

SENATE BILL No. 1151

May 29, 2012, Introduced by Senator MEEKHOF and referred to the Committee on Government Operations.

A bill to amend 1921 PA 246, entitled

"An act to regulate the service, rates, fares and charges of carriers by water within this state,"

by amending the title and sections 1, 2, 3, 4, 5, and 6 (MCL 460.201, 460.202, 460.203, 460.204, 460.205, and 460.206) and by adding sections 7, 8, and 10.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to regulate the service, rates, fares, **SCHEDULES**, and charges of carriers by water within this state; ~~—TO PROVIDE FOR~~ **UNIFORM CARRIER BY WATER LOCAL FRANCHISES; TO PROMOTE COMPETITION IN PROVIDING CARRIER BY WATER SERVICE IN THIS STATE; TO ENSURE REASONABLE LOCAL CONTROL OF RIGHTS-OF-WAY; TO PERMIT LOCAL UNITS OF GOVERNMENT TO IMPOSE FEES; TO PROVIDE FOR THE POWERS AND DUTIES OF CERTAIN STATE AND LOCAL AGENCIES AND OFFICIALS; AND TO PRESCRIBE**

1 **PENALTIES.**

2 Sec. 1. (1) ~~Any and all persons, firms and corporations~~
 3 ~~engaged in the transportation of freight, passengers, or express,~~
 4 ~~by water, wholly within this state shall, within 30 days after this~~
 5 ~~act shall take effect, make and~~ **A CARRIER BY WATER SHALL** file **A**
 6 **TARIFF DETAILING RATES, FARES, CHARGES, AND SCHEDULES FOR THE**
 7 **TRANSPORTING OF PASSENGERS, FREIGHT, EXPRESS, OR OTHER PROPERTY**
 8 ~~with the Michigan public utilities commission in such~~ **A** form as it
 9 ~~shall prescribe, its schedule of rates, fares, and charges for the~~
 10 ~~carrying of freight, passengers, and express, which said~~ **AND MANNER**
 11 **PRESCRIBED BY THE COMMISSION. EXCEPT AS OTHERWISE PROVIDED IN THIS**
 12 **SECTION, A TARIFF OF** rates, fares, and charges, **AND SCHEDULES** shall
 13 continue in force until superseded by ~~other schedules,~~ **ANOTHER**
 14 **TARIFF** ~~filed in the manner above prescribed, by said~~ **A** carrier ~~+~~
 15 ~~with~~ **OR ORDERED BY** the Michigan public utilities commission. ~~+~~
 16 ~~Provided, however, That said Michigan public utilities~~ **THE**
 17 commission may, either upon request ~~+~~ or upon its own motion,
 18 suspend the operation of any rate, fare, charge, ~~or~~ **A** tariff filed
 19 ~~as aforesaid,~~ **UNDER THIS SECTION** for a period not exceeding ~~30~~ **90**
 20 days. ~~+~~ ~~and in case any such rate, fare, charge, or~~ **IF A** tariff
 21 ~~shall be~~ **IS** suspended by said Michigan public utilities ~~THE~~
 22 commission, ~~it~~ **THE COMMISSION** shall ~~give~~ **IMMEDIATELY NOTIFY** the
 23 interested carrier ~~immediate notice thereof,~~ **OF THE SUSPENSION** and
 24 ~~+~~ ~~within 10 days from the date of such~~ **AFTER THE** suspension ~~+~~ shall
 25 ~~fix~~ **SET** a date ~~of~~ **FOR A** hearing ~~+~~ not more than ~~20~~ **45** days ~~from~~
 26 **AFTER** the date of ~~said~~ **THE** suspension. ~~+~~ ~~and~~ **THE COMMISSION** shall
 27 ~~give notice thereof to said~~ **NOTIFY AN INTERESTED CARRIER OF A**

