

**SUBSTITUTE FOR
HOUSE BILL NO. 5188**

A bill to amend 1939 PA 3, entitled

"An act to provide for the regulation and control of public 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 10a (MCL 460.10a), as added by 2000 PA 141.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10a. (1) No later than January 1, 2002, the commission

1 shall issue orders establishing the rates, terms, and conditions
2 of service that allow all retail customers of an electric utility
3 or provider to choose an alternative electric supplier. The
4 orders shall provide for full recovery of a utility's net
5 stranded costs and implementation costs as determined by the
6 commission.

7 (2) The commission shall issue orders establishing a
8 licensing procedure for all alternative electric suppliers. To
9 ensure adequate service to customers in this state, the
10 commission shall require that an alternative electric supplier
11 maintain an office within ~~Michigan~~ **this state**, shall assure
12 that an alternative electric supplier has the necessary
13 financial, managerial, and technical capabilities, shall require
14 that an alternative electric supplier maintain records which the
15 commission considers necessary, and shall ensure an alternative
16 electric supplier's accessibility to the commission, to
17 consumers, and to electric utilities in this state. The
18 commission also shall require alternative electric suppliers to
19 agree that they will collect and remit to local units of
20 government all applicable users, sales, and use taxes. An
21 alternative electric supplier is not required to obtain any
22 certificate, license, or authorization from the commission other
23 than as required by this act.

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

27 (4) Within 180 days after ~~the effective date of the~~

House Bill No. 5188 (H-2) as amended November 6, 2003

1 ~~amendatory act that added this section~~ **June 5, 2000**, the
2 commission shall establish a code of conduct that shall apply to
3 all electric utilities. The code of conduct shall include, but
4 is not limited to, measures to prevent cross-subsidization,
5 information sharing, and preferential treatment, between a
6 utility's regulated and unregulated services, whether those
7 services are provided by the utility or the utility's affiliated
8 entities. The code of conduct established under this subsection
9 shall also be applicable to electric utilities and alternative
10 electric suppliers consistent with section 10, this section, and
11 sections 10b through ~~10bb~~ 10cc.

12 **(5) Before December 31, 2003, the commission shall extend the**
13 **temporary waiver for appliance service plans granted in case**
14 **no. U-12134 issued February 20, 2003, to July 1, 2004, subject to**
15 **the conditions imposed by that order. [The enactment of this subsection**
shall not be deemed to prejudice, delay, or affect any pending legal case
or legal proceeding.]

16 **(6) ~~(5)~~** The orders issued by the commission before ~~the~~
17 ~~effective date of the amendatory act that added this section~~
18 **June 5, 2000** that allow customers of an electric utility to
19 choose an alternative electric supplier, including orders that
20 determine and authorize recovery of net stranded costs and
21 implementation costs and that confirm any voluntary commitments
22 of electric utilities, are in compliance with this act and
23 enforceable by the commission. An electric utility that has not
24 had voluntary commitments to provide customer choice previously
25 approved by orders of the commission shall file a restructuring
26 plan to allow customers to choose an alternative electric
27 supplier no later than the date ordered by the commission. The

1 plan shall propose a methodology to determine the electric
2 utility's net stranded costs and implementation costs.

3 (7) ~~(6)~~ This act does not prohibit or limit the right of a
4 person to obtain self-service power ~~—~~ and ~~it~~ does not impose
5 a transition, implementation, exit fee, or any other similar
6 charge on self-service power. A person using self-service power
7 is not an electric supplier, electric utility, or a person
8 conducting an electric utility business. As used in this
9 subsection, "self-service power" means any of the following:

10 (a) Electricity generated and consumed at an industrial site
11 or contiguous industrial site or single commercial establishment
12 or single residence without the use of an electric utility's
13 transmission and distribution system.

14 (b) Electricity generated primarily by the use of by-product
15 fuels, including waste water solids, ~~and the~~ **which** electricity
16 is consumed as part of a contiguous facility, with the use of an
17 electric utility's transmission and distribution system, but only
18 if the point or points of receipt of the power within the
19 facility are not greater than 3 miles distant from the point of
20 generation.

