

# SENATE BILL No. 1253

May 9, 2000, Introduced by Senator DUNASKISS and referred to the Committee on Technology and Energy.

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 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 therein 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 rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to provide for a restructuring of rates for certain utilities; to encourage the utilization of resource recovery facilities; to provide for appeals; to provide appropriations; to declare the effect of this act; to prescribe penalties; and to repeal all acts contrary to this act,"

(MCL 460.1 to 460.8) by adding sections 10h, 10i, 10j, 10k, 10l, 10m, 10n, and 10o.

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

1        SEC. 10H. AS USED IN THIS ACT:

1 (A) "ASSIGNEE" MEANS AN INDIVIDUAL, CORPORATION, OR OTHER  
2 LEGALLY RECOGNIZED ENTITY TO WHICH AN INTEREST IN SECURITIZATION  
3 PROPERTY IS TRANSFERRED.

4 (B) "COMMISSION" MEANS THE MICHIGAN PUBLIC SERVICE COMMIS-  
5 SION IN THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES.

6 (C) "ELECTRIC UTILITY" MEANS THAT TERM AS DEFINED IN  
7 SECTION 2 OF THE ELECTRIC TRANSMISSION LINE CERTIFICATION ACT,  
8 1995 PA 30, MCL 460.562.

9 (D) "FINANCING ORDER" MEANS AN ORDER OF THE COMMISSION  
10 APPROVING THE ISSUANCE OF SECURITIZATION BONDS AND THE CREATION  
11 OF SECURITIZATION CHARGES AND CORRESPONDING RATE REDUCTIONS.

12 (E) "FINANCING PARTY" MEANS A HOLDER OF SECURITIZATION  
13 BONDS, INCLUDING TRUSTEES, COLLATERAL AGENTS, AND OTHER PERSONS  
14 ACTING FOR THE BENEFIT OF THE HOLDER.

15 (F) "QUALIFIED COSTS" MEANS AN ELECTRIC UTILITY'S REGULATORY  
16 ASSETS, OFFSET BY THE APPLICABLE PORTION OF RELATED INVESTMENT  
17 TAX CREDITS, PLUS ANY COSTS THAT THE COMMISSION DETERMINES THAT  
18 THE ELECTRIC UTILITY WOULD BE UNLIKELY TO COLLECT IN A COMPETI-  
19 TIVE MARKET, TOGETHER WITH THE COSTS OF ISSUING, SUPPORTING, AND  
20 SERVICING SECURITIZATION BONDS AND ANY COSTS OF RETIRING AND  
21 REFUNDING THE ELECTRIC UTILITY'S EXISTING DEBT AND EQUITY SECURI-  
22 TIES IN CONNECTION WITH THE ISSUANCE OF SECURITIZATION BONDS.

23 (G) "SECURITIZATION BONDS" MEANS BONDS, DEBENTURES, NOTES,  
24 CERTIFICATES OF PARTICIPATION OR OF A BENEFICIAL INTEREST, OR  
25 OTHER EVIDENCES OF INDEBTEDNESS OR OWNERSHIP THAT ARE ISSUED BY  
26 AN ELECTRIC UTILITY, ITS SUCCESSORS, OR AN ASSIGNEE UNDER A  
27 FINANCING ORDER, THAT HAVE A TERM OF NOT MORE THAN 15 YEARS, AND

1 THAT ARE SECURED BY OR PAYABLE FROM SECURITIZATION PROPERTY. IF  
2 CERTIFICATES OF PARTICIPATION, BENEFICIAL INTEREST, OR OWNERSHIP  
3 ARE ISSUED, REFERENCES IN THIS ACT TO PRINCIPAL, INTEREST, OR  
4 PREMIUM SHALL REFER TO COMPARABLE AMOUNTS UNDER THOSE  
5 CERTIFICATES.

6 (H) "SECURITIZATION CHARGES" MEANS NONBYPASSABLE AMOUNTS TO  
7 BE CHARGED FOR THE USE OR AVAILABILITY OF ELECTRIC SERVICES,  
8 APPROVED BY THE COMMISSION UNDER A FINANCING ORDER TO RECOVER  
9 QUALIFIED COSTS, THAT SHALL BE COLLECTED BY AN ELECTRIC UTILITY,  
10 ITS SUCCESSORS, AND ASSIGNEE, OR OTHER COLLECTION AGENTS AS PRO-  
11 VIDED FOR IN THE FINANCING ORDER.