1 HEARING UNDER THIS SUBSECTION AND PROVIDE THE carrier and to other
2 persons in interest, who may be heard, and after said hearing said
3 commission shall fix the rate, fare, charge, or tariff in the
4 matter complained of, and such rate, fare, charge or tariff, when
5 so fixed, shall continue to be the legal rate, fare, charge, or
6 tariff in force until superseded as provided by law: Provided, That
7 any ferry company operating within any municipality under an
8 agreement with such municipality shall not be affected either as to
9 fares or operation by this act. OTHER INTERESTED PERSONS AN
10 OPPORTUNITY TO BE HEARD. WHILE A TARIFF IS SUSPENDED, THE RATES,
11 FARES, CHARGES, AND SCHEDULES IN EFFECT PRIOR TO THE SUSPENSION
12 SHALL APPLY. AFTER CONDUCTING A HEARING UNDER THIS SUBSECTION, THE
13 COMMISSION SHALL FIX A TARIFF OF RATES, FARES, CHARGES, AND
14 SCHEDULES IN THE MATTER AND THE TARIFF OF RATES, FEES, CHARGES, AND
15 SCHEDULES SHALL CONTINUE TO BE THE LEGAL TARIFF OF RATES, FARES,
16 CHARGES, AND SCHEDULES IN FORCE UNTIL SUPERSEDED BY A LATER FILING
17 OF A TARIFF BY THE CARRIER OR AN ORDER OF THE COMMISSION.

18 (2) BEGINNING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
19 ADDED THIS SUBSECTION, A CARRIER PROVIDING SERVICE TO A CITY,
20 TOWNSHIP, OR VILLAGE UNDER AN AGREEMENT WITH THE CITY, TOWNSHIP, OR
21 VILLAGE IS SUBJECT TO THIS ACT, INCLUDING, BUT NOT LIMITED TO, THE
22 REQUIREMENTS UNDER THIS ACT REGARDING FARES AND THE TIME AND MANNER
23 OF OPERATION. A TARIFF IN EFFECT UNDER SUBSECTION (1), INCLUDING,
24 BUT NOT LIMITED TO, A TARIFF ESTABLISHED BY ORDER OF THE
25 COMMISSION, TAKES PRECEDENCE OVER ANY INCONSISTENT OR CONFLICTING
26 LOCAL LAW, ORDINANCE, RESOLUTION, RULE, REGULATION, POLICY, OR
27 PRACTICE.

1 (3) A CARRIER BY WATER IS A COMMON CARRIER AND IS NOT A PUBLIC
2 UTILITY.

3 Sec. 2. The ~~Michigan public utilities commission~~ may examine
4 ~~any and all~~ **AND AUDIT THE** books, accounts, records, and papers of
5 ~~any such~~ **A** carrier by water, and audit the same, and it shall be
6 the duty of any such **REGARDING THE TRANSPORT OF PASSENGERS,**
7 **FREIGHT, EXPRESS, OR OTHER PROPERTY BY THE CARRIER. A** carrier by
8 water, to **SHALL** furnish to said ~~Michigan public utilities~~
9 ~~commission, its proper officers, and employes,~~ any and all data in
10 ~~relation~~ **RELATED** to its investment, income, **OR** operating expenses ~~and~~
11 ~~and such~~ **REGARDING THE TRANSPORT OF PASSENGERS, FREIGHT, EXPRESS,**
12 **OR OTHER PROPERTY BY THE CARRIER TO THE COMMISSION OR ITS OFFICERS**
13 **OR EMPLOYEES, ALONG WITH ANY** other statistical data ~~as it may~~
14 ~~require~~ **REGARDING THE TRANSPORT OF PASSENGERS, FREIGHT, EXPRESS, OR**
15 **OTHER PROPERTY BY THE CARRIER AS REQUIRED BY THE COMMISSION.**

16 Sec. 3. The ~~Michigan public utilities commission~~ is hereby
17 ~~authorized, empowered and directed to make all needful~~ **MAY**
18 **PROMULGATE** rules and regulations **UNDER THE ADMINISTRATIVE**
19 **PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328,**
20 governing its investigations of ~~the affairs of such~~ carriers by
21 water, **UNDER THIS ACT** and to ~~SHALL~~ prescribe the form of all
22 reports required from ~~such~~ carriers **UNDER THIS ACT.**

23 Sec. 4. ~~Whenever any~~ **IF A** complaint ~~shall be~~ **IS** made to said
24 ~~Michigan public utilities~~ **THE** commission by any person, firm, or
25 ~~corporation against any~~ **REGARDING A** rate, fare, charge, **SCHEDULE,**
26 or tariff of ~~any~~ **A** carrier by water within this state, or against
27 ~~any~~ **REGARDING A** rule, regulation, or service of ~~such~~ **A** carrier, or

