

MICHIGAN PUBLIC SERVICE COMMISSION (EXCERPT)
Act 3 of 1939

460.6m Utility consumer representation fund; creation as special fund; investment and release of money; remittance by energy utility; factor; action for recovery of disputed amount; action on application for energy cost recovery proceedings; conditions; acceptance of gift or grant; payment of operating costs and expenses; net grant proceeds to finance grant program; application form; consideration; encouraging representation of different consumer interests; criteria; joint filing; disbursements; notice of availability of fund; use of annual receipts and interest; retention of certain amounts; conditions applicable to grants; reports.

Sec. 6m.

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

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

(a) In the case of an energy utility company serving at least 100,000 customers in this state, its proportional share of \$1,800,000.00 adjusted annually by a factor as provided in subsection (4). This adjusted amount is the new base amount to which the factor provided in subsection (4) is applied in the succeeding year. A utility's proportional share must be calculated by dividing the company's jurisdictional total operating revenues for the preceding year, as stated in its annual report, by the total operating revenues for the preceding year of all energy utility companies serving at least 100,000 customers in this state. The board shall make this amount available for use by the attorney general for the purposes described in subsection (16).

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

(c) In the case of an energy utility company serving fewer than 100,000 customers in this state, its proportional share of \$100,000.00 adjusted annually by a factor as provided in subsection (4). This adjusted amount is the new base amount to which the factor provided in subsection (4) is applied in the succeeding year. A utility's proportional share must be calculated by dividing the company's jurisdictional total operating revenues for the preceding year, as stated in its annual report, by the total operating revenues for the preceding year of all energy utility companies serving fewer than 100,000 customers in this state. The board shall make this amount available for use by the attorney general for the purposes described in subsection (16).

(d) In the case of an energy utility company serving fewer than 100,000 residential customers in this state, its proportional share of \$100,000.00 adjusted annually by a factor as provided in subsection (4). This adjusted amount is the new base amount to which the factor provided in subsection (4) is applied in the succeeding year. A utility's proportional share must be calculated by dividing the company's jurisdictional gross revenues from residential tariff sales for the preceding year by the gross revenues from residential tariff sales for the preceding year of all energy utility companies serving fewer than 100,000 residential customers in this state. This amount must be used for grants under subsection (10).

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

(4) For purposes of subsection (2), the board shall set the factor at a level not to exceed the percentage increase in the index known as the Consumer Price Index for urban wage earners and clerical workers, select areas, all items indexed, for the Detroit standard metropolitan statistical area, compiled by the Bureau of Labor Statistics of the United States Department of Labor, or any successor agency, that has occurred between January of the preceding year and January of the year in which the payment is required to be made. In the event that more than 1 such index is compiled, the index yielding the largest payment is the maximum allowable factor. The board shall advise utilities

of the factor.

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

(6) In the event of a dispute between the board and an energy utility about the amount of payment due, the utility shall pay the undisputed amount and, if the utility and the board cannot agree, the board may initiate civil action in the circuit court for Ingham County for recovery of the disputed amount. The commission shall not accept or take action on an application for an energy cost recovery proceeding from an energy utility subject to this section that has not fully paid undisputed remittances required by this section.