12 (I) "SECURITIZATION PROPERTY" MEANS THE PROPERTY DESCRIBED  
13 IN SECTION 3.

14 SEC. 101. (1) UPON THE APPLICATION OF AN ELECTRIC UTILITY,  
15 IF THE COMMISSION FINDS THAT THE NET PRESENT VALUE OF THE REVE-  
16 NUES TO BE COLLECTED UNDER THE FINANCING ORDER IS LESS THAN THE  
17 AMOUNT THAT WOULD BE RECOVERED OVER THE REMAINING LIFE OF THE  
18 QUALIFIED COSTS USING CONVENTIONAL FINANCING METHODS AND THAT THE  
19 FINANCING ORDER IS CONSISTENT WITH THE STANDARDS IN SUBSECTION  
20 (2), THE COMMISSION SHALL ISSUE A FINANCING ORDER TO ALLOW THE  
21 UTILITY TO RECOVER QUALIFIED COSTS.

22 (2) IN A FINANCING ORDER, THE COMMISSION SHALL ENSURE ALL OF  
23 THE FOLLOWING:

24 (A) THAT THE PROCEEDS OF THE SECURITIZATION BONDS ARE USED  
25 SOLELY FOR THE PURPOSES OF REDUCING THE AMOUNT OF QUALIFIED  
26 ASSETS THROUGH THE REFINANCING OR RETIREMENT OF DEBT OR EQUITY.

1 (B) THAT SECURITIZATION PROVIDES TANGIBLE AND QUANTIFIABLE  
2 BENEFITS TO CUSTOMERS OF THE ELECTRIC UTILITY, GREATER THAN WOULD  
3 HAVE BEEN ACHIEVED ABSENT THE ISSUANCE OF SECURITIZATION BONDS.

4 (C) THAT THE STRUCTURING AND PRICING OF THE SECURITIZATION  
5 BONDS RESULT IN THE LOWEST SECURITIZATION CHARGES CONSISTENT WITH  
6 MARKET CONDITIONS AND THE TERMS OF THE FINANCING ORDER.

7 (D) THAT THE AMOUNT SECURITIZED DOES NOT EXCEED THE NET  
8 PRESENT VALUE OF THE REVENUE REQUIREMENT OVER THE LIFE OF THE  
9 PROPOSED SECURITIZATION BOND ASSOCIATED WITH THE QUALIFIED COSTS  
10 SOUGHT TO BE SECURITIZED.

11 (3) THE FINANCING ORDER SHALL DETAIL THE AMOUNT OF QUALIFIED  
12 COSTS TO BE RECOVERED AND THE PERIOD OVER WHICH THE SECURITIZA-  
13 TION CHARGES ARE TO BE RECOVERED, NOT TO EXCEED 15 YEARS.

14 (4) A FINANCING ORDER IS EFFECTIVE IN ACCORDANCE WITH ITS  
15 TERMS, AND THE FINANCING ORDER, TOGETHER WITH THE SECURITIZATION  
16 CHARGES AUTHORIZED IN THE ORDER, SHALL BE IRREVOCABLE AND NOT  
17 SUBJECT TO REDUCTION, IMPAIRMENT, OR ADJUSTMENT BY FURTHER ACTION  
18 OF THE COMMISSION, EXCEPT AS PROVIDED UNDER SECTION 10K(3).

19 (5) THE COMMISSION SHALL ISSUE A FINANCING ORDER OR AN ORDER  
20 REJECTING THE APPLICATION FOR A FINANCING ORDER NO LATER THAN  
21 90 DAYS AFTER THE ELECTRIC UTILITY FILES ITS APPLICATION.

22 (6) A FINANCING ORDER IS NOT SUBJECT TO REHEARING BY THE  
23 COMMISSION.

24 (7) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A FINANCING  
25 ORDER MAY BE REVIEWED BY THE COURT OF APPEALS UPON A FILING BY A  
26 PARTY TO THE COMMISSION PROCEEDING WITHIN 15 DAYS AFTER THE  
27 FINANCING ORDER IS ISSUED. ALL APPEALS OF A FINANCING ORDER

1 SHALL BE HEARD AND DETERMINED AS EXPEDITIOUSLY AS POSSIBLE WITH  
2 LAWFUL PRECEDENCE OVER OTHER MATTERS. REVIEW ON APPEAL SHALL BE  
3 BASED SOLELY ON THE RECORD BEFORE THE COMMISSION AND BRIEFS TO  
4 THE COURT AND SHALL BE LIMITED TO WHETHER THE FINANCING ORDER  
5 CONFORMS TO THE CONSTITUTION AND LAWS OF THIS STATE AND THE  
6 UNITED STATES AND IS WITHIN THE AUTHORITY OF THE COMMISSION UNDER  
7 THIS ACT.