1 ~~against~~ **REGARDING** the neglect, failure, or refusal of ~~any such~~ **A**
2 carrier to make, observe, or perform any rate, fare, charge,
3 **SCHEDULE**, or tariff ~~or~~ any rule, regulation, or service, ~~said~~
4 ~~Michigan public utilities~~ **THE** commission shall investigate the
5 ~~same, and it~~ **MATTER. THE COMMISSION** may regulate the performance or
6 observance of ~~any~~ **A** rate, fare, charge, **SCHEDULE**, or tariff ~~and~~
7 ~~any~~ **OR A** rule, regulation, or service ~~and~~ may prescribe ~~the same~~
8 **A RATE, FARE, CHARGE, SCHEDULE, OR TARIFF, OR A RULE, REGULATION,**
9 **OR SERVICE** to be observed by ~~such~~ **A** carrier, ~~Provided, That such~~
10 **INCLUDING, BUT NOT LIMITED TO, COMPLIANCE WITH SECTION 7(1). A**
11 carrier ~~shall in all cases be~~ **IS** entitled to reasonable notice and
12 an opportunity to be heard on ~~such~~ **AN** investigation **CONDUCTED BY**
13 **THE COMMISSION UNDER THIS SECTION** before ~~any~~ **A** rate, fare, charge,
14 ~~or~~ **SCHEDULE, OR** tariff, or ~~any~~ **A** rule, regulation, or service ~~shall~~
15 ~~be~~ **IS** prescribed, established, or imposed by ~~said~~ **THE** commission. ~~and~~
16 ~~in accordance with the terms of this section, and when any~~ **WHEN A**
17 rate, fare, charge, ~~or~~ **SCHEDULE, OR** tariff, or ~~any~~ **A** rule,
18 regulation, or service ~~shall be~~ **IS** prescribed, established, or
19 imposed by ~~said~~ **THE** commission, ~~it shall thereafter be the duty of~~
20 ~~said~~ **A** carrier ~~to~~ **SHALL** observe and obey the ~~same~~ **DECISION OF THE**
21 **COMMISSION.**

22 Sec. 5. ~~Any~~ **AN** order ~~made by~~ **OF** the ~~Michigan public utilities~~
23 commission prescribing or affecting ~~any~~ **A** rate, fare, charge, ~~or~~
24 **SCHEDULE, OR** tariff, or ~~any~~ **A** rule, regulation, or service of ~~any~~ **A**
25 carrier ~~by water within this state, shall be~~ **IS** subject to review
26 in the same manner ~~as is now provided by law for the review of~~
27 orders ~~made by said Michigan public utilities commission.~~ **OF THE**

1 COMMISSION UNDER SECTION 26 OF 1909 PA 300, MCL 462.26.

2 Sec. 6. ~~Any person, firm, or corporation violating any of the~~
3 ~~provisions~~ **A VIOLATION** of this act, ~~or any order of the Michigan~~
4 ~~public utilities commission made in pursuance thereof, shall be~~
5 **UNDER THIS ACT IS** punishable by a fine not to exceed ~~100 dollars~~
6 **\$100.00** for each violation. ~~, and any~~ **A VIOLATION OF THIS ACT OR**
7 **ANY ORDER OF THE COMMISSION BY AN** officer or director of any
8 ~~corporation violating the provisions of this act, or any of the~~
9 ~~orders of the Michigan public utilities commission made in~~
10 ~~pursuance thereof, shall be~~ **A CARRIER IS A MISDEMEANOR** punishable
11 by a ~~fine not exceeding 100 dollars for each such violation, or by~~
12 ~~imprisonment in the county jail for not more than 3 months, or by~~
13 ~~both such fine and punishment, in the discretion of the~~
14 ~~court.~~ **IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR A FINE OF NOT MORE**
15 **THAN \$100.00, OR BOTH.**

