

HOUSE BILL 78

C5
HB 1129/13 – ECM

(PRE-FILED)

4lr0920

By: **Delegate Carr**

Requested: November 13, 2013

Introduced and read first time: January 8, 2014

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Public Service Commission – Participant Compensation**

3 FOR the purpose of requiring the Public Service Commission to award certain
4 reasonable fees and costs of preparation for and participation in a hearing or
5 proceeding before the Commission to certain customers under certain
6 circumstances; requiring a customer that intends to seek a certain award to file
7 and submit to all parties of the hearing or proceeding a notice of intent to claim
8 compensation at a certain time; requiring the Commission to establish a
9 procedure to be used in filing a notice of intent to claim compensation or a
10 revised notice under certain circumstances; providing for the contents of the
11 notice of intent; authorizing the Commission or hearing examiner, within a
12 certain time period, to direct staff and allow other parties to file a statement
13 responding to the notice of intent; requiring the Commission or hearing
14 examiner to issue a preliminary determination on the eligibility of the customer
15 to receive an award of compensation within a certain time period; providing that
16 a certain finding creates a certain rebuttable presumption; authorizing a certain
17 customer to file a request for a certain award within a certain time period under
18 certain circumstances; providing for the minimum required contents of the
19 request for an award; authorizing certain parties to file a response to a request
20 for an award within a certain time period; authorizing the Commission to audit
21 the books and records of a certain customer for a certain purpose; requiring the
22 Commission to preserve the confidentiality of the customer in performing the
23 audit; requiring the Commission to prepare and file a certain audit report
24 within a certain time period; authorizing a certain party to file a response to the
25 audit report within a certain time period; requiring the Commission to make a
26 certain determination within a certain time period; requiring that, if the
27 Commission makes a certain determination, the Commission shall describe a
28 certain contribution and determine the amount of a certain compensation;
29 requiring the Commission to consider certain factors in determining the amount
30 of a certain compensation award; prohibiting the amount of a certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 compensation award to exceed a certain market rate; prohibiting the amount of
2 a certain compensation award from exceeding a certain dollar amount for a
3 single customer in any proceeding; requiring a certain public service company to
4 pay a certain amount awarded to a certain customer within a certain time
5 period; prohibiting the Commission from awarding compensation to a certain
6 customer under certain circumstances; prohibiting a representative of a certain
7 group from being eligible for a compensation award under certain
8 circumstances; requiring the Commission to adopt certain regulations; defining
9 certain terms; and generally relating to compensation for certain participants in
10 proceedings of the Public Service Commission.

11 BY adding to
12 Article – Public Utilities
13 Section 3–301 through 3–308 to be under the new subtitle “Subtitle 3.
14 Participant Compensation”
15 Annotated Code of Maryland
16 (2010 Replacement Volume and 2013 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article – Public Utilities**

20 **SUBTITLE 3. PARTICIPANT COMPENSATION.**

21 **3–301.**

22 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
23 INDICATED.

24 (B) (1) “COMPENSATION” MEANS PAYMENT FOR ALL OR PART, AS
25 THE COMMISSION DETERMINES, OF:

26 (I) REASONABLE ATTORNEY’S FEES;

27 (II) REASONABLE EXPERT WITNESS FEES; AND

28 (III) OTHER REASONABLE COSTS OF PREPARATION FOR AND
29 PARTICIPATION IN A PROCEEDING.

30 (2) “COMPENSATION” INCLUDES PAYMENT FOR FEES AND COSTS
31 OF OBTAINING AN AWARD UNDER THIS SUBTITLE AND OF OBTAINING JUDICIAL
32 REVIEW, IF ANY.

33 (C) (1) “CUSTOMER” INCLUDES:

1 **(I) A PERSON THAT REPRESENTS CONSUMERS,**
2 **CUSTOMERS, OR SUBSCRIBERS OF ANY PUBLIC SERVICE COMPANY THAT IS**
3 **UNDER THE JURISDICTION OF THE COMMISSION;**

4 **(II) A REPRESENTATIVE WHO HAS BEEN AUTHORIZED BY A**
5 **CUSTOMER; OR**

6 **(III) A REPRESENTATIVE OF A GROUP OR AN ORGANIZATION**
7 **AUTHORIZED IN ACCORDANCE WITH ITS ARTICLES OF INCORPORATION OR**
8 **BYLAWS TO REPRESENT THE INTERESTS OF:**

9 **1. RESIDENTIAL ELECTRICITY CUSTOMERS; OR**

10 **2. SMALL AND MEDIUM-SIZED NONRESIDENTIAL**
11 **CUSTOMERS.**

12 **(2) “CUSTOMER” DOES NOT INCLUDE ANY STATE, FEDERAL, OR**
13 **COUNTY AGENCY, ANY PUBLICLY OWNED PUBLIC SERVICE COMPANY, OR ANY**
14 **ENTITY THAT, IN THE COMMISSION’S OPINION, WAS ESTABLISHED OR FORMED**
15 **BY A COUNTY AGENCY FOR THE PURPOSE OF PARTICIPATING IN A COMMISSION**
16 **PROCEEDING.**

