as amended by 2016 PA 341.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6l. (1) For purposes of implementing sections 6a, 6h, **6I**,
2 6j, **6K**, 6s, and 6t, this section and section 6m provide a means of
3 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), (b), (c), and (d) 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) "Department" means the department of licensing and
12 regulatory affairs.

13 (e) "Energy cost recovery proceeding" means any proceeding to
14 establish or implement a gas cost recovery clause or a power supply
15 cost recovery clause as provided in section 6h or 6j, to set gas
16 cost recovery factors under section 6h(17), or to set power supply
17 cost recovery factors under section 6j(18).

18 (f) "Energy utility" means each electric or gas company
19 regulated by the commission.

20 (g) "Fund" means the utility consumer representation fund
21 created in section 6m.

22 (h) "Household" means a single-family home, duplex, mobile
23 home, seasonal dwelling, farm home, cooperative, condominium, or
24 apartment that has normal household facilities such as a bathroom,
25 individual cooking facilities, and kitchen sink facilities.

26 Household does not include a penal or corrective institution, or a

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

3 (i) "Jurisdictional" means subject to rate regulation by the
4 commission.

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

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

13 (l) "Residential tariff sales" means those sales by an energy
14 utility that are subject to residential tariffs on file with the
15 commission.

16 (m) "Utility consuming industry" means a person, sole
17 proprietorship, partnership, association, corporation, or other
18 entity that receives utility service ordinarily and primarily for
19 use in connection with the manufacture, sale, or distribution of
20 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 board ~~shall~~**MUST** be performed under the
26 direction and supervision of the department. The board ~~shall~~
27 ~~consist~~**CONSISTS** of 5 members appointed by the governor, 1 of whom

1 ~~shall~~**MUST** be chosen from 1 or more lists of qualified persons
2 submitted 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~~**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~~**NOT** be, or ~~shall not~~ have been within the 5
12 years preceding appointment, a member of a governing body of, or
13 employed in a managerial or professional or consulting capacity by
14 a utility or an association representing utilities; an enterprise
15 or professional practice that received over ~~\$1,500.00~~**\$7,500.00** in
16 the year preceding the appointment as a supplier of goods or
17 services 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 that
20 represents such an organization.

21 (c) ~~Shall not~~**NOT** have, or ~~shall not~~ have had within 1 year
22 preceding appointment, a financial interest exceeding ~~\$1,500.00~~
23 **\$7,500.00** in a utility, an association representing utilities, or
24 an enterprise or professional practice that received over ~~\$1,500.00~~
25 **\$7,500.00** in the year preceding the appointment as a supplier of
26 goods or services to a utility or association representing
27 utilities.

1 (d) ~~Shall not~~ **NOT** be an officer or director of an applicant
2 for a grant under section 6m.

3 (e) Shall not be a member of the immediate family of an
4 individual who would be ineligible under subdivision (a), (b), (c),
5 or (d).

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

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

25 (8) The board shall hold bimonthly meetings and additional
26 meetings as necessary. A quorum consists of 3 members. A majority
27 vote of the members appointed and serving is necessary for a

1 decision. At its first meeting following the appointment of new
2 members, or as soon as possible after the first meeting, the board
3 shall elect biennially from its membership a chairperson and a
4 vice-chairperson.

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

8 (10) The business that the board may perform ~~shall~~**MUST** be
9 conducted at a public meeting of the board held in compliance with
10 the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public
11 notice of the time, date, and place of the meeting ~~shall~~**MUST** be
12 given in the manner required by the open meetings act, 1976 PA 267,
13 MCL 15.261 to 15.275.

14 (11) A writing prepared, owned, used, in the possession of, or
15 retained by the board in the performance of an official function
16 ~~shall~~**MUST** be made available to the public in compliance with the
17 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

18 (12) A member of the board may be reimbursed for actual and
19 necessary expenses, including travel expenses to and from each
20 meeting held by the board, incurred in discharging the member's
21 duties under this section and section 6m. In addition to expense
22 reimbursement, a board member may receive remuneration from the
23 board of ~~\$100.00~~**UP TO \$250.00** per meeting attended, not to exceed
24 ~~\$1,000.00~~**\$10,000.00** in a calendar year. These limits ~~shall~~**MUST** be
25 adjusted proportionately to an adjustment in the remittance amounts
26 under section 6m(4) to allow for changes in the cost of living.

27 Sec. 6m. (1) The utility consumer representation fund is

1 created as a special fund. The state treasurer ~~shall be~~ **IS** the
2 custodian of the fund and shall maintain a separate account of the
3 money in the fund. The money in the fund ~~shall~~ **MUST** be invested in
4 the bonds, notes, and other evidences of indebtedness issued or
5 insured by the United States government and its agencies, and in
6 prime commercial paper. The state treasurer shall release money
7 from the fund, including interest earned, in the manner and at the
8 time directed by the board.