16 SEC. 7. (1) WHEN TRANSPORTING PASSENGERS, FREIGHT, EXPRESS, OR
17 OTHER PROPERTY NEAR OR UNDER A BRIDGE, A CARRIER SHALL ACTIVELY
18 COOPERATE WITH THE OWNER OR OPERATOR OF THE BRIDGE ON MATTERS
19 RELATING TO THE SAFETY AND SECURITY OF THE BRIDGE. WHEN
20 TRANSPORTING PASSENGERS, FREIGHT, EXPRESS, OR OTHER PROPERTY NEAR
21 AN INTERNATIONAL BORDER, A CARRIER SHALL ACTIVELY COOPERATE WITH
22 STATE AND FEDERAL LAW ENFORCEMENT OFFICIALS ON MATTERS RELATING TO
23 HOMELAND SECURITY, CUSTOMS, AND IMMIGRATION.

24 (2) THE PROVISIONS OF THIS ACT APPLY NOTWITHSTANDING A
25 PROVISION OF A PUBLIC ACT OR LOCAL ORDINANCE, RESOLUTION, OR
26 CHARTER PROVISION TO THE CONTRARY.

27 (3) IT IS THE INTENT OF THE LEGISLATURE THAT THE PROVISIONS OF

1 THIS ACT CONSTITUTE AN EXERCISE OF GENERAL CONTROL BY THE
2 LEGISLATURE, PROVIDE UNIFORMITY, ADDRESS MATTERS OF STATEWIDE
3 CONCERN, ARE NECESSARY TO PROVIDE FOR THE PROTECTION OF THE WATERS
4 OF THIS STATE, ARE COMPREHENSIVE AND GENERAL IN NATURE, AND APPLY
5 TO THE ENTIRE STATE.

6 SEC. 8. (1) NO LATER THAN 30 DAYS AFTER THE EFFECTIVE DATE OF
7 THE AMENDATORY ACT THAT ADDED THIS SECTION, THE COMMISSION SHALL
8 ISSUE AN ORDER ESTABLISHING A STANDARDIZED FORM FOR THE UNIFORM
9 CARRIER BY WATER LOCAL FRANCHISE AGREEMENT TO BE USED BY EACH
10 FRANCHISING ENTITY IN THIS STATE.

11 (2) A LOCAL UNIT OF GOVERNMENT MAY REQUIRE A PERSON PROVIDING
12 CARRIER BY WATER SERVICE AND UTILIZING THE PUBLIC RIGHTS-OF-WAY
13 WITHIN THE LOCAL UNIT OF GOVERNMENT TO OBTAIN A FRANCHISE AS
14 PROVIDED IN THIS SECTION. IF A LOCAL UNIT OF GOVERNMENT REQUIRES A
15 PERSON PROVIDING CARRIER BY WATER SERVICE WITHIN THE LOCAL UNIT OF
16 GOVERNMENT TO OBTAIN A FRANCHISE, THE LOCAL UNIT OF GOVERNMENT MAY
17 ONLY IMPOSE REQUIREMENTS AUTHORIZED UNDER THIS ACT. EXCEPT AS
18 OTHERWISE PROVIDED IN THIS SECTION, IF A LOCAL UNIT OF GOVERNMENT
19 REQUIRES A PERSON PROVIDING CARRIER BY WATER SERVICE WITHIN THE
20 LOCAL UNIT OF GOVERNMENT TO OBTAIN A FRANCHISE, A PERSON SHALL NOT
21 PROVIDE CARRIER BY WATER SERVICE WITHIN THAT LOCAL UNIT OF
22 GOVERNMENT WITHOUT FIRST OBTAINING A UNIFORM CARRIER BY WATER LOCAL
23 FRANCHISE.

24 (3) THE UNIFORM CARRIER BY WATER LOCAL FRANCHISE AGREEMENT
25 UNDER SUBSECTION (1) SHALL INCLUDE ALL OF THE FOLLOWING PROVISIONS:

26 (A) THE NAME OF THE PERSON SEEKING TO PROVIDE CARRIER BY WATER
27 SERVICE.

1 (B) THE ADDRESS AND TELEPHONE NUMBER OF THE PERSON'S PRINCIPAL
2 PLACE OF BUSINESS.

3 (C) THE NAME OF THE PERSON'S PRINCIPAL EXECUTIVE OFFICERS AND
4 ANY PERSONS AUTHORIZED TO REPRESENT THE PERSON BEFORE THE
5 FRANCHISING ENTITY AND THE COMMISSION.