8 (8) AT THE REQUEST OF AN ELECTRIC UTILITY, THE COMMISSION  
9 MAY ADOPT A FINANCING ORDER PROVIDING FOR RETIRING AND REFUNDING  
10 SECURITIZATION BONDS IF THE COMMISSION FINDS THAT THE FUTURE  
11 SECURITIZATION CHARGES REQUIRED TO SERVICE THE NEW SECURITIZATION  
12 BONDS, INCLUDING TRANSACTION COSTS, WILL BE LESS THAN THE FUTURE  
13 SECURITIZATION CHARGES REQUIRED TO SERVICE THE SECURITIZATION  
14 BONDS BEING REFUNDED. ON THE RETIREMENT OF THE REFUNDED SECURI-  
15 TIZATION BONDS, THE COMMISSION SHALL ADJUST THE RELATED SECURITI-  
16 ZATION CHARGES ACCORDINGLY.

17 SEC. 10J. (1) THE RIGHTS AND INTERESTS OF AN ELECTRIC UTIL-  
18 ITY OR SUCCESSOR UNDER A FINANCING ORDER, INCLUDING THE RIGHT TO  
19 IMPOSE, COLLECT, AND RECEIVE SECURITIZATION CHARGES AUTHORIZED IN  
20 THE FINANCING ORDER, SHALL BE ONLY CONTRACT RIGHTS UNTIL THEY ARE  
21 FIRST TRANSFERRED TO AN ASSIGNEE OR PLEDGED IN CONNECTION WITH  
22 THE ISSUANCE OF SECURITIZATION BONDS, AT WHICH TIME THEY BECOME  
23 SECURITIZATION PROPERTY.

24 (2) SECURITIZATION PROPERTY SHALL CONSTITUTE A PRESENT PROP-  
25 ERTY RIGHT FOR PURPOSES OF CONTRACTS CONCERNING THE SALE OR  
26 PLEDGE OF PROPERTY, EVEN THOUGH THE IMPOSITION AND COLLECTION OF  
27 SECURITIZATION CHARGES DEPENDS ON THE FURTHER ACTS OF THE

1 ELECTRIC UTILITY OR OTHERS THAT HAVE NOT YET OCCURRED. THE  
2 FINANCING ORDER SHALL REMAIN IN EFFECT AND THE PROPERTY SHALL  
3 CONTINUE TO EXIST FOR THE SAME PERIOD AS THE PLEDGE OF THE STATE  
4 DESCRIBED IN SECTION 10N.

5 (3) ALL REVENUES AND COLLECTIONS RESULTING FROM SECURITIZA-  
6 TION CHARGES SHALL CONSTITUTE PROCEEDS ONLY OF THE SECURITIZATION  
7 PROPERTY ARISING FROM THE FINANCING ORDER.

8 SEC. 10K. (1) THE INTEREST OF AN ASSIGNEE OR PLEDGEE IN  
9 SECURITIZATION PROPERTY AND IN THE REVENUES AND COLLECTIONS ARIS-  
10 ING FROM THAT PROPERTY ARE NOT SUBJECT TO SETOFF, COUNTERCLAIM,  
11 SURCHARGE, OR DEFENSE BY THE ELECTRIC UTILITY OR ANY OTHER PERSON  
12 OR IN CONNECTION WITH THE BANKRUPTCY OF THE ELECTRIC UTILITY OR  
13 ANY OTHER ENTITY. A FINANCING ORDER SHALL REMAIN IN EFFECT AND  
14 UNABATED NOTWITHSTANDING THE BANKRUPTCY OF THE ELECTRIC UTILITY,  
15 ITS SUCCESSORS, OR ASSIGNEES.

16 (2) A FINANCING ORDER SHALL INCLUDE TERMS ENSURING THAT THE  
17 IMPOSITION AND COLLECTION OF SECURITIZATION CHARGES AUTHORIZED IN  
18 THE ORDER ARE NONBYPASSABLE.

