

# HOUSE BILL No. 5488

December 7, 2005, Introduced by Rep. Farhat 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 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,"

by amending section 6g (MCL 460.6g), as added by 1980 PA 470.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 6g. (1) As used in this section:

2           (a) "Attaching party" means any person, firm, corporation,  
3 partnership, or cooperatively organized association, other than ~~a~~  
4 **AN ELECTRIC** utility or a municipality, which seeks to construct  
5 attachments upon, along, under, or across public ways or private  
6 rights of way. **AN ATTACHING PARTY DOES INCLUDE A SCHOOL OR**  
7 **EDUCATIONAL INSTITUTION AND AN ENTITY ENTITLED TO POLE ATTACHMENT**  
8 **UNDER 47 USC 224.**

9           (b) "Attachment" means any wire, cable, facility, or apparatus  
10 for the transmission of writing, signs, signals, pictures, sounds,  
11 or other forms of intelligence or for the transmission of  
12 electricity for light, heat, or power, installed by an attaching  
13 party upon any pole or in any duct or conduit owned or controlled,  
14 in whole or in part, by 1 or more utilities.

15           (c) "Commission" means the Michigan public service commission  
16 created in section 1.

17           (D) **"MAKE READY COSTS" MEANS THE ACTUAL ADDITIONAL DIRECT COST**  
18 **OF ATTACHING A PARTY'S FACILITIES TO THE UTILITY'S POLE OR FACILITY**  
19 **AND DOES NOT INCLUDE ANY COSTS TO REMEDIATE PREEXISTING VIOLATIONS**  
20 **OF APPLICABLE CODES OR REGULATIONS.**

21           (E) **"SCHOOL" OR "EDUCATIONAL INSTITUTION" MEANS THAT TERM AS**  
22 **DEFINED IN SECTION 102 OF THE MICHIGAN TELECOMMUNICATIONS ACT, 1991**  
23 **PA 179, MCL 484.2102.**

24           (F) ~~(d)~~ "Utility" means any public utility subject to the  
25 regulation and control of the commission that owns or controls **AN**  
26 **EXTENSIVE CONTIGUOUS NETWORK OF POLES**, or shares ownership or  
27 control of **AN EXTENSIVE CONTIGUOUS NETWORK OF** poles, ducts, or

1 conduits used or useful, in whole or in part, for supporting or  
2 enclosing wires, cables, or other facilities or apparatus for the  
3 transmission of writing, signs, signals, pictures, sounds, or other  
4 forms of intelligence, or for the transmission of electricity for  
5 light, heat, or power.

6 (2) The commission shall regulate the rates, terms, and  
7 conditions of attachments by attaching parties. The commission, in  
8 regulating the rates, terms, and conditions of attachments by  
9 attaching parties, shall ~~not~~ require a hearing when approving the  
10 rates, terms, and conditions ~~unless~~ **WHEN** the attaching party or  
11 utility petitions the commission for a hearing. The commission  
12 shall ensure that the rates, terms, and conditions are just and  
13 reasonable and shall consider the interests of the attaching  
14 parties' customers **OR USERS, IF ANY**, as well as the utility and its  
15 customers. **THE COMMISSION SHALL HAVE JURISDICTION AND AUTHORITY TO**  
16 **FULLY ENFORCE THIS SECTION AND TO IMPOSE THE REMEDIES, FINES, AND**  
17 **PENALTIES PROVIDED FOR IN SECTION 10C OF THIS ACT FOR A VIOLATION**  
18 **OF THIS SECTION.**

19 (3) A UTILITY POLE OWNER SHALL ENSURE ALL OF THE FOLLOWING:

20 (A) THAT SCHOOLS, EDUCATIONAL INSTITUTIONS, AND OTHER  
21 ATTACHING PARTIES ARE ABLE TO PROMPTLY ATTACH TELECOMMUNICATIONS  
22 AND TECHNOLOGY FACILITIES TO UTILITY POLES AND FACILITIES AT JUST  
23 AND REASONABLE RATES, TERMS, AND CONDITIONS WITHIN 120 DAYS OF AN  
24 INITIAL REQUEST TO ATTACH.

