

**SUBSTITUTE FOR  
HOUSE BILL NO. 5902**

A bill to amend 1939 PA 3, entitled

"An act to provide for the regulation and control of public and certain private 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 powers and duties of certain state governmental officers and entities; 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 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,"

(MCL 460.1 to 460.11) by adding section 10gg.

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

1        SEC. 10GG. (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS  
2 ACT, THE COMMISSION MAY ESTABLISH LONG-TERM ELECTRICITY RATES FOR  
3 INDUSTRIAL CUSTOMERS. AN ELECTRIC UTILITY MAY PROPOSE A LONG-TERM  
4 INDUSTRIAL LOAD RATE IN A GENERAL RATE CASE FILING OR IN A STAND-  
5 ALONE PROCEEDING. THE COMMISSION SHALL APPROVE THE LONG-TERM  
6 INDUSTRIAL LOAD RATE PROPOSED BY THE ELECTRIC UTILITY IF THE  
7 COMMISSION FINDS ALL OF THE FOLLOWING:

8        (A) THE COST OF SERVICE FOR THE CAPACITY NEEDED TO SERVE THE  
9 INDUSTRIAL CUSTOMER UNDER THE PROPOSED LONG-TERM INDUSTRIAL LOAD  
10 RATE IS BASED ON 1 OR MORE DESIGNATED POWER SUPPLY RESOURCES.

11        (B) THE PROPOSED LONG-TERM INDUSTRIAL LOAD RATE REQUIRES THE  
12 INDUSTRIAL CUSTOMER TO ENTER INTO A CONTRACT FOR A TERM EQUAL TO  
13 EITHER OF THE FOLLOWING:

14        (i) THE TERM OF THE ELECTRIC UTILITY POWER PURCHASE AGREEMENT  
15 OR AGREEMENTS, THAT MUST NOT BE LESS THAN 15 YEARS, FOR 1 OR MORE  
16 DESIGNATED POWER SUPPLY RESOURCES IF THE RESOURCES ARE AN ELECTRIC  
17 UTILITY POWER PURCHASE AGREEMENT OR AGREEMENTS.

18        (ii) THE EXPECTED REMAINING LIFE OF 1 OR MORE DESIGNATED POWER  
19 SUPPLY RESOURCES IF THE RESOURCES ARE UTILITY-OWNED RESOURCES.

20        (C) THE PROPOSED LONG-TERM INDUSTRIAL LOAD RATE REQUIRES THAT  
21 THE INDUSTRIAL CUSTOMER HAVE AN ANNUAL AVERAGE ELECTRIC DEMAND OF  
22 AT LEAST 200 MEGAWATTS AT 1 SITE AT THE TIME THE CONTRACT FOR A  
23 TERM IS ENTERED INTO, HAVE AN ANNUAL LOAD FACTOR OF AT LEAST 75% AT  
24 THE TIME THE CONTRACT FOR A TERM IS ENTERED INTO, AND MUST  
25 DEMONSTRATE THAT THE INDUSTRIAL CUSTOMER WOULD NOT PURCHASE  
26 STANDARD TARIFF SERVICE FROM THE ELECTRIC UTILITY EXCEPT UNDER THE  
27 LONG-TERM INDUSTRIAL LOAD RATE. THE INDUSTRIAL CUSTOMER

1 DEMONSTRATES THAT IT WOULD NOT PURCHASE STANDARD TARIFF SERVICE  
2 FROM THE ELECTRIC UTILITY EXCEPT UNDER THE LONG-TERM INDUSTRIAL  
3 LOAD RATE IF ANY OF THE FOLLOWING CONDITIONS EXIST:

4 (i) THE CUSTOMER HAS AVAILABLE SELF-SERVICE POWER IN A  
5 QUANTITY EQUAL TO THE CONTRACT DEMAND LEVEL.

