

# HOUSE BILL No. 4187

February 1, 2007, Introduced by Reps. Proos, Meekhof, Hildenbrand, Palsrok, Nitz, Mayes, Byrnes, Clemente, Nofs, Caswell and Wenke and referred to the Committee on Energy and Technology.

A bill to amend 1939 PA 3, entitled

"An act to provide for the regulation and control of public and certain private 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,"

(MCL 460.1 to 460.10cc) by adding section 6r.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 6R. (1) A PERSON SHALL COMPLY WITH THIS SECTION BEFORE  
2 COMPLETING EITHER OF THE FOLLOWING TRANSACTIONS:

3 (A) THE PURCHASE OR SALE, OR OTHER ACQUISITION OR DISPOSITION,  
4 OF 51% OR MORE OF THE THEN OUTSTANDING SHARES OF A REGULATED  
5 UTILITY'S STOCK, OR OF A CONTROLLING INTEREST IN A REGULATED  
6 UTILITY, EITHER DIRECTLY OR INDIRECTLY.

7 (B) THE PURCHASE OR SALE, OR OTHER ACQUISITION OR DISPOSITION,  
8 OF ALL OR A SUBSTANTIAL PART OF A REGULATED UTILITY'S EXISTING AND  
9 OPERATING ASSETS USED OR USEFUL AT THE TIME OF THE TRANSACTION IN  
10 PROVIDING REGULATED SERVICE IN THIS STATE. THIS SECTION DOES NOT  
11 APPLY TO THE ACQUISITION OR TRANSFER OF ASSETS ACQUIRED OR SOLD IN  
12 THE NORMAL COURSE OF BUSINESS.

13 (2) THE COMMISSION SHALL PROMULGATE RULES FOR THE  
14 ADMINISTRATION OF THIS SECTION.

15 (3) WITHIN A REASONABLE PERIOD AFTER ENTERING INTO AN  
16 AGREEMENT FOR A TRANSACTION DESCRIBED IN SUBSECTION (1), THE  
17 PARTIES TO THE TRANSACTION SHALL FILE ALL OF THE FOLLOWING MATERIAL  
18 WITH THE COMMISSION:

19 (A) A CONCISE SUMMARY OF THE TERMS AND CONDITIONS OF THE  
20 PROPOSED TRANSACTION.

21 (B) COPIES OF THE MATERIAL TRANSACTION DOCUMENTS IF AVAILABLE.

22 (C) A SUMMARY OF THE PROJECTED IMPACTS OF THE TRANSACTION ON  
23 RATES AND REGULATED UTILITY SERVICES IN MICHIGAN.

24 (D) PRO FORMA FINANCIAL STATEMENTS THAT ARE RELEVANT TO THE  
25 TRANSACTION.

26 (E) COPIES OF THE PARTIES' PUBLIC FILINGS WITH OTHER STATE OR

1 FEDERAL REGULATORY AGENCIES REGARDING THE SAME TRANSACTION  
2 INCLUDING ANY REGULATORY ORDERS ISSUED BY THE AGENCIES REGARDING  
3 THE TRANSACTION.

4 (4) NOT LATER THAN 30 DAYS FROM THE DATE A PERSON MAKES A  
5 FILING UNDER THIS SECTION, THE COMMISSION SHALL NOTIFY THE PERSON  
6 WHAT, IF ANY, MATERIALS REQUIRED UNDER SUBSECTION (3) OR REQUESTED  
7 UNDER SUBSECTION (6) HAVE NOT BEEN PROVIDED. THE COMMISSION SHALL  
8 HAVE 30 DAYS FROM THE DATE THAT THE COMMISSION RECEIVES ALL OF THE  
9 MATERIALS REQUIRED UNDER SUBSECTION (3) OR REQUESTED UNDER  
10 SUBSECTION (6) TO DETERMINE WHETHER ANY INVESTIGATIONS OR HEARINGS  
11 ARE NECESSARY TO REVIEW THE PROPOSED TRANSACTION. AT THE END OF THE  
12 30-DAY PERIOD, THE COMMISSION SHALL ISSUE 1 OF THE FOLLOWING:

13 (A) ADVISORY COMMENTS THAT MAY INCLUDE ANY PROPOSED  
14 RECOMMENDATIONS, MODIFICATIONS, OR CHANGES TO THE STRUCTURE OF THE  
15 PROPOSED TRANSACTION BASED ON THE FACTORS LISTED IN SUBSECTION (8).