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

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

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

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

(11) The board shall create and make available to applicants an application form. Each applicant shall indicate on the application how the applicant meets the eligibility requirements provided for in this section and how the applicant proposes to use a grant from the fund to participate in 1 or more proceedings as authorized in subsection (16) that have been or are expected to be filed. Each applicant shall also identify on the application any additional funds or resources, other than the grant funds being requested, that are to be used to participate in the proceeding for which the grant is being requested and how those funds or resources will be utilized. The board shall receive an application requesting a grant from the fund only from a nonprofit organization or a unit of local government in this state. The board shall consider only applications for grants containing proposals that are consistent with subsections (16) and (17) and that serve the interests of residential utility consumers. The interest of residential consumers includes, but is not limited to, considerations of utility service in this state; the reduction of greenhouse gas emissions from the utility sector; and the protection of public health, equitable access to energy efficiency, weatherization, efficient electrification measures, programs and services, and clean energy technologies. For purposes of making grants, the board may consider energy conservation, energy waste reduction, demand response, and rate design options to encourage energy conservation, energy waste reduction, and demand response, as well as the maintenance of adequate energy resources. The board shall not consider an application that primarily benefits the applicant or a service provided or administered by the applicant. The board shall not consider an application from a nonprofit organization if 1 of the organization's principal interests or unifying principles is the welfare of a utility or its investors or employees, or the welfare of 1 or more businesses or industries, other than farms not owned or operated by a corporation, that receive utility service ordinarily and primarily for use in connection with the profit-seeking manufacture, sale, or distribution of goods or services. Mere ownership of securities by a nonprofit organization or its members does not disqualify an application submitted by that organization.

(12) The board shall encourage grant making to nonprofits representing environmental justice communities and communities with the highest energy burdens. The board shall also encourage the interests of identifiable types of residential utility consumers whose interests may differ, including various social and economic classes and areas of the state, and if necessary, may make grants to more than 1 applicant whose applications are related to a similar issue to achieve this type of representation. In addition, the board shall consider and balance the following criteria in determining whether to make a grant to an applicant:

(a) Evidence of the applicant's competence, experience, and commitment to advancing the interests of residential utility consumers.

(b) The anticipated involvement of the attorney general in a proceeding and whether activities of the applicant will be duplicative or supplemental to those of the attorney general.

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

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

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

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

(13) As an alternative to choosing between 2 or more applications that have similar proposals, the board may

invite 2 or more of the applicants to file jointly and award a grant to be managed cooperatively.

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

(15) Any notice to utility customers and the general public of hearings or other state proceedings in which grants from the fund may be used must contain a notice of the availability of the fund and the address of the board.

(16) The annual receipts and interest earned, less administrative costs, may be used only for participation in administrative and judicial proceedings under sections 6a, 6h, 6j, 6s, 6t, 6w, and 10i, and the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001 to 460.1211, and in federal administrative and judicial proceedings that directly affect the energy costs or rates paid by energy utility customers in this state. Amounts that have been in the fund more than 12 months may be retained in the fund for future proceedings and any unexpended money in the fund is reserved to fulfill the purposes for which it was appropriated or may be returned to energy utility companies or used to offset their future remittances in proportion to their previous remittances to the fund, as the board and attorney general determine will best serve the interests of consumers.

(17) The following conditions apply to all grants from the fund:

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

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

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

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

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

(20) A recipient of a grant under subsection (10) shall file a report with the board not later than 90 days following the end of the year or a shorter period for which the grant is made. The report must be made in a form prescribed by the board and is subject to audit by the board. The board shall include each report received under this subsection as part of the board's annual report required under subsection (22). The report under this subsection must include the following information:

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

(i) Employee and contract for services costs.

(ii) Costs of materials and supplies.

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

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

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

(21) On or before July 1 of each year, the attorney general shall file a report with the house and senate committees on appropriations and the house and senate committees with jurisdiction over energy and utility policy issues. The report must include the following information:

(a) An account of all expenditures made by the attorney general of money received under this section.

Expenditures must be reported in the following categories:

(i) Employee and contract for services costs.

(ii) Costs of materials and supplies.

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

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

(22) On or before July 1 of each calendar year, the board shall submit a detailed report to the house and senate committees with jurisdiction over energy and utility policy issues regarding the discharge of duties and responsibilities under this section and section 6l during the preceding calendar year.

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982 ;-- Am. 2014, Act 170, Imd. Eff. June 17, 2014 ;-- Am. 2016, Act 341, Eff. Apr. 20, 2017 ;-- Am. 2023, Act 231, Eff. Feb. 13, 2024