6 (ii) THE CUSTOMER, OR AN ENTITY ACTING ON THE CUSTOMER'S  
7 BEHALF, HAS ENTERED THE APPLICABLE REGIONAL TRANSMISSION  
8 ORGANIZATION'S GENERATION INTERCONNECTION QUEUE FOR A NEW  
9 GENERATION RESOURCE THAT, IF CONSTRUCTED, WOULD QUALIFY AS SELF-  
10 SERVICE POWER IN A QUANTITY EQUAL TO THE CONTRACT DEMAND LEVEL.  
11 ENTERING THE REGIONAL TRANSMISSION ORGANIZATION'S INTERCONNECTION  
12 QUEUE MEANS COMPLIANCE WITH ALL APPLICABLE INTERCONNECTION  
13 APPLICATION REQUIREMENTS, SUCH AS PAYMENT OF THE APPLICATION FEE,  
14 DISCLOSURE OF THE TECHNICAL REQUIREMENTS, PAYMENT OF THE DEFINITIVE  
15 PLANNING PHASE STUDYING FUNDING DEPOSIT, DEMONSTRATION OF SITE  
16 CONTROL, AND PAYMENT OF ALL OTHER APPLICABLE PER-MEGAWATT FEES OR  
17 DEPOSITS, AS REQUIRED BY THE REGIONAL TRANSMISSION ORGANIZATION.

18 (D) THE PROPOSED LONG-TERM INDUSTRIAL LOAD RATE IS ONLY  
19 AVAILABLE TO THE INDUSTRIAL CUSTOMER FOR SERVICE AT A SITE WHERE  
20 THE INDUSTRIAL CUSTOMER'S ANNUAL AVERAGE ELECTRIC DEMAND IS AT  
21 LEAST 200 MEGAWATTS AT THE TIME THE CONTRACT FOR A TERM IS ENTERED  
22 INTO. THE CONTRACT FOR A TERM MUST BE FOR A MINIMUM OF 100  
23 MEGAWATTS OF FIRM CONTRACTED CAPACITY.

24 (E) IF THE RESOURCE DESIGNATED IN A CONTRACT EXECUTED UNDER  
25 THE LONG-TERM INDUSTRIAL LOAD RATE IS A UTILITY-OWNED RESOURCE,  
26 THEN THE PROPOSED LONG-TERM INDUSTRIAL LOAD RATE IS BASED ON ALL OF  
27 THE FOLLOWING:

1           (i) THE ELECTRIC UTILITY'S LEVELIZED COST OF CAPACITY,  
2 INCLUDING FIXED OPERATION AND MAINTENANCE EXPENSE, ASSOCIATED WITH  
3 THE DESIGNATED POWER SUPPLY RESOURCE AT THE TIME THE CUSTOMER  
4 CONTRACT IS EXECUTED.

5           (ii) THE ELECTRIC UTILITY'S ACTUAL VARIABLE FUEL AND ACTUAL  
6 VARIABLE OPERATION AND MAINTENANCE EXPENSE BASED ON THE CUSTOMER'S  
7 ACTUAL ENERGY CONSUMPTION AND ASSOCIATED WITH THE DESIGNATED POWER  
8 SUPPLY RESOURCE.

9           (iii) THE ELECTRIC UTILITY'S ACTUAL ENERGY AND CAPACITY MARKET  
10 PURCHASES, IF ANY, BASED ON THE CUSTOMER'S ACTUAL CONSUMPTION. THE  
11 AMOUNT OF CAPACITY NEEDED TO SERVE A QUALIFYING LONG-TERM  
12 INDUSTRIAL LOAD IS BASED ON THE CAPACITY NEEDED BY THE ELECTRIC  
13 UTILITY TO COMPLY WITH ITS REGIONAL TRANSMISSION ORGANIZATION'S  
14 LOAD-SERVING RESOURCE REQUIREMENT BASED ON THE AMOUNT OF  
15 CONTRACTUAL FIRM AND INTERRUPTIBLE CAPACITY SUPPLIED TO THE  
16 INDUSTRIAL CUSTOMER.

17           (F) IF THE DESIGNATED RESOURCE ASSOCIATED WITH A CONTRACT  
18 EXECUTED UNDER THE LONG-TERM INDUSTRIAL LOAD RATE IS AN ELECTRIC  
19 UTILITY POWER PURCHASE AGREEMENT OR AGREEMENTS, THEN THE PROPOSED  
20 LONG-TERM INDUSTRIAL LOAD RATE IS BASED ON RECOVERING ALL COSTS  
21 ASSOCIATED WITH THE DESIGNATED POWER PURCHASE AGREEMENT OR  
22 AGREEMENTS.