16 (B) A WRITTEN STATEMENT THAT REVIEW IS COMPLETED AND NO  
17 FURTHER COMMENT IS NECESSARY.

18 (5) THE COMMISSION MAY EXTEND THE TIME REQUIRED UNDER  
19 SUBSECTION (4) FOR THE REVIEW AND THE ISSUING OF ITS ADVISORY  
20 COMMENTS FOR A PERIOD NOT TO EXCEED 120 DAYS FROM THE DATE THAT THE  
21 COMMISSION RECEIVES ALL OF THE MATERIAL REQUIRED OR REQUESTED  
22 WITHIN 30 DAYS OF THE INITIAL FILING UNDER SUBSECTION (3).

23 (6) THE COMMISSION SHALL BE ENTITLED, UPON WRITTEN REQUEST, TO  
24 DOCUMENTS REASONABLY RELATED TO MAKING THE ADVISORY COMMENTS UNDER  
25 SUBSECTION (4).

26 (7) NONPUBLIC INFORMATION AND MATERIALS SUBMITTED BY A PERSON  
27 UNDER THIS SECTION CLEARLY DESIGNATED BY THE PERSON AS CONFIDENTIAL

1 ARE EXEMPT FROM THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL  
2 15.231 TO 15.246. THE COMMISSION SHALL ISSUE PROTECTIVE ORDERS AS  
3 NECESSARY TO PROTECT INFORMATION DESIGNATED BY A PARTY AS  
4 CONFIDENTIAL.

5 (8) THE COMMISSION SHALL CONSIDER AND MAY ISSUE ADVISORY  
6 COMMENTS, INCLUDING SPECIFIC RECOMMENDATIONS, MODIFICATIONS, OR  
7 CHANGES TO THE STRUCTURE OF A PROPOSED TRANSACTION SUBJECT TO THIS  
8 SECTION, REGARDING 1 OR MORE OF THE FOLLOWING:

9 (A) WHETHER THE PROPOSED TRANSACTION WOULD HAVE A MATERIAL  
10 ADVERSE IMPACT ON THE RATES REGULATED BY THE COMMISSION UNDER MCL  
11 460.6A OF THE CUSTOMERS IN THIS STATE AFFECTED BY THE TRANSACTION.

12 (B) WHETHER THE PROPOSED TRANSACTION WOULD HAVE A MATERIAL  
13 ADVERSE IMPACT ON THE PROVISION OF SAFE, RELIABLE, AND ADEQUATE  
14 ENERGY SERVICE.

15 (C) WHETHER THE PROPOSED TRANSACTION WILL RESULT IN THE  
16 SUBSIDIZATION OF A NONREGULATED ACTIVITY OF A PERSON THROUGH THE  
17 RATES PAID BY THE CUSTOMERS OF A REGULATED UTILITY, TO THE EXTENT  
18 PROHIBITED BY A CODE OF CONDUCT ESTABLISHED BY THE COMMISSION UNDER  
19 SECTION 10A(4).

20 (D) WHETHER THE PROPOSED TRANSACTION WILL SIGNIFICANTLY IMPAIR  
21 A REGULATED UTILITY'S ABILITY TO RAISE NECESSARY CAPITAL OR TO  
22 MAINTAIN A REASONABLE CAPITAL STRUCTURE.

23 (E) WHETHER THE PROPOSED TRANSACTION WILL HAVE A MATERIAL  
24 ADVERSE IMPACT ON COMPETITION IN THIS STATE.

25 (9) AS USED IN THIS SECTION:

26 (A) "COMMISSION" MEANS THE MICHIGAN PUBLIC SERVICE COMMISSION.

27 (B) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, ASSOCIATION,

1 PARTNERSHIP, OR ANY OTHER LEGAL PRIVATE OR PUBLIC ENTITY.

2 (C) "REGULATED UTILITY" MEANS AN INVESTOR-OWNED ELECTRIC  
3 UTILITY, AN ELECTRIC COOPERATIVE, OR A NATURAL GAS DISTRIBUTION  
4 UTILITY, WITH RATES SUBJECT TO THE JURISDICTION OF THE COMMISSION.

5 (10) THIS SECTION DOES NOT APPLY TO A TRANSACTION SUBJECT TO A  
6 WRITTEN AGREEMENT ENTERED INTO BEFORE THE EFFECTIVE DATE OF THE  
7 AMENDATORY ACT THAT ADDED THIS SECTION.