21 (c) A site or facility with load existing on ~~the effective~~
22 ~~date of the amendatory act that added this section~~ **June 5, 2000**
23 that is divided by an inland body of water or by a public
24 highway, road, or street but that otherwise meets this definition
25 meets the contiguous requirement of this subdivision regardless
26 of whether self-service power was being generated on ~~the~~
27 ~~effective date of the amendatory act that added this section~~

1 **June 5, 2000.**

2 (d) A commercial or industrial facility or single residence
3 that meets the requirements of subdivision (a) or (b) meets this
4 definition whether or not the generation facility is owned by an
5 entity different from the owner of the commercial or industrial
6 site or single residence.

7 **(8)** ~~-(7)-~~ This act does not prohibit or limit the right of a
8 person to engage in affiliate wheeling and does not impose a
9 transition, implementation, exit fee, or any other similar charge
10 on a person engaged in affiliate wheeling. As used in this
11 section:

12 (a) "Affiliate" means a person or entity that directly, or
13 indirectly through 1 or more intermediates, controls, is
14 controlled by, or is under common control with another specified
15 entity. As used in this subdivision, "control" means, whether
16 through an ownership, beneficial, contractual, or equitable
17 interest, the possession, directly or indirectly, of the power to
18 direct or to cause the direction of the management or policies of
19 a person or entity or the ownership of at least 7% of an entity
20 either directly or indirectly.

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

26 (i) For at least 90 days during the period from January 1,
27 1996 to October 1, 1999, supplied by self-service power, but only

1 to the extent of the capacity reserved or load served by
2 self-service power during the period.

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

11 (9) ~~-(8)-~~ The rights of parties to existing contracts and
12 agreements in effect as of January 1, 2000 between electric
13 utilities and qualifying facilities, including the right to have
14 the charges recovered from the customers of an electric utility,
15 or its successor, shall not be abrogated, increased, or
16 diminished by this act, nor shall the receipt of any proceeds of
17 the securitization bonds by an electric utility be a basis for
18 any regulatory disallowance. Further, any securitization or
19 financing order issued by the commission that relates to a
20 qualifying facility's power purchase contract shall fully
21 consider that qualifying facility's legal and financial
22 interests.

23 (10) ~~-(9)-~~ The commission shall, after a contested case
24 proceeding, issue annually an order approving for each electric
25 utility a true-up adjustment to reconcile any overcollections or
26 undercollections of the preceding 12 months to ensure the
27 recovery of all amounts of net stranded costs. The rates for

1 customers remaining with an incumbent electric utility will not
2 be affected by the true-up process under this subsection. The
3 commission shall review the electric utility's stranded cost
4 recovery charges and securitization charges implemented for the
5 preceding 12 months, and adjust the stranded cost recovery
6 charge, by way of supplemental surcharges or credits, to allow
7 the netting of stranded costs.

8 **(11)** ~~-(10)-~~ The commission shall consider the reasonableness
9 and appropriateness of various methods to determine net stranded
10 costs, including, but not limited to, all of the following:

11 (a) Evaluating the relationship of market value to the net
12 book value of generation assets and purchased power contracts.

13 (b) Evaluating net stranded costs based on the market price
14 of power in relation to prices assumed by the commission in prior
15 orders.

16 (c) Any other method the commission considers appropriate.

17 **(12)** ~~-(11)-~~ The true-up adjustment adopted under subsection
18 ~~-(9)-~~ **(10)** shall not result in a modification to the
19 securitization charge. The commission shall not adjust or change
20 in any manner securitization charges authorized by the commission
21 in a financing order issued under section 10i as a result of its
22 review and any action taken under subsection ~~-(9)-~~ **(10)**.

23 **(13)** ~~-(12)-~~ After the time period described in section
24 10d(2), the rates for retail customers that remain with or leave
25 and later return to the incumbent electric utility shall be
26 determined in the same manner as the rates were determined before
27 the effective date of this section.