25 (B) THAT ALL ATTACHMENT FEES, CHARGES, MAKE READY COSTS, BY  
26 WHATEVER DESCRIPTION, PRACTICES, AND PROCEDURES ARE SPECIFICALLY  
27 PROVIDED FOR IN ITS TARIFFS ON FILE WITH AND APPROVED BY THE

1 COMMISSION.

2 (C) THAT THE UTILITY COOPERATES WITH SCHOOLS, EDUCATIONAL  
3 INSTITUTIONS, AND OTHER ATTACHING PARTIES AND DOES NOT DELAY ANY  
4 ATTACHING FROM PROMPTLY ATTACHING TO THE UTILITY'S POLES OR  
5 FACILITIES WITHIN THE TIME PERIOD REQUIRED UNDER SUBDIVISION (A).

6 (D) THAT THE UTILITY PROVIDES RELIABLE MAKE READY COST  
7 ESTIMATES WITHIN 45 DAYS FROM THE DATE AN ATTACHING PARTY MAKES AN  
8 APPLICATION FOR ATTACHMENT, AND THAT ONCE THE MAKE READY COST  
9 ESTIMATES HAVE BEEN PROVIDED, NO GREATER AMOUNT MAY BE CHARGED TO A  
10 SCHOOL OR EDUCATIONAL INSTITUTION EVEN FOR SUBSEQUENTLY ARISING  
11 MAKE READY ISSUES OR POLE MODIFICATIONS FOR AT LEAST 5 YEARS,  
12 UNLESS THE CHANGES WERE PLANNED AT THE TIME OF THE SCHOOL'S OR  
13 EDUCATIONAL INSTITUTION'S ATTACHMENT APPLICATION AND FULLY  
14 DISCLOSED TO THE SCHOOL OR EDUCATIONAL INSTITUTION BEFORE THE  
15 ATTACHMENT WAS MADE.

16 (E) THAT THE UTILITY PERFORMS ALL NECESSARY MAKE READY WORK  
17 WITHIN 60 DAYS FROM THE DATE THE ATTACHING PARTY APPLICANT APPROVES  
18 THE MAKE READY COST ESTIMATE.

19 (F) THAT THE UTILITY CONTINUOUSLY MAINTAINS ALL POLES AND  
20 FACILITIES, AS REQUIRED BY LAW, RULE, OR SAFETY REGULATIONS, SO AS  
21 TO FACILITATE PROMPT ATTACHMENTS AS PROVIDED UNDER THIS SECTION.

22 (G) THAT THE UTILITY DOES NOT REQUIRE ATTACHING PARTIES TO  
23 ENTER INTO SEPARATE POLE ATTACHMENT AGREEMENTS.

24 (H) THAT THE UTILITY DOES NOT ATTEMPT TO SHIFT LIABILITY OR  
25 RESPONSIBILITY, OR SECURE INDEMNIFICATION FOR ITS NEGLIGENT,  
26 RECKLESS, OR INTENTIONAL MISCONDUCT FROM THE ATTACHING PARTY.

27 (I) THAT THE UTILITY DOES NOT REQUIRE OR MAINTAIN ANY SECRET

1 OR CONFIDENTIAL AGREEMENTS OR ARRANGEMENTS REGARDING POLE  
2 ATTACHMENTS, NOR MAINTAIN ANY POLE ATTACHMENT AGREEMENTS OR  
3 ARRANGEMENTS THAT ARE NOT IN CONFORMANCE WITH THIS SECTION.

4 (J) THAT THE UTILITY DOES NOT CHARGE ANY FURTHER FEES OR  
5 CHARGES, OTHER THAN POLE RENTAL FEES, TO AN ATTACHING PARTY AFTER  
6 ITS ATTACHMENTS HAVE BEEN MADE FOR SUBSEQUENT CONSTRUCTION, POLE  
7 CHANGES, OR MODIFICATIONS UNLESS THE ATTACHING PARTY WAS GIVEN  
8 SPECIFIC NOTICE OF THE ADDITIONAL CHARGES BEFORE PLACING ITS  
9 ATTACHMENTS, A NEW PARTY SEEKS TO ATTACH TO THE POLE, OR THE  
10 SUBSEQUENT CHARGES ARE REASONABLY ALLOCATED AMONG ALL USERS OF THE  
11 POLE, INCLUDING THE UTILITY ITSELF, BASED UPON THE PROPORTIONAL USE  
12 OF THE POLE, AND THE ATTACHING PARTY HAS BEEN GIVEN A REASONABLE  
13 OPPORTUNITY TO LEAVE THE POLE RATHER THAN PAY THE SUBSEQUENT  
14 CHARGES.