19 (3) A FINANCING ORDER SHALL INCLUDE A MECHANISM REQUIRING  
20 THAT SECURITIZATION CHARGES BE REVIEWED AND ADJUSTED AT LEAST  
21 ANNUALLY, WITHIN 45 DAYS OF THE ANNIVERSARY DATE OF THE ISSUANCE  
22 OF THE SECURITIZATION BONDS, TO CORRECT ANY OVERCOLLECTIONS OR  
23 UNDERCOLLECTIONS OF THE PRECEDING 12 MONTHS AND TO ENSURE THE  
24 EXPECTED RECOVERY OF AMOUNTS SUFFICIENT TO TIMELY PROVIDE ALL  
25 PAYMENTS OF DEBT SERVICE AND OTHER REQUIRED AMOUNTS AND CHARGES  
26 IN CONNECTION WITH THE SECURITIZATION BONDS.

1           SEC. 10/. (1) AN AGREEMENT BY AN ELECTRIC UTILITY OR  
2 ASSIGNEE TO TRANSFER SECURITIZATION PROPERTY THAT EXPRESSLY  
3 STATES THAT THE TRANSFER IS A SALE OR OTHER ABSOLUTE TRANSFER  
4 SIGNIFIES THAT THE TRANSACTION IS A TRUE SALE AND IS NOT A  
5 SECURED TRANSACTION AND THAT TITLE, LEGAL AND EQUITABLE, HAS  
6 PASSED TO THE ENTITY TO WHICH THE SECURITIZATION PROPERTY IS  
7 TRANSFERRED.

8           (2) A TRUE SALE UNDER THIS SECTION APPLIES REGARDLESS OF  
9 WHETHER THE PURCHASER HAS ANY RECOURSE AGAINST THE SELLER, OR ANY  
10 OTHER TERM OF THE PARTIES' AGREEMENT, INCLUDING THE SELLER'S  
11 RETENTION OF AN EQUITY INTEREST IN THE SECURITIZATION PROPERTY,  
12 THE FACT THAT THE ELECTRIC UTILITY ACTS AS A COLLECTOR OF SECURI-  
13 TIZATION CHARGES RELATING TO THE SECURITIZATION PROPERTY, OR THE  
14 TREATMENT OF THE TRANSFER AS A FINANCING FOR TAX, FINANCIAL  
15 REPORTING, OR OTHER PURPOSES.

16           SEC. 10M. (1) A VALID AND ENFORCEABLE LIEN AND SECURITY  
17 INTEREST IN TRANSITION PROPERTY MAY BE CREATED ONLY BY A FINANC-  
18 ING ORDER AND THE EXECUTION AND DELIVERY OF A SECURITY AGREEMENT  
19 WITH A FINANCING PARTY IN CONNECTION WITH THE ISSUANCE OF SECURI-  
20 TIZATION BONDS.

21           (2) THE LIEN AND SECURITY INTEREST SHALL ATTACH AUTOMATI-  
22 CALLY FROM THE TIME THAT VALUE IS RECEIVED FOR THE BONDS AND  
23 SHALL BE A CONTINUOUSLY PERFECTED LIEN AND SECURITY INTEREST IN  
24 THE TRANSITION PROPERTY AND ALL PROCEEDS OF THE PROPERTY, WHETHER  
25 ACCRUED OR NOT, SHALL HAVE PRIORITY IN THE ORDER OF FILING AND  
26 TAKE PRECEDENCE OVER ANY SUBSEQUENT JUDICIAL AND OTHER LIEN  
27 CREDITOR.

1           (3) TRANSFER OF AN INTEREST IN SECURITIZATION PROPERTY TO AN  
2 ASSIGNEE SHALL BE PERFECTED AGAINST ALL THIRD PARTIES, INCLUDING  
3 SUBSEQUENT JUDICIAL AND OTHER LIEN CREDITORS, WHEN A FINANCING  
4 STATEMENT HAS BEEN FILED WITH RESPECT TO THE TRANSFER IN ACCORD-  
5 ANCE WITH THE UNIFORM COMMERCIAL CODE, 1962 PA 174, MCL 440.1101  
6 TO 440.11102.