17 **(D) “EXPERT WITNESS FEE” MEANS A RECORDED OR BILLED COST**
18 **INCURRED BY A CUSTOMER FOR AN EXPERT WITNESS.**

19 **(E) “OTHER REASONABLE COST” MEANS A REASONABLE**
20 **OUT-OF-POCKET EXPENSE DIRECTLY INCURRED BY A CUSTOMER THAT IS**
21 **DIRECTLY RELATED TO THE CONTENTIONS OR RECOMMENDATIONS MADE BY**
22 **THE CUSTOMER THAT RESULTED IN A SUBSTANTIAL CONTRIBUTION.**

23 **(F) “PROCEEDING” MEANS AN APPLICATION, A COMPLAINT, OR AN**
24 **INVESTIGATION, A RULEMAKING, OR AN ALTERNATIVE DISPUTE RESOLUTION**
25 **PROCEDURE IN LIEU OF A FORMAL PROCEEDING SPONSORED OR ENDORSED BY**
26 **THE COMMISSION, OR ANY OTHER FORMAL PROCEEDING BEFORE THE**
27 **COMMISSION.**

28 **(G) “SIGNIFICANT FINANCIAL HARDSHIP” MEANS:**

29 **(1) THE CUSTOMER CANNOT AFFORD, WITHOUT UNDUE**
30 **HARDSHIP, TO PAY THE COSTS OF EFFECTIVE PARTICIPATION, INCLUDING**
31 **ATTORNEY’S FEES, EXPERT WITNESS FEES, AND OTHER REASONABLE COSTS OF**
32 **PARTICIPATION; OR**

1 **(2)** IN THE CASE OF A GROUP OR AN ORGANIZATION, THE
2 ECONOMIC INTEREST OF THE INDIVIDUAL MEMBERS OF THE GROUP OR
3 ORGANIZATION IS SMALL IN COMPARISON TO THE COSTS OF EFFECTIVE
4 PARTICIPATION IN THE PROCEEDING.

5 **(H)** “SUBSTANTIAL CONTRIBUTION” MEANS THAT, IN THE
6 DETERMINATION OF THE COMMISSION, THE CUSTOMER’S PRESENTATION HAS
7 SUBSTANTIALLY ASSISTED THE COMMISSION IN THE MAKING OF ITS ORDER OR
8 DECISION BECAUSE THE ORDER OR DECISION HAS ADOPTED WHOLLY OR
9 PARTLY ONE OR MORE FACTUAL CONTENTIONS, LEGAL CONTENTIONS, OR
10 SPECIFIC POLICY OR PROCEDURAL RECOMMENDATIONS PRESENTED BY THE
11 CUSTOMER.

12 **3-302.**

13 THE COMMISSION SHALL AWARD REASONABLE ATTORNEY’S FEES,
14 REASONABLE EXPERT WITNESS FEES, AND OTHER REASONABLE COSTS OF
15 PREPARATION FOR AND PARTICIPATION IN A HEARING OR PROCEEDING TO ANY
16 CUSTOMER THAT COMPLIES WITH § 3-303 OF THIS SUBTITLE AND SATISFIES
17 THE FOLLOWING REQUIREMENTS:

18 **(1)** THE CUSTOMER’S PRESENTATION:

19 **(I)** MAKES A SUBSTANTIAL CONTRIBUTION TO THE
20 ADOPTION, WHOLLY OR PARTLY, OF THE COMMISSION’S ORDER OR DECISION;
21 AND

22 **(II)** REGARDS AN ISSUE THAT IS NOT NORMALLY
23 ADDRESSED BY THE OFFICE OF PEOPLE’S COUNSEL; AND

24 **(2)** PARTICIPATION OR INTERVENTION WITHOUT AN AWARD OF
25 FEES OR COSTS IMPOSES A SIGNIFICANT FINANCIAL HARDSHIP.

26 **3-303.**

27 **(A)** **(1)** **(I)** EXCEPT AS PROVIDED IN SUBPARAGRAPH **(II)** OF THIS
28 PARAGRAPH, WITHIN 30 DAYS AFTER THE PREHEARING CONFERENCE, A
29 CUSTOMER THAT INTENDS TO SEEK AN AWARD UNDER THIS SUBTITLE SHALL
30 FILE AND SUBMIT TO ALL PARTIES TO THE PROCEEDING A NOTICE OF INTENT
31 TO CLAIM COMPENSATION.

