



HOUSE BILL No. 5916

May 29, 1996. Introduced by Reps. Munsell, DeLange, Curtis, Dobronski, Cropsey, Weeks and Jaye and referred to the Committee on Public Utilities.

A bill to amend 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 amended, being sections 460.1 to 460.8 of the Michigan Compiled Laws, by adding section 6q.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 3 of the Public Acts of 1939, as
2 amended, being sections 460.1 to 460.8 of the Michigan Compiled
3 Laws, is amended by adding section 6q to read as follows:

4 SEC. 6Q. (1) AS USED IN THIS SECTION:

5 (A) "APPLIANCE SERVICE AFFILIATE" MEANS A PERSON THAT CON-
6 TROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH A UTILI-
7 TY, AND THAT IS ENGAGED IN THE SALE, LEASE, RENTAL, INSTALLATION,
8 CONSTRUCTION, MODERNIZATION, RETROFITTING, MAINTENANCE, OR REPAIR
9 OF PRODUCTS OR EQUIPMENT.

10 (B) "COMMISSION" MEANS THE MICHIGAN PUBLIC SERVICE COMMIS-
11 SION CREATED IN SECTION 1.

12 (C) "EMERGENCY SERVICE" MEANS SERVICE PERFORMED BY A UTILITY
13 TO CORRECT MALFUNCTIONS OR INTERRUPTIONS IN THE GENERATION,
14 TRANSMISSION, DISTRIBUTION, OR USE OF NATURAL GAS OR ELECTRICITY
15 THAT, IF NOT CORRECTED, MAY ENDANGER LIFE OR PROPERTY OR OTHER-
16 WISE AFFECT PUBLIC SAFETY.

17 (D) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION,
18 ASSOCIATION, GOVERNMENTAL ENTITY, OR OTHER LEGAL ENTITY.

19 (E) "PRODUCTS OR EQUIPMENT" MEANS ALL PRODUCTS OR EQUIPMENT,
20 INCLUDING HOUSEHOLD APPLIANCES, THAT DEPEND UPON ENERGY SUPPLIED
21 BY A UTILITY FOR THEIR OPERATION.

22 (F) "UTILITY" MEANS A PUBLIC UTILITY SUBJECT TO THE
23 COMMISSION'S REGULATION AND CONTROL THAT PRODUCES OR FURNISHES
24 NATURAL, MANUFACTURED, OR MIXED GAS OR ELECTRIC SERVICE AT RETAIL
25 OR FOR RESALE. UTILITY DOES NOT INCLUDE ALL OF THE FOLLOWING:

1 (i) THE SELLER OF COMPRESSED NATURAL GAS AT RETAIL FOR USE
2 AS A VEHICULAR FUEL WHO PURCHASES THE NATURAL GAS FROM A
3 UTILITY.

4 (ii) THE SELLER OF GAS OR ELECTRIC SERVICE ONLY TO TENANTS
5 OR COOPERATIVE OR CONDOMINIUM OWNERS IN BUILDINGS OWNED, LEASED,
6 OR OPERATED BY THE SELLER OR THE SELLER'S AUTHORIZED REPRESENTA-
7 TIVE WHO DOES NOT OTHERWISE ENGAGE IN THE BUSINESS OF A UTILITY.

8 (iii) THE FURNISHER OF GAS OR ELECTRIC SERVICE TO OCCUPANTS
9 OF A MANUFACTURED HOME OR TRAILER PARK, OWNED, LEASED, OR OPER-
10 ATED BY THE FURNISHER OR THE FURNISHER'S AUTHORIZED REPRESENTA-
11 TIVE WHO DOES NOT OTHERWISE ENGAGE IN THE BUSINESS OF A UTILITY.

12 (iv) AN ELECTRIC COOPERATIVE WITH NOT MORE THAN 50,000 RATE-
13 PAYERS IN THIS STATE.

14 (G) "UTILITY CONTRACTOR" MEANS A PERSON WHO CONTRACTS WITH A
15 UTILITY TO PROVIDE THE SALES AND SERVICES ENGAGED IN BY AN APPLI-
16 ANCE SERVICE AFFILIATE. UTILITY CONTRACTOR DOES NOT INCLUDE AN
17 OFFICIAL OR EMPLOYEE OF A UTILITY.

18 (2) EXCEPT IN EMERGENCY SERVICE SITUATIONS OR AS OTHERWISE
19 PROVIDED BY LAW, A UTILITY SHALL NOT DO ANY OF THE FOLLOWING:

20 (A) SELL, LEASE, OR OTHERWISE TRANSFER AN ASSET TO AN APPLI-
21 ANCE SERVICE AFFILIATE OF THE UTILITY OR A UTILITY CONTRACTOR FOR
22 AN AMOUNT LESS THAN THE FAIR MARKET VALUE OF THE ASSET.

