

Act No. 323
Public Acts of 1990
Approved by the Governor
December 20, 1990
Filed with the Secretary of State
December 21, 1990

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1990**

Introduced by Rep. Middaugh

Reps. Allen, Alley, Barns, Bender, Brown, Willis Bullard, Crandall, DeMars, Dolan, Emmons, Fitzgerald, Gagliardi, Giese, Gnodtke, Hart, Hillegonds, Hoekman, Hoffman, Hollister, Honigman, Hunter, Jacobetti, Jaye, Kosteva, Kulchitsky, Leland, Maynard, Pitoniak, Porreca, Pridnia, Sofio, Stacey and Strand named co-sponsors

ENROLLED HOUSE BILL No. 5890

AN ACT to amend section 60 of Act No. 3 of the Public Acts of 1939, entitled as amended "An act to provide for the regulation and control of public utilities and other services affected with a public interest within this state; 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 therein 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 rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to provide for a restructuring of rates for certain utilities; to encourage the utilization of resource recovery facilities; to provide for appeals; to provide appropriations; to declare the effect of this act; to prescribe penalties; and to repeal all acts contrary to this act," as added by Act No. 2 of the Public Acts of 1989, being section 460.60 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 60 of Act No. 3 of the Public Acts of 1939, as added by Act No. 2 of the Public Acts of 1989, being section 460.60 of the Michigan Compiled Laws, is amended to read as follows:

Sec. 60. (1) As used in this section:

(a) "Resource recovery facility" means a facility that meets all of the following requirements:

(i) Has machinery, equipment, and structures installed for the primary purpose of recovering energy through the incineration of qualified solid waste, landfill gas, or scrap tires.

(ii) Utilizes at least 80% of its total annual fuel input in the form of qualified solid waste, at least 90% of its total annual fuel input in the form of landfill gas, or 90% of its total annual fuel input in the form of scrap tires, exclusive of fuel used for normal start-up and shutdown.

(iii) Is a qualifying facility as defined by the federal energy regulatory commission pursuant to the public utility regulatory policies act of 1978, Public Law 95-617, 92 Stat. 3117.

(b) "Qualified solid waste" means solid waste that may be lawfully disposed of in a type II landfill as defined by R 299.4105 of the Michigan administrative code, and which is generated within this state.

(c) "Scrap tire", "scrap tire hauler", and "scrap tire processor" mean those terms as they are defined in the scrap tire regulatory act, Act No. 133 of the Public Acts of 1990, being sections 299.561 to 299.572 of the Michigan Compiled Laws.

(2) Public utilities with more than 500,000 customers in this state shall enter into power purchase agreements for the purchase of capacity and energy from resource recovery facilities that will process qualified solid waste, at least 50.1% of which is generated within the service areas of the public utility; or, subject to the

provisions of this section, scrap tires, under rates, charges, terms, and conditions of service that, for these facilities, may differ from those negotiated, authorized, or prescribed for purchases from qualifying facilities that are not resource recovery facilities. If a resource recovery facility incinerates scrap tires, or any other tires that are obtained from outside the state, or if more than 50.1% of the scrap tires or other tires are obtained outside the public utility service area, the public utility may in partial satisfaction of its obligation under this subsection purchase capacity and energy from the facility but shall not be obligated by this act to purchase the facility's capacity and energy. A resource recovery facility that incinerates at least 90% of its total annual fuel input in the form of scrap tires shall accept all scrap tires that first became scrap tires in the state and that are delivered to the facility by a scrap tire processor or a scrap tire hauler. The first 6,000,000 of these scrap tires delivered to the resource recovery facility each year shall be charged a rate not greater than an amount equal to \$34.50 per ton, increased each calendar quarter beginning July 1, 1990, by an amount equal to the increase in the all items version of the consumer price index for urban wage earners and clerical workers during the prior calendar quarter. Including power purchase agreements executed prior to June 30, 1989, this section shall not apply after 120 megawatts of electric resource recovery facility capacity in a utility's service territory have been contracted and entered in commercial operation. Further, the provisions of this section shall not apply to more than the first 30 megawatts of scrap tire fueled resource recovery facility capacity in the state that has been contracted and entered in commercial operation. Excluding rate provisions, if a provision or provisions of a purchase agreement remain in dispute, each party shall submit to the commission all of the purchase agreement provisions of their last best offer and a supporting brief. On each disputed provision, the commission shall within 60 days either select or reject with recommendation the offers submitted by either party.

(3) A power purchase agreement entered into by a public utility for the purchase of capacity and energy from a resource recovery facility shall be filed with the commission and a contested case proceeding shall commence immediately pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws. Notwithstanding section 6j, a power purchase agreement shall be considered approved if the commission does not approve or disapprove the agreement within 6 months of the date of the filing of the agreement, or April 3, 1989, whichever is later. Approval pursuant to this subsection shall constitute prior approval under section 6j(13)(b).

(4) The energy rate component of all power sales contracts for resource recovery facilities shall be equal to the avoided energy cost of the purchasing utility.

(5) When averaged over the term of the contract, the capacity rate component of all power sales contracts for resource recovery facilities may be equal to but not less than the full avoided cost of the utility as determined by the commission. In determining the capacity rate, the commission may assume that the utility needs capacity.

(6) Capacity purchased by a utility prior to January 1, 2000 under a power sales contract with a resource recovery facility shall not be considered directly or indirectly in determining the utility's reserve margin, reserve capacity, or other resource capability measurement. The legislature and the Michigan public service commission shall receive an annual accounting from a resource recovery facility which incinerates scrap tires to insure compliance with the provisions of this act. The annual accounting shall include the total amount of scrap tires incinerated at the resource recovery facility and the percentage of those scrap tires that prior to incineration were used within this state for their original intended purpose.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved

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Governor.

