

Act No. 356  
Public Acts of 1993  
Approved by the Governor  
January 14, 1994  
Filed with the Secretary of State  
January 14, 1994

**STATE OF MICHIGAN  
87TH LEGISLATURE  
REGULAR SESSION OF 1993**

**Introduced by Senators McManus, Koivisto, Gast, Emmons, Hart, Schwarz, Cisky and Carl**

# **ENROLLED SENATE BILL No. 648**

AN ACT to amend sections 1 and 3 of Act No. 144 of the Public Acts of 1909, entitled as amended "An act to regulate the issuance of stocks, bonds and other evidences of indebtedness by persons, corporations and associations owning, conducting or operating certain public utilities, and to provide a penalty for the violation thereof," section 1 as amended by Act No. 10 of the Public Acts of 1987, being sections 460.301 and 460.303 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Sections 1 and 3 of Act No. 144 of the Public Acts of 1909, section 1 as amended by Act No. 10 of the Public Acts of 1987, being sections 460.301 and 460.303 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 1. (1) A person, corporation, or association, or a lessee or trustee of a corporation or association, except a municipal corporation or the owner of a renewable resource power production facility as provided in section 1a, organized or authorized to do business under the laws of this state, owning, conducting, managing, operating, or controlling a plant or equipment within this state used wholly or in part in the business of transmitting messages by telephone or telegraph, producing or furnishing heat, artificial gas, light, water, or mechanical power to the public, directly or indirectly, or other common carrier, or a corporation, association, or individual exercising or claiming the right to carry or transport natural gas for public use, directly or indirectly, or petroleum oil by or through a pipeline or engaged in the business of piping or transporting natural gas for public use, directly or indirectly, or engaged in the business of purchasing natural gas for distribution may issue stocks, bonds, notes, or other evidences of indebtedness payable at periods of more than 12 months after the date of issuance, if necessary for the acquisition of property, the construction, completion, extension, or improvement of facilities or for the improvement or maintenance of service or for the discharge or lawful refunding of obligations and may issue stock to represent accumulated earnings invested in capital assets and not previously capitalized, if the Michigan public service commission issues an order authorizing the issue and the amount of the issue, and states that in the opinion of the commission the use of the capital or property to be acquired to be secured by the issue of the stock, bonds, notes, or other evidences of indebtedness, is reasonably required for the purposes of the person, corporation, or association, or that the issue of the stock fairly represents accumulated and undistributed earnings invested in capital assets and not previously capitalized. Approval of securities

does not presume that the projects to be constructed or property to be acquired will be included in the company's rate base.

(2) A person, corporation, or association desiring authority to issue stocks, bonds, notes, or other evidences of indebtedness shall make written application to the commission in the form as the commission requires. After receiving the application, the commission, for the purpose of determining whether the commission should grant the authority, may make an inquiry or investigation, hold hearings, and examine witnesses, books, papers, documents, or contracts the commission considers of importance in enabling it to reach a determination. An interested person, including municipalities and organizations whose membership consists of a substantial number of ratepayers within the service area of the utility, shall have the right to intervene as provided in the rules of the commission. If the applicant fails, neglects, or refuses to furnish the information required by the commission, or if the commission directs, an appraisal of the property of the applicant shall be made by a disinterested person to be appointed by the commission and whose compensation shall be fixed by the commission. The entire expense of making the appraisal shall be borne by the applicant. After the appraisal is made and filed with the commission and before any action is taken by the commission upon the application, the expenses of the appraisal as determined by the commission shall be paid by the applicant to the commission, which shall deposit the amount in the treasury of the state to be credited to the general fund, taking the receipt of the treasurer for the deposit and filing the receipt in the commission's office with the application. If the applicant refuses or neglects to pay the expense of the appraisal, the commission shall dismiss the application and the commission may bring an action against the applicant in a court of competent jurisdiction in this state for the recovery of the expense of the appraisal. The expense of the appraisal shall be paid by the state treasurer to the person certified by the commission to be entitled to the appraisal fee.

(3) If from the application filed and other information obtained from the investigation authorized in this act the commission is satisfied that the funds derived from the issue of stocks, bonds, or notes are to be applied to lawful purposes and that the issue and amount is essential to the successful carrying out of the purposes, or that the issue of the stock fairly represents accumulated and undistributed earnings invested in capital assets and not previously capitalized, the commission shall grant authority to make the issue. In granting the authority, the commission may impose as a condition of the grant reasonable terms and conditions that the commission considers proper.

(4) A person, corporation, or association may issue notes for lawful purposes, payable at periods of not more than 24 months, without authority from the commission; but the notes shall not in whole or in part, be refunded by an issue of stock or bonds or by an evidence of indebtedness running for more than 12 months without the consent of the commission.

(5) This act shall apply to stock, shares, bonds, or notes issued to or taken by the incorporators or their agents, assigns, or trustees of a corporation or association in the first instance, and shall also apply to stock, bonds, or notes issued to or taken by the stockholders of the corporation or association, their agents, assigns, or trustees, after the first instance.

(6) Any order or decree of the Michigan public service commission shall be subject to review in the manner provided for in section 26 of Act No. 300 of the Public Acts of 1909, being section 462.26 of the Michigan Compiled Laws.

(7) Stocks, bonds, notes, or other evidences of indebtedness issued pursuant to an order of the commission shall be binding in accordance with their terms notwithstanding that the order of the commission is later vacated, modified, or otherwise held to be invalid in whole or in part, unless either of the following occurred:

(a) Operation of the order of the commission has been stayed or suspended by the reviewing court before issuance, which issuance shall not precede the expiration of 30 days following the date of the final order of the commission.

(b) The stocks or bonds were issued pursuant to an underwritten public offering and registered under title I of the securities act of 1933, 15 U.S.C. 77a to 77aa, by an electric utility with a total property value of not less than \$1,000,000,000.00 in this state and the commission has authorized their issuance without conducting a hearing pursuant to subsection (2).

(8) This act shall not apply to a person, corporation, or association which is engaged in the business of carrying, transporting, piping, purchasing for distribution, or selling natural gas into this state, which derives less than 5% of its consolidated gross revenues from all of its operations from natural gas operations in this state, and which does not offer residential natural gas service to the general public under rules promulgated by the Michigan public service commission.

Sec. 3. Any officer, director, agent or employee of any person, corporation or association, who shall cause to be issued any stocks, bonds, notes or other evidences of indebtedness payable at periods of more than 12 months after the date thereof, or who shall in any way aid in the issue of such stocks, bonds, notes or other evidences of indebtedness, not authorized by the Michigan public service commission, or under the terms and conditions imposed, or any officer, director, agent or employee of such person, corporation or association, who, after the issue of stocks, bonds, notes or other evidences of indebtedness authorized by the commission upon certain terms and conditions, fails to comply with those terms and conditions, is guilty of a felony punishable by imprisonment for not less than 1 year or more than 5 years.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Co-Clerk of the House of Representatives.

Approved -----

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Governor.