

# SENATE BILL NO. 695

October 20, 2021, Introduced by Senators VICTORY, LAUWERS and STAMAS 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 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 section 10a (MCL 460.10a), as amended by 2016 PA 341.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 10a. (1) The commission shall issue orders establishing  
2 the rates, terms, and conditions of service that allow retail  
3 customers to take service from an alternative electric supplier.

4 The orders ~~shall~~**must** do all of the following:

5           (a) Except as otherwise provided in this section, provide that  
6 no more than 10% of an electric utility's average weather-adjusted  
7 retail sales for the preceding calendar year may take service from  
8 an alternative electric supplier at any time.

9           (b) Set forth procedures necessary to allocate the amount of  
10 load that will be allowed to be served by alternative electric  
11 suppliers, through the use of annual energy allotments awarded on a  
12 calendar year basis. If the sales of a utility are less in a  
13 subsequent year or if the energy usage of a customer receiving  
14 electric service from an alternative electric supplier exceeds its  
15 annual energy allotment for that facility, that customer shall not  
16 be forced to purchase electricity from a utility, but may purchase  
17 electricity from an alternative electric supplier for that facility  
18 during that calendar year.

19           (c) Notwithstanding any other provision of this section,  
20 provide that, if the commission determines that less than 10% of an

1 electric utility's average weather-adjusted retail sales for the  
2 preceding calendar year is taking service from alternative electric  
3 suppliers, the commission shall set as a cap on the weather-  
4 adjusted retail sales that may take service from an alternative  
5 electric supplier, for the current calendar year and 5 subsequent  
6 calendar years, the percentage amount of weather-adjusted retail  
7 sales for the preceding calendar year rounded up to the nearest  
8 whole percentage. If the cap is not adjusted for 6 consecutive  
9 calendar years, the cap shall return to 10% in the calendar year  
10 following that sixth consecutive calendar year. If a utility that  
11 serves less than 200,000 customers in this state has not had any  
12 load served by an alternative electric supplier in the preceding 4  
13 years, the commission shall adjust the cap in accordance with this  
14 provision for no more than 2 consecutive calendar years.

15 (d) Notwithstanding any other provision of this section,  
16 customers seeking to expand usage at a facility that has been  
17 continuously served through an alternative electric supplier since  
18 April 1, 2008 shall be permitted to purchase electricity from an  
19 alternative electric supplier for both the existing and any  
20 expanded load at that facility as well as any new facility  
21 constructed or acquired after October 6, 2008 that is similar in  
22 nature if the customer owns more than 50% of the new facility.

23 (e) **Notwithstanding any other provision of this section, an**  
24 **eligible industrial customer may purchase electricity from an**  
25 **alternative electric supplier, regardless of whether the sales**  
26 **exceed 10% of the serving electric utility's average weather-**  
27 **adjusted retail sales, if the eligible industrial customer enters**  
28 **into a power supply contract with an alternative electric supplier**  
29 **that, for a duration no less than 3 years, provides capacity for a**

1 minimum 80% of the eligible industrial customer's projected annual  
2 peak load contribution value from a resource located within the  
3 same local resource zone or locational deliverability area in which  
4 the eligible industrial customer is located and agrees to provide a  
5 minimum of 5 years' notice before returning to full utility  
6 service. As used in this subdivision:

7 (i) "Eligible industrial customer" means new industrial  
8 buildings and facilities, existing industrial buildings and  
9 facilities that require the installation, replacement, or upgrade  
10 of distribution facilities due to planned physical modifications or  
11 a substantial increase in electric load, or existing industrial  
12 buildings and facilities with a peak electric load of 2,000  
13 kilowatts or more.

14 (ii) "Industrial buildings and facilities" means any buildings  
15 or facilities that are served through 1 or more electric billing  
16 meters, the primary purpose of which is the manufacture of goods or  
17 materials, the processing of goods and materials by physical or  
18 chemical change, or the provision of research and development  
19 directly associated with either the manufacture or processing of  
20 goods or materials.

21 (f) ~~(e)~~ Provide that for an existing facility that is  
22 receiving 100% of its electric service from an alternative electric  
23 supplier on or after ~~the effective date of the amendatory act that~~  
24 ~~added section 6t, April 20, 2017,~~ the owner of that facility may  
25 purchase electricity from an alternative electric supplier,  
26 regardless of whether the sales exceed 10% of the servicing  
27 electric utility's average weather-adjusted retail sales, for both  
28 the existing electric choice load at that facility and any expanded  
29 load arising after ~~the effective date of the amendatory act that~~

1 ~~added section 6t~~ **April 20, 2017** at that facility as well as any new  
2 facility that is similar in nature to the existing facility, that  
3 is constructed or acquired by the customer on a site contiguous to  
4 the existing site or on a site that would be contiguous to an  
5 existing site in the absence of an existing public right-of-way,  
6 and the customer owns more than 50% of that facility. This  
7 subdivision does not authorize or permit an existing facility being  
8 served by an electric utility on standard tariff service on ~~the~~  
9 ~~effective date of the amendatory act that added section 6t~~ **April**  
10 **20, 2017** to be served by an alternative electric supplier.

