



SENATE BILL No. 648

May 18, 1993, Introduced by Senators MC MANUS, KOIVISTO, GAST, EMMONS, HART, SCHWARZ, CISKY and CARL and referred to Transportation and Tourism.

A bill 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:

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

5 Sec. 1. (1) A person, corporation, or association, or a
6 lessee or trustee of a corporation or association, except a

1 municipal corporation or the owner of a renewable resource power
2 production facility as provided in section 1a, organized or
3 authorized to do business under the laws of this state, owning,
4 conducting, managing, operating, or controlling a plant or equip-
5 ment within this state used wholly or in part in the business of
6 transmitting messages by telephone or telegraph, producing or
7 furnishing heat, artificial gas, light, water, or mechanical
8 power to the public, directly or indirectly, ~~a railroad, inter-~~
9 ~~urban railroad,~~ or other common carrier, or a corporation, asso-
10 ciation, or individual exercising or claiming the right to carry
11 or transport natural gas for public use, directly or indirectly,
12 or petroleum oil by or through a pipeline or engaged in the busi-
13 ness of piping or transporting natural gas for public use,
14 directly or indirectly, or engaged in the business of purchasing
15 natural gas for distribution may issue stocks, bonds, notes, or
16 other evidences of indebtedness payable at periods of more than
17 12 months after the date of issuance, if necessary for the acqui-
18 sition of property, the construction, completion, extension, or
19 improvement of facilities or for the improvement or maintenance
20 of service or for the discharge or lawful refunding of obliga-
21 tions and may issue stock to represent accumulated earnings
22 invested in capital assets and not previously capitalized, if the
23 Michigan public service commission issues an order authorizing
24 the issue and the amount of the issue, and states that in the
25 opinion of the commission the use of the capital or property to
26 be acquired to be secured by the issue of the stock, bonds,
27 notes, or other evidences of indebtedness, is reasonably required

1 for the purposes of the person, corporation, or association, or
2 that the issue of the stock fairly represents accumulated and
3 undistributed earnings invested in capital assets and not previ-
4 ously capitalized. Approval of securities does not presume that
5 the projects to be constructed or property to be acquired will be
6 included in the company's rate base.

7 (2) A person, corporation, or association desiring authority
8 to issue stocks, bonds, notes, or other evidences of indebtedness
9 shall make written application to the commission in the form as
10 the commission requires. After receiving the application, the
11 commission, for the purpose of determining whether the commission
12 should grant the authority, may make an inquiry or investigation,
13 hold hearings, and examine witnesses, books, papers, documents,
14 or contracts the commission considers of importance in enabling
15 it to reach a determination. An interested person, including
16 municipalities and organizations whose membership consists of a
17 substantial number of ratepayers within the service area of the
18 utility, shall have the right to intervene as provided in the
19 rules of the commission. If the applicant fails, neglects, or
20 refuses to furnish the information required by the commission, or
21 if the commission directs, an appraisal of the property of the
22 applicant shall be made by a disinterested person to be appointed
23 by the commission and whose compensation shall be fixed by the
24 commission. The entire expense of making the appraisal shall be
25 borne by the applicant. After the appraisal is made and filed
26 with the commission and before any action is taken by the
27 commission upon the application, the expenses of the appraisal as

1 determined by the commission shall be paid by the applicant to
2 the commission, which shall deposit the amount in the treasury of
3 the state to be credited to the general fund, taking the receipt
4 of the treasurer for the deposit and filing the receipt in the
5 commission's office with the application. If the applicant
6 refuses or neglects to pay the expense of the appraisal, the com-
7 mission shall dismiss the application and the commission may
8 bring an action against the applicant in a court of competent
9 jurisdiction in this state for the recovery of the expense of the
10 appraisal. The expense of the appraisal shall be paid by the
11 state treasurer to the person certified by the commission to be
12 entitled to the appraisal fee.

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

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

1 or bonds or by an evidence of indebtedness running for more than
2 12 months without the consent of the commission.

3 (5) This act shall apply to stock, shares, bonds, or notes
4 issued to or taken by the incorporators or their agents, assigns,
5 or trustees of a corporation or association in the first
6 instance, and shall also apply to stock, bonds, or notes issued
7 to or taken by the stockholders of the corporation or associa-
8 tion, their agents, assigns, or trustees, after the first
9 instance.

10 (6) Any order or decree of the Michigan public service com-
11 mission shall be subject to review in the manner provided for in
12 section 26 of Act No. 300 of the Public Acts of 1909, being sec-
13 tion 462.26 of the Michigan Compiled Laws.

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

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

24 (b) The stocks or bonds were issued pursuant to an under-
25 written public offering and registered under title I of the
26 securities act of 1933, 15 U.S.C. 77a to 77aa, by an electric
27 utility with a total property value of not less than

1 \$1,000,000,000.00 in this state and the commission has authorized
 2 their issuance without conducting a hearing pursuant to subsec-
 3 tion (2).

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

12 Sec. 3. Any officer, director, agent or ~~employee~~ EMPLOYEE
 13 of any person, corporation or association, who shall cause to be
 14 issued any stocks, bonds, notes or other evidences of indebted-
 15 ness payable at periods of more than 12 months after the date
 16 thereof, or who shall in any way aid in the issue of such stocks,
 17 bonds, notes or other evidences of indebtedness, not authorized
 18 by the Michigan ~~railroad~~ PUBLIC SERVICE commission, or under
 19 the terms and conditions imposed, or any officer, director, agent
 20 or ~~employee~~ EMPLOYEE of such person, corporation or association,
 21 who, ~~shall,~~ after the issue of stocks, bonds, notes or other
 22 evidences of indebtedness authorized by ~~said~~ THE commission
 23 upon certain terms and conditions, ~~fail~~ FAILS to comply with
 24 ~~such~~ THOSE terms and conditions, ~~so imposed, shall be deemed~~
 25 IS guilty of a felony ~~, and upon conviction thereof shall be~~
 26 ~~punished~~ PUNISHABLE by imprisonment ~~in the state prison~~ FOR
 27 not less than 1 year ~~nor~~ OR more than 5 years.