

HOUSE BILL 1129

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By: **Delegates Carr, Bobo, Frick, Frush, Gutierrez, Hucker, Kaiser, A. Kelly, Lee, Mizeur, Stukes, and M. Washington**

Introduced and read first time: February 8, 2013

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 reward within a certain time period
18 under certain circumstances; providing for the minimum required contents of
19 the request for a reward; authorizing certain parties to file a response to a
20 request for a reward within a certain time period; authorizing the Commission
21 to audit the books and records of a certain customer for a certain purpose;
22 requiring the Commission to preserve the confidentiality of the customer in
23 performing the audit; requiring the Commission to prepare and file a certain
24 audit report within a certain time period; authorizing a certain party to file a
25 response to the audit report within a certain time period; requiring the
26 Commission to make a certain determination within a certain time period;
27 requiring that, if the Commission makes a certain determination, the
28 Commission make a certain description and determine the amount of a certain
29 compensation; requiring the Commission to consider certain factors in
30 determining the amount of a certain compensation award; prohibiting the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 amount of a certain compensation award to exceed a certain market rate;
2 requiring a certain public service company to pay a certain amount awarded to
3 a certain customer within a certain time period; providing that a certain
4 compensation award shall be authorized by the Commission as an expense for
5 certain purposes; requiring that the amount of a certain compensation award be
6 fully recovered within a certain time period; prohibiting the Commission from
7 awarding compensation to a certain customer under certain circumstances;
8 prohibiting a representative of a certain group from being eligible for a
9 compensation award under certain circumstances; requiring the Commission to
10 adopt certain regulations; defining certain terms; and generally relating to
11 compensation for certain participants to proceedings of the Public Service
12 Commission.

13 BY adding to

14 Article – Public Utilities
15 Section 3–301 through 3–308 to be under the new subtitle “Subtitle 3.
16 Participant Compensation”
17 Annotated Code of Maryland
18 (2010 Replacement Volume and 2012 Supplement)

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

21 **Article – Public Utilities**

22 **SUBTITLE 3. PARTICIPANT COMPENSATION.**

23 **3–301.**

24 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
25 **INDICATED.**

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

28 **(I) REASONABLE ATTORNEY’S FEES;**

29 **(II) REASONABLE EXPERT WITNESS FEES; AND**

30 **(III) OTHER REASONABLE COSTS OF PREPARATION FOR AND**
31 **PARTICIPATION IN A PROCEEDING.**

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

1 **(C) (1) “CUSTOMER” INCLUDES:**

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

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

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

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

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

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

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

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

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

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

30 **(1) THE CUSTOMER CANNOT AFFORD, WITHOUT UNDUE**
31 **HARDSHIP, TO PAY THE COSTS OF EFFECTIVE PARTICIPATION, INCLUDING**

1 ATTORNEY'S FEES, EXPERT WITNESS FEES, AND OTHER REASONABLE COSTS OF
2 PARTICIPATION; OR

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

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

14 **3-302.**

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

20 (1) THE CUSTOMER'S PRESENTATION:

21 (I) MAKES A SUBSTANTIAL CONTRIBUTION TO THE
22 ADOPTION, WHOLLY OR PARTLY, OF THE COMMISSION'S ORDER OR DECISION;
23 AND

24 (II) IS REGARDING AN ISSUE THAT IS NOT NORMALLY
25 ADDRESSED BY THE OFFICE OF PEOPLE'S COUNSEL; AND

26 (2) PARTICIPATION OR INTERVENTION WITHOUT AN AWARD OF
27 FEES OR COSTS IMPOSES A SIGNIFICANT FINANCIAL HARDSHIP.

28 **3-303.**

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

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 WHEN NEW ISSUES EMERGE AFTER**
10 **THE 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 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:**

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

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

7 **(3) A FINDING THAT A SIGNIFICANT FINANCIAL HARDSHIP HAS**
8 **BEEN MADE CREATES A REBUTTABLE PRESUMPTION OF ELIGIBILITY FOR**
9 **COMPENSATION IN OTHER COMMISSION PROCEEDINGS THAT COMMENCE**
10 **WITHIN 1 YEAR AFTER THE DATE OF THE FINDING.**

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

15 **(2) AT A MINIMUM, THE REQUEST SHALL INCLUDE A DETAILED**
16 **DESCRIPTION OF SERVICES AND EXPENDITURES AND A DESCRIPTION OF THE**
17 **CUSTOMER'S SUBSTANTIAL CONTRIBUTION TO THE HEARING OR PROCEEDING.**

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

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

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

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

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

30 **(E) (1) ON OR BEFORE THE LATER OF 75 DAYS AFTER RECEIVING A**
31 **REQUEST FOR COMPENSATION OR 50 DAYS AFTER THE FILING OF AN AUDIT**
32 **REPORT, THE COMMISSION SHALL DETERMINE WHETHER THE CUSTOMER HAS**

1 MADE A SUBSTANTIAL CONTRIBUTION TO THE FINAL ORDER OR DECISION IN
2 THE PROCEEDING OR HEARING.

3 (2) IF THE COMMISSION DETERMINES THAT THE CUSTOMER HAS
4 MADE A SUBSTANTIAL CONTRIBUTION, THE COMMISSION SHALL:

5 (I) DESCRIBE THE SUBSTANTIAL CONTRIBUTION; AND

6 (II) IN ACCORDANCE WITH § 3-304 OF THIS SUBTITLE,
7 DETERMINE THE AMOUNT OF COMPENSATION TO BE PAID.

8 **3-304.**

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

13 (B) THE AMOUNT OF COMPENSATION AWARDED MAY NOT EXCEED THE
14 GREATER OF THE COMPARABLE MARKET RATE FOR SERVICES PAID BY THE
15 COMMISSION OR BY THE PUBLIC SERVICE COMPANY TO PERSONS OF
16 COMPARABLE TRAINING AND EXPERIENCE WHO OFFER SIMILAR SERVICES.

17 **3-305.**

18 (A) WITHIN 30 DAYS AFTER A COMPENSATION AWARD IS MADE UNDER
19 THIS SUBTITLE, THE PUBLIC SERVICE COMPANY THAT IS THE SUBJECT OF THE
20 HEARING OR PROCEEDING, AS DETERMINED BY THE COMMISSION, SHALL PAY
21 THE AMOUNT AWARDED TO THE CUSTOMER.

22 (B) (1) NOTWITHSTANDING ANY OTHER LAW, ANY COMPENSATION
23 AWARD PAID BY A PUBLIC SERVICE COMPANY UNDER THIS SUBTITLE SHALL BE
24 AUTHORIZED BY THE COMMISSION AS AN EXPENSE FOR THE PURPOSE OF
25 ESTABLISHING RATES OF THE PUBLIC SERVICE COMPANY THROUGH A
26 DOLLAR-FOR-DOLLAR ADJUSTMENT TO RATES AUTHORIZED BY THE
27 COMMISSION IMMEDIATELY ON THE DETERMINATION OF THE AMOUNT OF THE
28 AWARD.

29 (2) THE AMOUNT OF THE COMPENSATION AWARD SHALL BE
30 FULLY RECOVERED WITHIN 1 YEAR AFTER THE DATE OF THE AWARD.

31 **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, 2013.**