9 (2) Except as provided in subsection ~~(5)~~, **(6)**, each energy
10 utility that has applied to the commission for the initiation of an
11 energy cost recovery proceeding shall remit to the fund before or
12 upon filing its initial application for that proceeding, and on or
13 before the first anniversary of that application, an amount of
14 money determined by the board in the following manner:

15 (a) In the case of an energy utility company serving at least
16 100,000 customers in this state, its proportional share of
17 \$900,000.00 adjusted annually by a factor as provided in subsection
18 (4). This adjusted amount ~~shall become~~ **BECOMES** the new base amount
19 to which the factor provided in subsection (4) is applied in the
20 succeeding year. A utility's proportional share ~~shall~~ **MUST** be
21 calculated by dividing the company's jurisdictional total operating
22 revenues for the preceding year, as stated in its annual report, by
23 the total operating revenues for the preceding year of all energy
24 utility companies serving at least 100,000 customers in this state.
25 This amount ~~shall~~ **MUST** be made available by the board for use by
26 the attorney general for the purposes described in subsection
27 ~~(16)~~. **(17)**.

1 (b) In the case of an energy utility company serving at least
2 100,000 residential customers in this state, its proportional share
3 of \$650,000.00 adjusted annually by a factor as provided in
4 subsection (4). This adjusted amount ~~shall become~~ **BECOMES** the new
5 base amount to which the factor provided in subsection (4) is
6 applied in the succeeding year. A utility's proportional share
7 ~~shall~~ **MUST** be calculated by dividing the company's jurisdictional
8 gross revenues from residential tariff sales for the preceding year
9 by the gross revenues from residential tariff sales for the
10 preceding year of all energy utility companies serving at least
11 100,000 residential customers in this state. This amount ~~shall~~ **MUST**
12 be used for grants under subsection ~~(10)~~ **(11)**.

13 (c) In the case of an energy utility company serving fewer
14 than 100,000 customers in this state, its proportional share of
15 \$100,000.00 adjusted annually by a factor as provided in subsection
16 (4). This adjusted amount ~~shall become~~ **BECOMES** the new base amount
17 to which the factor provided in subsection (4) is applied in the
18 succeeding year. A utility's proportional share ~~shall~~ **MUST** be
19 calculated by dividing the company's jurisdictional total operating
20 revenues for the preceding year, as stated in its annual report, by
21 the total operating revenues for the preceding year of all energy
22 utility companies serving fewer than 100,000 customers in this
23 state. This amount ~~shall~~ **MUST** be made available by the board for
24 use by the attorney general for the purposes described in
25 subsection ~~(16)~~ **(17)**.

26 (d) In the case of an energy utility company serving fewer
27 than 100,000 residential customers in this state, its proportional

1 share of \$100,000.00 adjusted annually by a factor as provided in
2 subsection (4). This adjusted amount ~~shall become~~ **BECOMES** the new
3 base amount to which the factor provided in subsection (4) is
4 applied in the succeeding year. A utility's proportional share
5 ~~shall~~ **MUST** be calculated by dividing the company's jurisdictional
6 gross revenues from residential tariff sales for the preceding year
7 by the gross revenues from residential tariff sales for the
8 preceding year of all energy utility companies serving fewer than
9 100,000 residential customers in this state. This amount ~~shall~~ **MUST**
10 be used for grants under subsection ~~(10)~~ **(11)**.

11 (3) Payments made by an energy utility under subsection (2) (a)
12 or (c) are operating expenses of the utility that the commission
13 shall permit the utility to charge to its customers. Payments made
14 by a utility under subsection (2) (b) or (d) are operating expenses
15 of the utility that the commission shall permit the utility to
16 charge to its residential customers.

17 (4) For purposes of subsection (2), the board shall set the
18 factor at a level not to exceed the percentage increase in the
19 index known as the ~~consumer price index~~ **CONSUMER PRICE INDEX** for
20 urban wage earners and clerical workers, select areas, all items
21 indexed, for the Detroit standard metropolitan statistical area,
22 compiled by the Bureau of Labor Statistics of the United States
23 Department of Labor, or any successor agency, that has occurred
24 between January of the preceding year and January of the year in
25 which the payment is required to be made. In the event that more
26 than 1 such index is compiled, the index yielding the largest
27 payment ~~shall be~~ **IS** the maximum allowable factor. The board shall

1 advise utilities of the factor.

2 (5) ON OR BEFORE THE SECOND AND SUCCEEDING ANNIVERSARIES OF
3 ITS INITIAL APPLICATION FOR AN ENERGY COST RECOVERY PROCEEDING, AN
4 ENERGY UTILITY SHALL REMIT TO THE FUND AMOUNTS EQUAL TO 5/6 OF THE
5 AMOUNTS REQUIRED UNDER SUBSECTION (2).