23           (2) A LONG-TERM INDUSTRIAL LOAD RATE MAY CONTAIN OTHER TERMS  
24 AND CONDITIONS PROPOSED BY THE ELECTRIC UTILITY.

25           (3) THE COMMISSION SHALL APPROVE ANY CONTRACT FOR A TERM  
26 PROPOSED BY AN ELECTRIC UTILITY UNDER A LONG-TERM INDUSTRIAL LOAD  
27 RATE AUTHORIZED UNDER THIS SECTION IF THERE IS A NET BENEFIT TO THE

1 ELECTRIC UTILITY'S CUSTOMERS RESULTING FROM THE INDUSTRIAL CUSTOMER  
2 TAKING SERVICE UNDER THE LONG-TERM INDUSTRIAL LOAD RATE COMPARED TO  
3 THE INDUSTRIAL CUSTOMER NOT PURCHASING STANDARD TARIFF SERVICE FROM  
4 THE ELECTRIC UTILITY. IN DETERMINING WHETHER A NET BENEFIT EXISTS,  
5 THE COMMISSION MAY CONSIDER ANY BENEFIT, INCLUDING, BUT NOT LIMITED  
6 TO, BENEFITS TO CUSTOMERS AS A RESULT OF THE FOLLOWING:

7 (A) SYSTEM PEAK DEMAND REDUCTION DUE TO ABILITY TO CURTAIL,  
8 ENGAGE IN DEMAND RESPONSE, OR PARTICIPATE IN FEDERAL LOAD  
9 MANAGEMENT PROGRAMS.

10 (B) AVOIDANCE OF NEW PRODUCTION CAPACITY COSTS AND RISKS FOR  
11 OTHER RATEPAYERS.

12 (C) ABILITY TO REDUCE SYSTEM COSTS, SUCH AS BY CONTRIBUTING TO  
13 VOLT-VAR CONTROL.

14 (4) IF THE CUSTOMER TAKING SERVICE UNDER A LONG-TERM  
15 INDUSTRIAL LOAD RATE WILL CONTRIBUTE TO THE ELECTRIC UTILITY'S  
16 FIXED DISTRIBUTION OR TRANSMISSION COSTS THAT OTHERWISE WOULD HAVE  
17 BEEN RECOVERED FROM THE ELECTRIC UTILITY'S OTHER CUSTOMERS AS  
18 COMPARED TO THE CUSTOMER NOT PURCHASING STANDARD TARIFF SERVICE  
19 FROM THE ELECTRIC UTILITY, THEN THE COMMISSION SHALL DETERMINE THAT  
20 A NET BENEFIT EXISTS UNDER SUBSECTION (3).

21 (5) AN ELECTRIC UTILITY MAY SUBMIT A PROPOSAL FOR A LONG-TERM  
22 INDUSTRIAL LOAD RATE AND A PROPOSED CONTRACT FOR A TERM UNDER THE  
23 PROPOSED LONG-TERM INDUSTRIAL LOAD RATE IN THE SAME PROCEEDING.

24 (6) IF AN ELECTRIC UTILITY PROPOSES A LONG-TERM INDUSTRIAL  
25 LOAD RATE IN A STAND-ALONE PROCEEDING, THAT PROCEEDING MUST BE  
26 CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 4 OF THE ADMINISTRATIVE  
27 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271 TO 24.287, AND MUST

1 BE SUPPORTED BY A COMPLETE COST OF SERVICE STUDY, RATE DESIGN, AND  
2 PROPOSED TARIFFS REFLECTING THE IMPACT OF THE LONG-TERM INDUSTRIAL  
3 LOAD RATE ON OTHER CUSTOMER RATES. A STAND-ALONE PROCEEDING FILED  
4 UNDER THIS SECTION MUST NOT BE EXPANDED TO RESULT IN ANY CHANGES TO  
5 THE ELECTRIC UTILITY'S OVERALL REVENUE REQUIREMENT. THE COMMISSION  
6 SHALL ISSUE A FINAL ORDER IN A STAND-ALONE PROCEEDING CONDUCTED  
7 UNDER THIS SECTION NO LATER THAN 270 DAYS AFTER AN ELECTRIC UTILITY  
8 FILES AN APPLICATION REQUESTING APPROVAL OF A LONG-TERM INDUSTRIAL  
9 LOAD RATE.