15 (4) THE COMMISSION SHALL REQUIRE A HEARING WHEN APPROVING OR  
16 CHANGING THE RATES, TERMS, AND CONDITIONS OF ATTACHING TO UTILITY  
17 POLES AND FACILITIES. UPON ITS OWN MOTION OR A PETITION OR  
18 COMPLAINT OF AN INTERESTED PARTY, THE COMMISSION SHALL REQUIRE A  
19 HEARING TO REVIEW ANY ATTACHMENT RATE, TERM, OR CONDITION, OR ANY  
20 PROVISION IN A CONTRACT RELATED TO POLE ATTACHMENTS, OR ANY  
21 PRACTICE OR CONDUCT OF A UTILITY POLE OWNER. THE UTILITY SHALL HAVE  
22 THE BURDEN OF PROVING ANY EXISTING OR PROPOSED CONTRACT PROVISION,  
23 RATE, TERM, OR CONDITION OF ATTACHMENT IS JUST, REASONABLE, AND IN  
24 THE PUBLIC INTEREST.

25 (5) THE COMMISSION SHALL ENSURE THAT ALL ATTACHMENT RATES,  
26 FEES, MAKE READY COSTS, TERMS, CONDITIONS, PRACTICES, AND  
27 PROCEDURES ARE JUST AND REASONABLE AND IN THE PUBLIC INTEREST.

1           (6) A RATE, FEE, COST, OR CHARGE TO A SCHOOL, EDUCATIONAL  
2 INSTITUTION, OR OTHER ATTACHING PARTY IS NOT JUST AND REASONABLE IF  
3 IT IS MORE THAN THE DIRECT ACTUAL COST RELATED TO THE ATTACHING  
4 PARTY'S ATTACHMENT TO THE UTILITY'S POLE OR FACILITY.

5           (7) ~~-(3)-~~ An attaching party shall obtain any necessary  
6 authorization before occupying public ways or private rights of way  
7 with its attachment.

8           (8) ~~-(4)-~~ Procedures under this section shall be those  
9 applicable to any utility whose rates charged its customers are  
10 regulated by the commission, including the right to appeal a final  
11 decision of the commission to the courts.

12           (9) A UTILITY THAT IMPOSES OR ATTEMPTS TO IMPOSE A RATE, TERM,  
13 OR CONDITION INCONSISTENT WITH THIS SECTION, OR INCONSISTENT WITH A  
14 COMMISSION ORDER ISSUED UNDER THIS SECTION, OR WHICH BY ACTION,  
15 FAILURE TO ACT, OR DELAY, VIOLATES THIS SECTION, OR AN ORDER OF THE  
16 COMMISSION ISSUED UNDER THIS SECTION, SHALL BE SUBJECT TO ALL  
17 REMEDIES, FINES, AND PENALTIES SET FORTH IN SECTION 10C. IN  
18 ADDITION, THE COMMISSION SHALL STRICTLY ENFORCE THIS SECTION TO  
19 ENSURE THAT SCHOOLS AND EDUCATIONAL INSTITUTIONS ARE MADE  
20 COMPLETELY WHOLE FOR ALL COSTS IF THEY INCUR ANY COSTS TO ENFORCE  
21 THIS SECTION.

22           (10) WITHIN 12 MONTHS OF THE EFFECTIVE DATE OF THE AMENDATORY  
23 ACT THAT ADDED THIS SUBSECTION, UTILITY POLE OWNERS SHALL REVIEW  
24 THEIR POLE ATTACHMENT ARRANGEMENTS AND CONFORM ALL ARRANGEMENTS TO  
25 COMPLY WITH THIS SECTION.