6 (D) IF THE PERSON IS NOT ALREADY A CARRIER BY WATER, THE DATE
7 ON WHICH THE PERSON EXPECTS TO PROVIDE CARRIER BY WATER SERVICE IN
8 THE AREA IDENTIFIED UNDER SUBDIVISION (E).

9 (E) A DESCRIPTION OF THE GEOGRAPHIC AREA TO BE SERVED BY THE
10 PERSON.

11 (F) A REQUIREMENT THAT THE PERSON PAY THE CARRIER BY WATER
12 FRANCHISE FEE REQUIRED UNDER THIS SECTION.

13 (G) A REQUIREMENT THAT THE PERSON AGREES TO COMPLY WITH ALL
14 VALID AND ENFORCEABLE FEDERAL AND STATE STATUTES AND REGULATIONS.

15 (H) A REQUIREMENT THAT THE PERSON ACTIVELY COOPERATE WITH THE
16 OWNER OR OPERATOR OF A BRIDGE ON MATTERS RELATING TO THE SAFETY AND
17 SECURITY OF THE BRIDGE WHEN TRANSPORTING PASSENGERS, FREIGHT,
18 EXPRESS, OR OTHER PROPERTY NEAR OR UNDER A BRIDGE.

19 (I) A REQUIREMENT THAT THE PERSON COOPERATE WITH STATE AND
20 FEDERAL LAW ENFORCEMENT OFFICIALS ON MATTERS RELATING TO HOMELAND
21 SECURITY, CUSTOMS, AND IMMIGRATION WHEN TRANSPORTING PASSENGERS,
22 FREIGHT, EXPRESS, OR OTHER PROPERTY NEAR AN INTERNATIONAL BORDER.

23 (J) A GRANT OF AUTHORITY BY THE FRANCHISING ENTITY TO THE
24 PERSON FOR THE PROVISION OF CARRIER BY WATER SERVICE IN THE
25 GEOGRAPHIC AREA DESCRIBED IN SUBDIVISION (E).

26 (K) A GRANT OF AUTHORITY BY THE FRANCHISING ENTITY TO THE
27 PERSON TO USE AND OCCUPY PUBLIC RIGHTS-OF-WAY OF THE FRANCHISING

1 ENTITY IN THE PROVISION OF CARRIER BY WATER SERVICE, SUBJECT TO THE
2 LAWS OF THIS STATE AND THE GENERAL POLICE POWERS OF THE FRANCHISING
3 ENTITY NOT SPECIFICALLY APPLICABLE TO OR LIMITED TO CARRIERS BY
4 WATER.

5 (I) A REQUIREMENT THAT THE FRANCHISING ENTITY AND THE PERSON
6 ARE SUBJECT TO THE PROVISIONS OF THIS ACT.

7 (M) THE PENALTIES PROVIDED FOR UNDER SUBSECTION (17).

8 (4) IF A LOCAL UNIT OF GOVERNMENT REQUIRES A PERSON PROVIDING
9 CARRIER BY WATER SERVICE WITHIN THE LOCAL UNIT OF GOVERNMENT TO
10 OBTAIN A FRANCHISE AS DESCRIBED IN SUBSECTION (2), BEFORE OFFERING
11 CARRIER BY WATER SERVICE WITHIN THE BOUNDARIES OF A LOCAL UNIT OF
12 GOVERNMENT, A CARRIER SHALL ENTER INTO OR POSSESS A FRANCHISE
13 AGREEMENT WITH THE LOCAL UNIT OF GOVERNMENT AS REQUIRED BY THIS
14 SECTION. A FRANCHISING ENTITY SHALL NOTIFY A CARRIER AS TO WHETHER
15 A SUBMITTED FRANCHISE AGREEMENT IS COMPLETE AS REQUIRED BY THIS
16 SECTION WITHIN 15 BUSINESS DAYS AFTER THE DATE THAT THE FRANCHISE
17 AGREEMENT IS FILED. IF THE FRANCHISE AGREEMENT IS NOT COMPLETE, THE
18 FRANCHISING ENTITY SHALL NOTIFY THE CARRIER OF THE REASONS THE
19 FRANCHISE AGREEMENT IS INCOMPLETE. A FRANCHISING ENTITY HAS 30 DAYS
20 AFTER THE SUBMISSION DATE OF A COMPLETE FRANCHISE AGREEMENT TO
21 APPROVE THE AGREEMENT. IF THE FRANCHISING ENTITY DOES NOT NOTIFY
22 THE CARRIER REGARDING THE COMPLETENESS OF THE FRANCHISE AGREEMENT
23 OR APPROVE THE FRANCHISE AGREEMENT WITHIN THE TIME PERIODS REQUIRED
24 UNDER THIS SUBSECTION, THE FRANCHISE AGREEMENT SHALL BE CONSIDERED
25 COMPLETE AND THE FRANCHISE AGREEMENT APPROVED.

