

# HOUSE BILL No. 5994

July 2, 1998, Introduced by Reps. Profit and Olshove and referred to the Committee on Public Utilities.

A bill to require the certification of electricity suppliers in this state; to prescribe the powers and duties of certain state agencies and officials; and to prescribe penalties and civil sanctions and provide remedies.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. As used in this act:

2       (a) "Administrative procedures act of 1969" means the admin-  
3 istrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
4 24.328.

5       (b) "Aggregator" means a person who combines electric loads  
6 of multiple retail customers or a single customer with multiple  
7 sites to facilitate the provision of direct access electric serv-  
8 ice to such retail customers.

9       (c) "Commission" means the Michigan public service  
10 commission in the department of consumer and industry services.

1 (d) "Consumer" or "customer" means an end-user of  
2 electricity.

3 (e) "Contested case" means that term as defined in section 3  
4 of the administrative procedures act of 1969, MCL 24.203.

5 (f) "Direct access" means the decision of an electricity  
6 customer to choose its electricity supplier and pay the electric-  
7 ity distributor a reasonable rate to deliver the electricity to  
8 the customer.

9 (g) "Electricity distributor" or "distributor" means a  
10 person or his or her lessees, trustees, and receivers, owning or  
11 operating equipment or facilities for delivering electricity to  
12 the public for compensation.

13 (h) "Electricity supplier" or "supplier" means a person who  
14 sells electricity and related services to electricity distribu-  
15 tors, aggregators, or at retail to customers located in the serv-  
16 ice territories of electricity distributors.

17 (i) "Person" means an individual, partnership, corporation,  
18 association, governmental entity, or other legal entity.

19 Sec. 2. (1) A person shall not engage in the business of an  
20 electricity supplier in this state unless the person possesses a  
21 certificate in good standing from the commission.

22 (2) A person may apply to the commission for a certificate  
23 authorizing the person to engage in the business of an electric-  
24 ity supplier by submitting an application to the commission on a  
25 form prescribed by the commission and containing the information  
26 required by the commission. The application shall detail the  
27 person's financial, managerial, and technical capabilities to

1 carry out the responsibilities of a supplier under this article.  
2 The application shall provide evidence of financial assurance  
3 equal to the cost of providing electrical service to the custom-  
4 ers proposed to be served by the supplier.

5 (3) The application shall also include a disclosure of any  
6 civil judgments or pending civil actions involving fraud, misrep-  
7 resentation, or a violation of consumer protection laws and any  
8 criminal convictions or pending prosecutions of the applicant,  
9 the board of directors of the corporation, if applicable, the 5  
10 persons holding the largest shares of equity in or debt liability  
11 of the business, and, if known, the 3 employees of the business  
12 who will have the most responsibility for day-to-day operations  
13 of the business. If any information required to be included in  
14 the disclosure statement changes or needs to be supplemented  
15 after the filing of the statement, the applicant or other appro-  
16 priate person shall provide that information to the commission  
17 within 30 days of the change or addition.

18 (4) The commission shall establish a certification fee that  
19 is not greater than the cost to the commission for the processing  
20 and review of the application.

21 Sec. 3. (1) Upon receipt of an application under section 2,  
22 the commission shall direct the applicant to provide notice to  
23 the public by publishing notice of the application in 1 or more  
24 newspapers of general circulation in the proposed service area of  
25 the applicant. At the cost to the applicant, the commission  
26 shall also provide notice to the public through the internet and

1 by providing direct notice to any interested person who requests  
2 notices of certification applications.

3       (2) If, within 30 days following publication of the notice  
4 under subsection (1), the commission has not received an objec-  
5 tion to the issuance of the certificate as required under  
6 subsection (3), and the commission determines, based upon the  
7 information in the application and any supporting materials sub-  
8 mitted, that the applicant has demonstrated the current and ongo-  
9 ing financial, managerial, and technical capabilities to carry  
10 out the responsibilities and obligations imposed upon suppliers  
11 by this article, the commission shall issue a certificate to the  
12 applicant. However, if the commission determines, based upon the  
13 information and materials, that the applicant has not demon-  
14 strated the requisite capabilities, the application shall be  
15 denied.

16       (3) An objection to the issuance of a certificate must be  
17 filed with the commission within 30 days after the date of the  
18 notice under subsection (1). If the commission receives 1 or  
19 more objections to the issuance of a certificate, the commission  
20 shall schedule a public hearing on the matter within 60 days  
21 after the date public notice was provided under subsection (1) in  
22 the same manner as provided for contested case hearings under the  
23 administrative procedures act of 1969.

24       (4) If the commission determines, based upon the evidence  
25 admitted at the public hearing held before the commission con-  
26 cerning the application, that the applicant has the current and  
27 ongoing financial, managerial, and technical capabilities to

1 carry out the responsibilities and obligations imposed upon a  
2 supplier by this article, the commission shall issue a certifi-  
3 cate to the supplier within 30 days after the public hearing.

4       Sec. 4. The commission shall determine the manner and  
5 extent to which the information contained in an application for  
6 commission certification under this act, and the materials filed  
7 with the commission concerning the application, are entitled to  
8 confidential treatment and not subject to public disclosure with-  
9 out adequate confidentiality protections.

10       Sec. 5. An electricity supplier shall notify the commission  
11 of any changes that occur regarding the information required for  
12 certification under this act.

13       Sec. 6. (1) If the commission finds that a supplier no  
14 longer possesses the requisite capabilities to provide service as  
15 required by this article or has otherwise violated or failed to  
16 comply with this article, the commission may, after notice to the  
17 supplier and an opportunity to be heard, revoke the certificate  
18 of the supplier.

19       (2) If the commission finds that a supplier intentionally  
20 failed to provide for its energy commitments, the commission may,  
21 after notice to the supplier and an opportunity to be heard,  
22 order appropriate penalties under this act.

23       Sec. 7. As a condition of certification, a supplier, to be  
24 eligible to provide services to customers, shall do both of the  
25 following:

1 (a) Irrevocably consent in writing to the jurisdiction of  
2 the courts of Michigan for any civil or criminal matters arising  
3 out of its provision of services in this state.

4 (b) Designate an agent authorized to accept service of pro-  
5 cess in Michigan.

6 Sec. 8. A supplier shall not provide electrical service to  
7 a customer that elects direct access without the express consent  
8 and authorization of the customer.

9 Sec. 9. If after notice and hearing the commission finds a  
10 person has violated this act, the commission shall order remedies  
11 and penalties to protect and make whole any persons who have suf-  
12 fered an economic loss as a result of the violation, including,  
13 but not limited to, 1 or more of the following:

14 (a) The person to pay a fine for the first offense of not  
15 less than \$1,000.00 nor more than \$20,000.00 per day that the  
16 person is in violation of this act, and for each subsequent  
17 offense, a fine of not less than \$2,000.00 nor more than  
18 \$40,000.00 per day.

19 (b) A refund to the customers of any collected excessive  
20 rates.

21 (c) Cease and desist orders.

22 (d) If the person is certified or registered under this or  
23 any other act, revoke the person's certificate or registration.