23 (B) BUY, LEASE, OR OTHERWISE ACQUIRE AN ASSET FROM AN APPLI-
24 ANCE SERVICE AFFILIATE OF THE UTILITY OR A UTILITY CONTRACTOR FOR
25 AN AMOUNT GREATER THAN THE FAIR MARKET VALUE OF THE ASSET.

26 (C) SELL SERVICES OR PRODUCTS, EXTEND CREDIT, OR OFFER OTHER
27 TERMS AND CONDITIONS ON MORE FAVORABLE TERMS TO AN APPLIANCE

1 SERVICE AFFILIATE OF THE UTILITY OR A UTILITY CONTRACTOR THAN THE
2 UTILITY OFFERS TO OTHER PERSONS.

3 (D) USE RATES OR PROCEEDS FROM RATEPAYERS OR THE SALE,
4 LEASE, OR TRANSFER OF RATE-ACQUIRED ASSETS, DIRECTLY OR INDIRECT-
5 LY, TO SUBSIDIZE OR OFFSET THE COSTS OF SERVICE OFFERED BY AN
6 APPLIANCE SERVICE AFFILIATE OF THE UTILITY OR A UTILITY
7 CONTRACTOR.

8 (E) UNLESS OTHERWISE REQUIRED BY LAW, ENGAGE IN OR OFFER A
9 CONTRACT FOR THE SALE, LEASE, RENTAL, INSTALLATION, CONSTRUCTION,
10 MODERNIZATION, RETROFITTING, MAINTENANCE, OR REPAIR OF PRODUCTS
11 OR EQUIPMENT THAT ARE NOT USED FOR DELIVERING OR MEASURING ELEC-
12 TRIC OR GAS SERVICE, EXCEPT THROUGH AN APPLIANCE SERVICE
13 AFFILIATE.

14 (F) REFER OR STEER CUSTOMERS TO SPECIFIC PERSONS ENGAGED IN
15 THE SALE OR SERVICING OF PRODUCTS OR EQUIPMENT, INCLUDING AN
16 APPLIANCE SERVICE AFFILIATE OR UTILITY CONTRACTOR.

17 (G) LEND MONEY TO OR GUARANTEE, ENDORSE, OR ACT AS A SURETY
18 ON THE DEBTS, LIABILITIES, BONDS, NOTES, CONTRACTS, OR OTHER
19 OBLIGATIONS OF, OR OTHERWISE ASSIST FINANCIALLY, AN APPLIANCE
20 SERVICE AFFILIATE.

21 (H) PURCHASE, RECEIVE, HOLD, OR OTHERWISE ACQUIRE THE STOCK,
22 SHARES, BONDS, DEBENTURES, NOTES, OR OTHER SECURITIES, OR OTHER
23 INTEREST IN AN APPLIANCE SERVICE AFFILIATE UNLESS THE UTILITY
24 PAYS AT LEAST THE FAIR MARKET VALUE FOR THE INTEREST ACQUIRED.

25 (3) AN APPLIANCE SERVICE AFFILIATE SHALL NOT ENGAGE IN OR
26 OFFER A CONTRACT FOR THE SALE, LEASE, RENTAL, INSTALLATION,
27 CONSTRUCTION, MODERNIZATION, RETROFITTING, MAINTENANCE, OR REPAIR

1 OF PRODUCTS OR EQUIPMENT UNLESS THE APPLIANCE SERVICE AFFILIATE
2 COMPLIES WITH ALL OF THE FOLLOWING REQUIREMENTS:

3 (A) THE APPLIANCE SERVICE AFFILIATE'S NAME DOES NOT RESEMBLE
4 THE UTILITY'S NAME, AND NEITHER THE UTILITY NOR THE APPLIANCE
5 SERVICE AFFILIATE TRADES UPON, PROMOTES, OR ADVERTISES ITS AFFIL-
6 IATED STATUS.

7 (B) THE APPLIANCE SERVICE AFFILIATE DOES NOT HAVE A PLACE OF
8 BUSINESS AT OR ON PREMISES OWNED OR OCCUPIED BY THE UTILITY, AND
9 THE APPLIANCE SERVICE AFFILIATE DOES NOT SHARE THE USE OF THE
10 UTILITY'S PREMISES, EQUIPMENT, INVENTORY, PERSONNEL, OR OTHER
11 RESOURCES.

12 (C) THE APPLIANCE SERVICE AFFILIATE DOES NOT ADVERTISE, PRO-
13 MOTE, OR MARKET ITS PRODUCTS OR SERVICES THROUGH MAILINGS OF THE
14 UTILITY OR ADVERTISEMENTS IN WHICH THE UTILITY'S NAME IS SET
15 FORTH.

16 (D) THE APPLIANCE SERVICE AFFILIATE MAINTAINS SEPARATE AND
17 DISTINCT ACCOUNTS, BOOKS, AND RECORDS FROM THOSE OF THE UTILITY.