1 **(II) THE COMMISSION SHALL ESTABLISH A PROCEDURE TO**
2 **BE USED IN FILING A NOTICE OF INTENT TO CLAIM COMPENSATION OR A**
3 **REVISED NOTICE OF INTENT TO CLAIM COMPENSATION IF:**

4 **1. NO PREHEARING CONFERENCE IS SCHEDULED OR**
5 **THE COMMISSION ANTICIPATES THAT THE PROCEEDING WILL TAKE LESS THAN**
6 **30 DAYS; OR**

7 **2. THE SCHEDULE WILL NOT REASONABLY ALLOW**
8 **PARTIES TO IDENTIFY ISSUES WITHIN THE TIME FRAME SET FORTH IN**
9 **SUBPARAGRAPH (I) OF THIS PARAGRAPH OR IF NEW ISSUES EMERGE AFTER THE**
10 **TIME SET FOR FILING.**

11 **(2) A NOTICE OF INTENT TO CLAIM COMPENSATION SHALL**
12 **INCLUDE:**

13 **(I) A STATEMENT OF THE NATURE AND EXTENT OF THE**
14 **CUSTOMER'S PLANNED PARTICIPATION IN THE PROCEEDING AS FAR AS IT IS**
15 **POSSIBLE TO SET OUT THE PLANNED PARTICIPATION WHEN THE CUSTOMER**
16 **FILES THE NOTICE OF INTENT;**

17 **(II) AN ITEMIZED ESTIMATE OF THE COMPENSATION THAT**
18 **THE CUSTOMER EXPECTS TO REQUEST, GIVEN THE LIKELY DURATION OF THE**
19 **PROCEEDING WHEN THE CUSTOMER FILES THE NOTICE OF INTENT; AND**

20 **(III) A SHOWING BY THE CUSTOMER THAT PARTICIPATION IN**
21 **THE HEARING OR PROCEEDING WOULD POSE A SIGNIFICANT FINANCIAL**
22 **HARDSHIP.**

23 **(3) WITHIN 15 DAYS AFTER RECEIVING THE NOTICE OF INTENT**
24 **TO CLAIM COMPENSATION, THE COMMISSION OR THE HEARING EXAMINER MAY**
25 **DIRECT THE STAFF AND ALLOW ANY OTHER INTERESTED PARTY TO FILE A**
26 **STATEMENT RESPONDING TO THE NOTICE.**

27 **(B) (1) WITHIN 30 DAYS AFTER RECEIVING THE NOTICE OF INTENT**
28 **TO CLAIM COMPENSATION, THE COMMISSION OR THE HEARING EXAMINER**
29 **SHALL ISSUE A PRELIMINARY DETERMINATION OF THE CUSTOMER'S**
30 **ELIGIBILITY TO RECEIVE AN AWARD OF COMPENSATION UNDER THIS SUBTITLE.**

31 **(2) THE PRELIMINARY DETERMINATION:**

32 **(I) SHALL ADDRESS WHETHER A SHOWING OF SIGNIFICANT**
33 **FINANCIAL HARDSHIP HAS BEEN MADE; AND**

1 (II) MAY ADDRESS SIMILAR POSITIONS, AREAS OF
2 POTENTIAL DUPLICATION IN SHOWINGS, UNREALISTIC EXPECTATIONS FOR
3 COMPENSATION, AND ANY OTHER MATTER THAT MAY AFFECT THE CUSTOMER'S
4 CLAIM FOR COMPENSATION.

5 (3) A FINDING THAT A SIGNIFICANT FINANCIAL HARDSHIP HAS
6 OCCURRED CREATES A REBUTTABLE PRESUMPTION OF ELIGIBILITY FOR
7 COMPENSATION IN OTHER COMMISSION PROCEEDINGS THAT COMMENCE
8 WITHIN 1 YEAR AFTER THE DATE OF THE FINDING.

9 (C) (1) WITHIN 60 DAYS AFTER THE COMMISSION ISSUES A FINAL
10 ORDER OR DECISION IN THE HEARING OR PROCEEDING, A CUSTOMER THAT HAS
11 BEEN FOUND ELIGIBLE FOR AN AWARD OF COMPENSATION MAY FILE A REQUEST
12 FOR AN AWARD.

13 (2) AT A MINIMUM, THE REQUEST SHALL INCLUDE:

14 (I) A DETAILED DESCRIPTION OF SERVICES AND
15 EXPENDITURES;

16 (II) COPIES OF INVOICES AND RECEIPTS; AND

17 (III) A DESCRIPTION OF THE CUSTOMER'S SUBSTANTIAL
18 CONTRIBUTION TO THE HEARING OR PROCEEDING.

19 (3) WITHIN 30 DAYS AFTER RECEIVING THE REQUEST, ANY PARTY
20 MAY FILE WITH THE COMMISSION A RESPONSE TO THE REQUEST.