11 (g) ~~(f)~~ Notwithstanding any other provision of this section,  
12 any customer operating an iron ore mining facility, iron ore  
13 processing facility, or both, located in the Upper Peninsula of  
14 this state, may purchase all or any portion of its electricity from  
15 an alternative electric supplier, regardless of whether the sales  
16 exceed 10% of the serving electric utility's average weather-  
17 adjusted retail sales, if that customer is in compliance with the  
18 terms of a settlement agreement requiring it to facilitate  
19 construction of a new power plant located in the Upper Peninsula of  
20 this state. A customer described in this subdivision and the  
21 alternative electric supplier that provides electric service to  
22 that customer are not subject to the requirements contained in ~~the~~  
23 ~~amendatory act that added section 6t~~ **2016 PA 341** and any  
24 administrative regulations adopted under ~~that amendatory act.~~ **2016**  
25 **PA 341**. The commission's orders establishing rates, terms, and  
26 conditions of retail access service issued before ~~the effective~~  
27 ~~date of the amendatory act that added section 6t~~ **April 20, 2017**  
28 remain in effect with regard to retail open access provided under  
29 this subdivision.

1           **(h)** ~~(g)~~ Provide that a customer on an enrollment queue waiting  
 2 to take retail open access service as of December 31, 2015 shall  
 3 continue on the queue and an electric utility shall add a new  
 4 customer to the queue if the customer's prospective alternative  
 5 electric supplier submits an enrollment request to the electric  
 6 utility. A customer shall be removed from the queue by notifying  
 7 the electric utility electronically or in writing.

8           **(i)** ~~(h)~~ Require each electric utility to file with the  
 9 commission not later than January 15 of each year a rank-ordered  
 10 queue of all customers awaiting retail open access service under  
 11 subdivision ~~(g)~~. **(h)**. The filing must include the estimated amount  
 12 of electricity used by each customer awaiting retail open access  
 13 service under subdivision ~~(g)~~. **(h)**. All customer-specific  
 14 information contained in the filing under this subdivision is  
 15 exempt from release under the freedom of information act, 1976 PA  
 16 442, MCL 15.231 to 15.246, and the commission shall treat that  
 17 information as confidential information. The commission may release  
 18 aggregated information as part of its annual report as long as  
 19 individual customer information or data are not released.

20           **(j)** ~~(i)~~ Provide that if the prospective alternative electric  
 21 supplier of a customer next on the queue awaiting retail open  
 22 access service is notified after ~~the effective date of the~~  
 23 ~~amendatory act that added section 6t~~ **April 20, 2017** that less than  
 24 10% of an electric utility's average weather-adjusted retail sales  
 25 for the preceding calendar year are taking service from an  
 26 alternative electric supplier and that the amount of electricity  
 27 needed to serve the customer's electric load is available under the  
 28 10% allocation, the customer may take service from an alternative  
 29 electric supplier. The customer's prospective alternative electric

1 supplier shall notify the electric utility within 5 business days  
2 after being notified whether the customer will take service from an  
3 alternative electric supplier. If the customer's prospective  
4 alternative electric supplier fails to notify the utility within 5  
5 business days or if the customer chooses not to take retail open  
6 access service, the customer shall be removed from the queue of  
7 those awaiting retail open access service. The customer may  
8 subsequently be added to the queue as a new customer under the  
9 provisions of subdivision ~~(g)~~ **(h)**. A customer that elects to take  
10 service from an alternative electric supplier under this  
11 subdivision ~~shall~~ **must** become service-ready under rules established  
12 by the commission and the utility's approved retail open access  
13 service tariffs.

14 **(k)** ~~(j)~~ Provide that the commission shall ensure if a customer  
15 is notified that the customer's service from an alternative  
16 electric supplier will be terminated or restricted as a result of  
17 the alternative electric supplier limiting service in this state,  
18 the customer has 60 days to acquire service from a different  
19 alternative electric supplier. If the customer is a public entity,  
20 the time to acquire services from a different alternative electric  
21 supplier ~~shall~~ **must** not be less than 180 days.

22 **(l)** ~~(k)~~ Provide that as a condition of licensure, an  
23 alternative electric supplier meets all of the requirements of this  
24 act.

25 (2) The commission shall issue orders establishing a licensing  
26 procedure for all alternative electric suppliers. To ensure  
27 adequate service to customers in this state, the commission shall  
28 require that an alternative electric supplier maintain an office  
29 within this state, shall assure that an alternative electric

1 supplier has the necessary financial, managerial, and technical  
2 capabilities, shall require that an alternative electric supplier  
3 maintain records that the commission considers necessary, and shall  
4 ensure an alternative electric supplier's accessibility to the  
5 commission, to consumers, and to electric utilities in this state.  
6 The commission also shall require alternative electric suppliers to  
7 agree that they will collect and remit to local units of government  
8 all applicable users, sales, and use taxes. An alternative electric  
9 supplier is not required to obtain any certificate, license, or  
10 authorization from the commission other than as required by this  
11 act.