7           (4) THE PRIORITY OF A LIEN AND SECURITY INTEREST UNDER THIS  
8 SECTION IS NOT IMPAIRED BY ANY LATER MODIFICATION OF THE FINANC-  
9 ING ORDER OR BY THE COMMINGLING OF FUNDS ARISING FROM SECURITIZA-  
10 TION CHARGES WITH OTHER FUNDS, AND ANY OTHER SECURITY INTEREST  
11 THAT MAY APPLY TO THOSE FUNDS SHALL BE TERMINATED WHEN THEY ARE  
12 TRANSFERRED TO A SEGREGATED ACCOUNT FOR THE ASSIGNEE OR A FINANC-  
13 ING PARTY. IF SECURITIZATION PROPERTY HAS BEEN TRANSFERRED TO AN  
14 ASSIGNEE, ANY PROCEEDS OF THAT PROPERTY SHALL BE HELD IN TRUST  
15 FOR THE ASSIGNEE.

16           (5) IN THE EVENT OF DEFAULT BY THE ELECTRIC UTILITY OR ITS  
17 ASSIGNEES OR SUCCESSORS, IN PAYMENT OF REVENUES ARISING WITH  
18 RESPECT TO SECURITIZATION PROPERTY, THE COMMISSION OR A COURT OF  
19 APPROPRIATE JURISDICTION, UPON THE APPLICATION OF THE FINANCING  
20 PARTY, AND WITHOUT LIMITING ANY OTHER REMEDIES AVAILABLE TO THE  
21 FINANCING PARTY, SHALL ORDER THE SEQUESTRATION AND PAYMENT TO THE  
22 FINANCING PARTY OF REVENUES ARISING WITH RESPECT TO THE  
23 PROPERTY. AN ORDER SHALL REMAIN IN FULL FORCE AND EFFECT NOT-  
24 WITHSTANDING ANY BANKRUPTCY, REORGANIZATION, OR OTHER INSOLVENCY  
25 PROCEEDINGS WITH RESPECT TO THE DEBTOR, PLEDGOR, OR TRANSFEROR OF  
26 THE PROPERTY.



1           SEC. 10N. (1) SECURITIZATION BONDS ARE NOT A DEBT OR  
2 OBLIGATION OF THE STATE AND ARE NOT A CHARGE ON ITS FULL FAITH  
3 AND CREDIT OR TAXING POWER.

4           (2) THE STATE PLEDGES, FOR THE BENEFIT AND PROTECTION OF THE  
5 FINANCING PARTIES AND THE ELECTRIC UTILITY, THAT IT WILL NOT TAKE  
6 OR PERMIT ANY ACTION THAT WOULD IMPAIR THE VALUE OF SECURITIZA-  
7 TION PROPERTY, OR, EXCEPT AS ALLOWED UNDER SECTION 6, REDUCE,  
8 ALTER, OR IMPAIR THE SECURITIZATION CHARGES TO BE IMPOSED, COL-  
9 LECTED, AND REMITTED TO FINANCING PARTIES, UNTIL THE PRINCIPAL,  
10 INTEREST AND PREMIUM, AND ANY OTHER CHARGES INCURRED AND CON-  
11 TRACTS TO BE PERFORMED IN CONNECTION WITH THE RELATED SECURITIZA-  
12 TION BONDS HAVE BEEN PAID AND PERFORMED IN FULL. ANY PARTY ISSU-  
13 ING SECURITIZATION BONDS IS AUTHORIZED TO INCLUDE THIS PLEDGE IN  
14 ANY DOCUMENTATION RELATING TO THOSE BONDS.

15           SEC. 10O. (1) THE ACQUISITION, OWNERSHIP, AND DISPOSITION  
16 OF ANY DIRECT INTEREST IN ANY SECURITIZATION BOND SHALL NOT BE  
17 TAKEN INTO ACCOUNT IN DETERMINING WHETHER A PERSON IS SUBJECT TO  
18 ANY INCOME TAX, SINGLE BUSINESS TAX, FRANCHISE TAX, BUSINESS  
19 ACTIVITIES TAX, INTANGIBLE PROPERTY TAX, EXCISE TAX, STAMP TAX,  
20 OR ANY OTHER TAX IMPOSED BY THIS STATE OR ANY AGENCY OR POLITICAL  
21 SUBDIVISION OF THIS STATE.

22           (2) AN ASSIGNEE OR FINANCING PARTY SHALL NOT BE CONSIDERED  
23 TO BE A PUBLIC UTILITY OR PERSON PROVIDING ELECTRIC SERVICE  
24 SOLELY BY VIRTUE OF THE TRANSACTIONS DESCRIBED IN THIS ACT.