6 (6) ~~(5)~~—The remittance requirements of this section do not
7 apply to an energy utility organized as a cooperative corporation
8 under sections 98 to 109 of 1931 PA 327, MCL 450.98 to 450.109, and
9 grants from the fund ~~shall~~**MUST** not be used to participate in an
10 energy cost recovery proceeding primarily affecting such a utility.

11 (7) ~~(6)~~—In the event of a dispute between the board and an
12 energy utility about the amount of payment due, the utility shall
13 pay the undisputed amount and, if the utility and the board cannot
14 agree, the board may initiate civil action in the ~~circuit court for~~
15 ~~Ingham County~~**COURT OF CLAIMS** for recovery of the disputed amount.
16 The commission shall not accept or take action on an application
17 for an energy cost recovery proceeding from an energy utility
18 subject to this section that has not fully paid undisputed
19 remittances required by this section.

20 (8) ~~(7)~~—The commission shall not accept or take action on an
21 application for an energy cost recovery proceeding from an energy
22 utility subject to this section until 30 days after it has been
23 notified by the board that the board is ready to process grant
24 applications, will transfer funds payable to the attorney general
25 immediately upon the receipt of those funds, and will within 30
26 days approve grants and remit funds to qualified grant applicants.

27 (9) ~~(8)~~—The board may accept a gift or grant from any source

1 to be deposited in the fund if the conditions or purposes of the
2 gift or grant are consistent with this section.

3 **(10)** ~~(9)~~—The costs of operation and expenses incurred by the
4 board in performing its duties under this section and section 6l,
5 including remuneration to board members, ~~shall~~**MUST** be paid from
6 the fund. A maximum of 5% of the annual receipts of the fund may be
7 budgeted and used to pay expenses other than grants made under
8 subsection ~~(10)~~**-(11)**.

9 **(11)** ~~(10)~~—The net grant proceeds ~~shall~~**MUST** finance a grant
10 program from which the board may award to an applicant an amount
11 that the board determines shall be used for the purposes set forth
12 in this section.

13 **(12)** ~~(11)~~—The board shall create and make available to
14 applicants an application form. Each applicant shall indicate on
15 the application how the applicant meets the eligibility
16 requirements provided for in this section and how the applicant
17 proposes to use a grant from the fund to participate in 1 or more
18 proceedings as authorized in subsection ~~(16)~~**-(17)** that have been or
19 are expected to be filed. Each applicant shall also identify on the
20 application any additional funds or resources, other than the grant
21 funds being requested, that are to be used to participate in the
22 proceeding for which the grant is being requested and how those
23 funds or resources will be utilized. The board shall receive an
24 application requesting a grant from the fund only from a nonprofit
25 organization or a unit of local government in this state. The board
26 shall consider only applications for grants containing proposals
27 that are consistent with subsections ~~(16)~~~~and~~~~(17)~~ **AND (18)** and

1 that serve the interests of residential utility consumers. For
2 purposes of making grants, the board may consider energy
3 conservation, energy waste reduction, demand response, and rate
4 design options to encourage energy conservation, energy waste
5 reduction, and demand response, as well as the maintenance of
6 adequate energy resources. The board shall not consider an
7 application that primarily benefits the applicant or a service
8 provided or administered by the applicant. The board shall not
9 consider an application from a nonprofit organization if 1 of the
10 organization's principal interests or unifying principles is the
11 welfare of a utility or its investors or employees, or the welfare
12 of 1 or more businesses or industries, other than farms not owned
13 or operated by a corporation, that receive utility service
14 ordinarily and primarily for use in connection with the profit-
15 seeking manufacture, sale, or distribution of goods or services.
16 Mere ownership of securities by a nonprofit organization or its
17 members does not disqualify an application submitted by that
18 organization.

19 (13) ~~(12)~~—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) The anticipated involvement of the attorney general in a
4 proceeding and whether activities of the applicant will be
5 duplicative or supplemental to those of the attorney general.

6 (c) In the case of a nongovernmental applicant, the extent to
7 which the applicant is representative of or has a previous history
8 of advocating the interests of citizens, especially residential
9 utility consumers.

10 (d) The anticipated effect of the proposal contained in the
11 application on residential utility consumers, including the
12 immediate and long-term impacts of the proposal.

13 (e) Evidence demonstrating the potential for continuity of
14 effort and the development of expertise in relation to the proposal
15 contained in the application.

16 (f) The uniqueness or innovativeness of an applicant's
17 position or point of view as it relates to advocating for
18 residential utility consumers concerning energy costs or rates, and
19 the probability and desirability of that position or point of view
20 prevailing.

21 **(14)** ~~(13)~~—As an alternative to choosing between 2 or more
22 applications that have similar proposals, the board may invite 2 or
23 more of the applicants to file jointly and award a grant to be
24 managed cooperatively.