10 (7) A CONTRACT FOR A TERM EXECUTED UNDER A LONG-TERM  
11 INDUSTRIAL LOAD RATE APPROVED UNDER THIS SECTION IS CONSIDERED  
12 REASONABLE AND PRUDENT FOR THE CONTRACT'S ENTIRE TERM.

13 (8) A DESIGNATED POWER SUPPLY RESOURCE THAT IS AN ELECTRIC  
14 UTILITY POWER PURCHASE AGREEMENT OR AGREEMENTS MAY BE A POWER  
15 PURCHASE AGREEMENT OR AGREEMENTS WITH AN AFFILIATE OF THE ELECTRIC  
16 UTILITY.

17 (9) A SINGLE CUSTOMER MAY NOT AGGREGATE LOAD FROM MULTIPLE  
18 SITES TO MEET THE REQUIREMENTS OF THIS SECTION. MULTIPLE CUSTOMERS  
19 MAY NOT AGGREGATE LOAD TO MEET THE REQUIREMENTS OF THIS SECTION.

20 (10) AS USED IN THIS SECTION:

21 (A) "ANNUAL LOAD FACTOR" MEANS A LOAD FACTOR CALCULATED AS AN  
22 AVERAGE OF THE PRIOR 12 MONTHLY LOAD FACTORS. EACH MONTHLY LOAD  
23 FACTOR MUST BE DETERMINED BY DIVIDING THE CUSTOMER'S ACTUAL MONTHLY  
24 KILOWATT HOURS CONSUMPTION BY THE PRODUCT OF THE CUSTOMER'S MONTHLY  
25 MAXIMUM DEMAND AND THE NUMBER OF HOURS IN THE MONTH.

26 (B) "CONTRACT FOR A TERM" MEANS AN AGREEMENT EXECUTED BETWEEN  
27 AN ELECTRIC UTILITY AND INDUSTRIAL CUSTOMER UNDER A LONG-TERM

1 INDUSTRIAL LOAD RATE AUTHORIZED BY THIS SECTION.

2 (C) "ELECTRIC UTILITY POWER PURCHASE AGREEMENT" MEANS AN  
3 AGREEMENT EXECUTED BETWEEN AN ELECTRIC UTILITY AND AN ELECTRIC  
4 GENERATION FACILITY NOT OWNED BY THE ELECTRIC UTILITY FOR THE  
5 PURCHASE OF ENERGY AND CAPACITY.

6 (D) "LONG-TERM INDUSTRIAL LOAD RATE" MEANS A RATE APPROVED BY  
7 THE COMMISSION UNDER THIS SECTION.

8 (E) "SELF-SERVICE POWER" MEANS THAT TERM AS DEFINED IN SECTION  
9 10A(4) .

10 (F) "SITE" MEANS AN INDUSTRIAL SITE OR CONTIGUOUS INDUSTRIAL  
11 SITE OR SINGLE COMMERCIAL ESTABLISHMENT. A SITE THAT IS DIVIDED BY  
12 AN INLAND BODY OF WATER OR BY A PUBLIC HIGHWAY, ROAD, OR STREET BUT  
13 THAT OTHERWISE MEETS THIS DEFINITION MEETS THE CONTIGUOUS  
14 REQUIREMENT.

15 (G) "STANDARD TARIFF SERVICE" MEANS THE RETAIL RATES, TERMS,  
16 AND CONDITIONS OF SERVICE APPROVED BY THE COMMISSION FOR SERVICE TO  
17 CUSTOMERS THAT DO NOT PURCHASE POWER UNDER THE LONG-TERM INDUSTRIAL  
18 LOAD RATE.