18 (E) COSTS AND EXPENSES INVOLVED IN OPERATING THE APPLIANCE
19 SERVICE AFFILIATE ARE BORNE BY THE APPLIANCE SERVICE AFFILIATE
20 AND NOT BY THE UTILITY, AND REVENUES FROM THE APPLIANCE SERVICE
21 AFFILIATE ARE NOT PROVIDED OR DISBURSED TO THE UTILITY.

22 (F) ASSETS OF THE APPLIANCE SERVICE AFFILIATE ARE SEPARATE
23 AND DISTINCT FROM THE ASSETS OF THE UTILITY.

24 (G) THE APPLIANCE SERVICE AFFILIATE TRANSACTS ITS BUSINESS
25 IN THE STATE SEPARATE AND INDEPENDENT OF THE UTILITY AND GAINS NO
26 COMPETITIVE ADVANTAGE BY VIRTUE OF ITS STATUS AS AN APPLIANCE
27 SERVICE AFFILIATE.

1 (4) A UTILITY SHALL NOTIFY THE COMMISSION WHEN IT TRANSFERS,
2 IN WHOLE OR IN PART, SUBSTANTIAL ASSETS, FUNCTIONS, OR EMPLOYEES
3 ASSOCIATED WITH UTILITY SERVICE TO AN APPLIANCE SERVICE AFFILIATE
4 OF THE UTILITY OR A UTILITY CONTRACTOR, INDICATING THE IDENTITY
5 OF THE APPLIANCE SERVICE AFFILIATE OR UTILITY CONTRACTOR, A
6 DESCRIPTION OF THE TRANSACTION, AND THE IMPACT ON THE UTILITY'S
7 SERVICE. AFTER CONSULTATION WITH INTERESTED PARTIES, THE COMMIS-
8 SION SHALL SPECIFY BY ORDER THE FORM AND MANNER IN WHICH NOTIFI-
9 CATION WILL BE REQUIRED UNDER THIS SUBSECTION.

10 (5) A UTILITY OR APPLIANCE SERVICE AFFILIATE THAT VIOLATES
11 SUBSECTION (2) OR (3) IS SUBJECT TO A CIVIL FINE NOT TO EXCEED
12 \$25,000.00 FOR EACH SEPARATE AND DISTINCT VIOLATION.

13 (6) A DEFAULT IN THE PAYMENT OF A CIVIL FINE OR COSTS
14 ORDERED UNDER THIS ACT OR AN INSTALLMENT OF THE FINE OR COSTS MAY
15 BE REMEDIED BY ANY MEANS AUTHORIZED UNDER THE REVISED JUDICATURE
16 ACT OF 1961, ACT NO. 236 OF THE PUBLIC ACTS OF 1961, BEING SEC-
17 TIONS 600.101 TO 600.9947 OF THE MICHIGAN COMPILED LAWS.

18 (7) THE COMMISSION HAS THE POWERS AND JURISDICTION NECESSARY
19 TO IMPLEMENT THIS SECTION AND SHALL DO ALL OF THE FOLLOWING:

20 (A) REVIEW, INSPECT, AND AUDIT BOOKS, ACCOUNTS, AND OTHER
21 RECORDS KEPT BY A UTILITY, APPLIANCE SERVICE AFFILIATE, OR UTIL-
22 ITY CONTRACTOR.

23 (B) INVESTIGATE THE OPERATIONS OF A UTILITY, APPLIANCE SERV-
24 ICE AFFILIATE, OR UTILITY CONTRACTOR AND THEIR RELATIONSHIP TO
25 EACH OTHER FOR THE PURPOSE OF ENSURING COMPLIANCE WITH THIS SEC-
26 TION AND RULES PROMULGATED UNDER THIS SECTION.

1 (C) PROMULGATE RULES NECESSARY TO IMPLEMENT THIS ACT
2 PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT
3 NO. 306 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 24.201 TO
4 24.328 OF THE MICHIGAN COMPILED LAWS.

5 (8) IN ADDITION TO ANY OTHER REMEDY AVAILABLE, A PERSON MAY
6 COMMENCE AN ACTION AGAINST A UTILITY OR APPLIANCE SERVICE AFFILI-
7 ATE FOR INJUNCTIVE OR OTHER EQUITABLE RELIEF WITHOUT REGARD TO
8 THE STATUS OF ANY PROCEEDING BEFORE THE COMMISSION. AN ACTION
9 UNDER THIS SUBSECTION SHALL BE BROUGHT IN THE CIRCUIT COURT IN
10 THE COUNTY WHERE THE CORPORATE HEADQUARTERS OF THE UTILITY OR
11 APPLIANCE SERVICE AFFILIATE IS LOCATED OR, IF THE UTILITY OR
12 APPLIANCE SERVICE AFFILIATE IS A NONRESIDENT CORPORATION, WHERE
13 ITS AGENT DESIGNATED FOR SERVICE OF PROCESS IS LOCATED.