25 **(15)** ~~(14)~~—The board shall make disbursements pursuant to a
26 grant in advance of an applicant's proposed actions as set forth in
27 the application if necessary to enable the applicant to initiate,

1 continue, or complete the proposed actions.

2 (16) ~~(15)~~ Any notice to utility customers and the general
3 public of hearings or other state proceedings in which grants from
4 the fund may be used ~~shall~~ **MUST** contain a notice of the
5 availability of the fund and the address of the board.

6 (17) ~~(16)~~ The annual receipts and interest earned, less
7 administrative costs, may be used only for participation in
8 administrative and judicial proceedings under sections 6a, 6h, **6I**,
9 6j, **6K**, 6s, and 6t, and in federal administrative and judicial
10 proceedings that directly affect the energy costs or rates paid by
11 energy utility customers in this state. Amounts that have been in
12 the fund more than 12 months may be retained in the fund for future
13 proceedings and any unexpended money in the fund ~~shall~~ **MUST** be
14 reserved to fulfill the purposes for which it was appropriated or
15 may be returned to energy utility companies or used to offset their
16 future remittances in proportion to their previous remittances to
17 the fund, as the board ~~and attorney general determine~~ **DETERMINES**
18 will best serve the interests of consumers.

19 (18) ~~(17)~~ The following conditions apply to all grants from
20 the fund:

21 (a) Disbursements from the fund may be used only to advocate
22 the interests of ~~residential~~ energy utility customers concerning
23 energy costs or rates and not for representation of merely
24 individual interests.

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

1 (c) The board shall coordinate the funded activities of grant
2 recipients with those of the attorney general to avoid duplication
3 of effort, particularly as it relates to the hiring of expert
4 witnesses, to promote supplementation of effort, and to maximize
5 the number of hearings and proceedings with intervenor
6 participation.

7 (19) ~~(18)~~—A recipient of a grant under subsection ~~(10)~~—(11)
8 may use the grant only for the advancement of the proposed action
9 approved by the board, including, but not limited to, costs of
10 staff, hired consultants and counsel, and research.

11 (20) ~~(19)~~—A recipient of a grant under subsection ~~(10)~~—(11)
12 shall prepare for and participate in all discussions among the
13 parties designed to facilitate settlement or narrowing of the
14 contested issues before a hearing in order to minimize litigation
15 costs for all parties.

16 (21) ~~(20)~~—A recipient of a grant under subsection ~~(10)~~—(11)
17 shall file a report with the board within 90 days following the end
18 of the year or a shorter period for which the grant is made. The
19 report ~~shall~~ **MUST** be made in a form prescribed by the board and is
20 subject to audit by the board. The board shall include each report
21 received under this subsection as part of the board's annual report
22 required under subsection ~~(22)~~—(23). The report under this
23 subsection ~~shall~~ **MUST** include the following information:

24 (a) An account of all grant expenditures made by the grant
25 recipient. Expenditures ~~shall~~ **MUST** be reported within the following
26 categories:

27 (i) Employee and contract for services costs.

1 (ii) Costs of materials and supplies.

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

5 (b) A detailed list of the regulatory issues raised by the
6 grant recipient and how each issue was determined by the
7 commission, court, or other tribunal.

8 (c) Any additional information concerning uses of the grant
9 required by the board.

10 **(22)** ~~(21)~~—On or before July 1 of each year, the attorney
11 general shall file a report with the house and senate committees on
12 appropriations and the house and senate committees with
13 jurisdiction over energy and utility policy issues. The report
14 ~~shall~~ **MUST** include the following information:

15 (a) An account of all expenditures made by the attorney
16 general of money received under this section. Expenditures ~~shall~~
17 **MUST** be reported within the following categories:

18 (i) Employee and contract for services costs.

19 (ii) Costs of materials and supplies.

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

22 (b) Any additional information concerning uses of the money
23 received under this section required by the committees.

24 **(23)** ~~(22)~~—On or before July 1 of each calendar year, the board
25 shall submit a detailed report to the house and senate committees
26 with jurisdiction over energy and utility policy issues regarding
27 the discharge of duties and responsibilities under this section and

1 section 6I during the preceding calendar year.

2 (24) BY SEPTEMBER 30, 2019, AND EVERY 3 YEARS THEREAFTER, A
3 SENATE COMMITTEE CHOSEN BY THE MAJORITY LEADER OF THE SENATE AND A
4 HOUSE COMMITTEE CHOSEN BY THE SPEAKER OF THE HOUSE OF
5 REPRESENTATIVES SHALL REVIEW THE RELATIONSHIP BETWEEN COSTS AND
6 BENEFITS RESULTING FROM THIS SECTION AND SECTIONS 6H THROUGH 6I AND
7 RECOMMEND CHANGES TO THE LEGISLATURE.