21 (D) (1) THE COMMISSION MAY AUDIT THE BOOKS AND RECORDS OF
22 THE CUSTOMER TO THE EXTENT NECESSARY TO VERIFY THE BASIS OF THE
23 AWARD.

24 (2) WHEN PERFORMING THE AUDIT, THE COMMISSION SHALL
25 PRESERVE THE CONFIDENTIALITY OF THE CUSTOMER'S RECORDS.

26 (3) WITHIN 20 DAYS AFTER COMPLETING THE AUDIT, THE
27 COMMISSION SHALL PREPARE AND FILE AN AUDIT REPORT.

28 (4) WITHIN 20 DAYS AFTER THE AUDIT REPORT IS FILED, A
29 PARTY TO THE HEARING OR PROCEEDING MAY FILE A RESPONSE TO THE AUDIT
30 REPORT.

1 **(E) (1) ON OR BEFORE THE LATER OF 75 DAYS AFTER RECEIVING A**
2 **REQUEST FOR COMPENSATION OR 50 DAYS AFTER THE FILING OF AN AUDIT**
3 **REPORT, THE COMMISSION SHALL DETERMINE WHETHER THE CUSTOMER HAS**
4 **MADE A SUBSTANTIAL CONTRIBUTION TO THE FINAL ORDER OR DECISION IN**
5 **THE PROCEEDING OR HEARING.**

6 **(2) IF THE COMMISSION DETERMINES THAT THE CUSTOMER HAS**
7 **MADE A SUBSTANTIAL CONTRIBUTION, THE COMMISSION SHALL:**

8 **(I) DESCRIBE THE SUBSTANTIAL CONTRIBUTION;**

9 **(II) IN ACCORDANCE WITH § 3-304 OF THIS SUBTITLE,**
10 **DETERMINE THE AMOUNT OF COMPENSATION TO BE AWARDED; AND**

11 **(III) IF THE PROCEEDING INVOLVES MORE THAN ONE**
12 **PUBLIC SERVICE COMPANY, DETERMINE THE AMOUNT OF COMPENSATION TO**
13 **BE AWARDED BY EACH PUBLIC SERVICE COMPANY.**

14 **3-304.**

15 **(A) IN DETERMINING THE AMOUNT OF COMPENSATION AWARDED IN**
16 **ACCORDANCE WITH § 3-303 OF THIS SUBTITLE, THE COMMISSION SHALL**
17 **CONSIDER THE MARKET RATES PAID TO PERSONS OF COMPARABLE TRAINING**
18 **AND EXPERIENCE WHO OFFER SIMILAR SERVICES.**

19 **(B) THE AMOUNT OF COMPENSATION AWARDED MAY NOT EXCEED THE**
20 **GREATER OF THE COMPARABLE MARKET RATE FOR SERVICES PAID BY THE**
21 **COMMISSION OR BY THE PUBLIC SERVICE COMPANY TO PERSONS OF**
22 **COMPARABLE TRAINING AND EXPERIENCE WHO OFFER SIMILAR SERVICES.**

23 **(C) THE AMOUNT OF COMPENSATION AWARDED MAY NOT EXCEED**
24 **\$50,000 FOR A SINGLE CUSTOMER IN ANY PROCEEDING.**

25 **3-305.**

26 **WITHIN 30 DAYS AFTER A COMPENSATION IS AWARDED UNDER THIS**
27 **SUBTITLE, EACH PUBLIC SERVICE COMPANY THAT IS THE SUBJECT OF THE**
28 **HEARING OR PROCEEDING SHALL PAY THE AMOUNT DETERMINED BY THE**
29 **COMMISSION TO THE CUSTOMER.**

30 **3-306.**

1 **THE COMMISSION MAY NOT AWARD COMPENSATION TO A CUSTOMER**
2 **THAT ATTEMPTS TO DELAY OR OBSTRUCT THE ORDERLY AND TIMELY**
3 **FULFILLMENT OF THE COMMISSION’S RESPONSIBILITIES.**

4 **3-307.**

5 **A REPRESENTATIVE OF A GROUP THAT REPRESENTS THE INTERESTS OF**
6 **SMALL AND MEDIUM-SIZED NONRESIDENTIAL CUSTOMERS FROM AN**
7 **ELECTRICITY SUPPLIER MAY NOT BE ELIGIBLE FOR A COMPENSATION AWARD**
8 **UNDER THIS SUBTITLE IF THE REPRESENTATIVE HAS A CONFLICT ARISING**
9 **FROM PRIOR REPRESENTATION BEFORE THE COMMISSION.**

10 **3-308.**

11 **THE COMMISSION SHALL ADOPT REGULATIONS TO IMPLEMENT THIS**
12 **SUBTITLE.**

13 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
14 **October 1, 2014.**