12 (3) The commission shall issue orders to ensure that customers  
13 in this state are not switched to another supplier or billed for  
14 any services without the customer's consent.

15 (4) This act does not prohibit or limit the right of a person  
16 to obtain self-service power and does not impose a transition,  
17 implementation, exit fee, or any other similar charge on self-  
18 service power. A person using self-service power is not an electric  
19 supplier, electric utility, or a person conducting an electric  
20 utility business. As used in this subsection, "self-service power"  
21 means any of the following:

22 (a) Electricity generated and consumed at an industrial site  
23 or contiguous industrial site or single commercial establishment or  
24 single residence without the use of an electric utility's  
25 transmission and distribution system.

26 (b) Electricity generated primarily by the use of by-product  
27 fuels, including waste water solids, which electricity is consumed  
28 as part of a contiguous facility, with the use of an electric  
29 utility's transmission and distribution system, but only if the

1 point or points of receipt of the power within the facility are not  
2 greater than 3 miles distant from the point of generation.

3 (c) A site or facility with load existing on June 5, 2000 that  
4 is divided by an inland body of water or by a public highway, road,  
5 or street but that otherwise meets this definition meets the  
6 contiguous requirement of this subdivision regardless of whether  
7 self-service power was being generated on June 5, 2000.

8 (d) A commercial or industrial facility or single residence  
9 that meets the requirements of subdivision (a) or (b) meets this  
10 definition whether or not the generation facility is owned by an  
11 entity different from the owner of the commercial or industrial  
12 site or single residence.

13 (5) This act does not prohibit or limit the right of a person  
14 to engage in affiliate wheeling and does not impose a transition,  
15 implementation, exit fee, or any other similar charge on a person  
16 engaged in affiliate wheeling.

17 (6) The rights of parties to existing contracts and agreements  
18 in effect as of January 1, 2000 between electric utilities and  
19 qualifying facilities, including the right to have the charges  
20 recovered from the customers of an electric utility, or its  
21 successor, are not abrogated, increased, or diminished by this act,  
22 nor shall the receipt of any proceeds of the securitization bonds  
23 by an electric utility be a basis for any regulatory disallowance.  
24 Further, any securitization or financing order issued by the  
25 commission that relates to a qualifying facility's power purchase  
26 contract ~~shall~~**must** fully consider that qualifying facility's legal  
27 and financial interests.

28 (7) A customer that elects to receive service from an  
29 alternative electric supplier may subsequently provide notice to

1 the electric utility of the customer's desire to receive standard  
2 tariff service from the electric utility under procedures approved  
3 by the commission.

4 (8) The commission shall authorize rates that will ensure that  
5 an electric utility that offered retail open access service from  
6 2002 through October 6, 2008 fully recovers its restructuring costs  
7 and any associated accrued regulatory assets. This includes, but is  
8 not limited to, implementation costs, stranded costs, and costs  
9 authorized under section 10d(4) as it existed before October 6,  
10 2008, that have been authorized for recovery by the commission in  
11 orders issued before October 6, 2008. The commission shall approve  
12 surcharges that will ensure full recovery of all such costs by  
13 October 6, 2013.

14 (9) As used in subsections (1) and (7):

15 (a) "Customer" means the building or facilities served through  
16 a single existing electric billing meter and does not mean the  
17 person, corporation, partnership, association, governmental body,  
18 or other entity owning or having possession of the building or  
19 facilities.

20 (b) "Standard tariff service" means, for each regulated  
21 electric utility, the retail rates, terms, and conditions of  
22 service approved by the commission for service to customers who do  
23 not elect to receive generation service from alternative electric  
24 suppliers.

25 (10) As used in this section:

26 (a) "Affiliate" means a person or entity that directly, or  
27 indirectly through 1 or more intermediates, controls, is controlled  
28 by, or is under common control with another specified entity. As  
29 used in this subdivision, "control" means, whether through an

1 ownership, beneficial, contractual, or equitable interest, the  
2 possession, directly or indirectly, of the power to direct or to  
3 cause the direction of the management or policies of a person or  
4 entity or the ownership of at least 7% of an entity either directly  
5 or indirectly.

6 (b) "Affiliate wheeling" means a person's use of direct access  
7 service where an electric utility delivers electricity generated at  
8 a person's industrial site to that person or that person's  
9 affiliate at a location, or general aggregated locations, within  
10 this state that was either 1 of the following:

11 (i) For at least 90 days during the period from January 1, 1996  
12 to October 1, 1999, supplied by self-service power, but only to the  
13 extent of the capacity reserved or load served by self-service  
14 power during the period.

15 (ii) Capable of being supplied by a person's cogeneration  
16 capacity within this state that has had since January 1, 1996 a  
17 rated capacity of 15 megawatts or less, was placed in service  
18 before December 31, 1975, and has been in continuous service since  
19 that date. A person engaging in affiliate wheeling is not an  
20 electric supplier, an electric utility, or conducting an electric  
21 utility business when a person engages in affiliate wheeling.