26 (5) A UNIFORM CARRIER BY WATER LOCAL FRANCHISE AGREEMENT
27 ISSUED BY A FRANCHISING ENTITY OR AN EXISTING FRANCHISE OF AN

1 INCUMBENT CARRIER IS FULLY TRANSFERABLE TO ANY SUCCESSOR IN
2 INTEREST TO THE CARRIER TO WHICH IT IS INITIALLY GRANTED. A NOTICE
3 OF TRANSFER SHALL BE FILED WITH THE FRANCHISING ENTITY WITHIN 15
4 DAYS OF THE COMPLETION OF THE TRANSFER.

5 (6) THE UNIFORM CARRIER BY WATER LOCAL FRANCHISE AGREEMENT
6 ISSUED BY A FRANCHISING ENTITY MAY BE TERMINATED OR THE GEOGRAPHIC
7 AREA SERVED BY THE CARRIER MAY BE MODIFIED BY THE CARRIER BY
8 SUBMITTING NOTICE TO THE FRANCHISING ENTITY. IF ANY OF THE
9 INFORMATION CONTAINED IN THE FRANCHISE AGREEMENT CHANGES, THE
10 CARRIER SHALL TIMELY NOTIFY THE FRANCHISING ENTITY. THE UNIFORM
11 CARRIER BY WATER LOCAL FRANCHISE SHALL BE FOR A PERIOD OF 10 YEARS
12 FROM THE DATE IT IS ISSUED. BEFORE THE EXPIRATION OF THE INITIAL
13 FRANCHISE AGREEMENT OR ANY SUBSEQUENT RENEWALS, THE CARRIER MAY
14 APPLY FOR AN ADDITIONAL 10-YEAR RENEWAL UNDER THIS SECTION.

15 (7) AS A CONDITION TO OBTAINING OR HOLDING A FRANCHISE, A
16 FRANCHISING ENTITY SHALL NOT REQUIRE A CARRIER TO OBTAIN ANY OTHER
17 FRANCHISE, ASSESS ANY OTHER FEE OR CHARGE, OR IMPOSE ANY OTHER
18 FRANCHISE REQUIREMENT OR REGULATION OTHER THAN THOSE ALLOWED UNDER
19 THIS SECTION. FOR PURPOSES OF THIS SUBSECTION, A FRANCHISE
20 REQUIREMENT OR REGULATION INCLUDES, BUT IS NOT LIMITED TO, ANY OF
21 THE FOLLOWING:

22 (A) A PROVISION REGULATING RATES, FARES, OR OTHER CHARGES OF A
23 CARRIER.

24 (B) THE SCHEDULE OF A CARRIER.

25 (C) THE TIME AND MANNER OF OPERATION OF A CARRIER.

26 (D) THE KEEPING AND MANAGEMENT OF VESSELS OF THE CARRIER.

27 (E) IMPOSITION OR SATISFACTION OF ANY BUILD-OUT REQUIREMENTS.

1 (F) REQUIRING THE DEPLOYMENT OF ANY FACILITIES OR EQUIPMENT.

2 (G) A REQUIREMENT OR REGULATION WITHIN THE JURISDICTION OF THE
3 COMMISSION UNDER THIS ACT.

4 (8) AS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
5 THIS SECTION, NO EXISTING FRANCHISE AGREEMENT WITH A FRANCHISING
6 ENTITY SHALL BE RENEWED OR EXTENDED UPON THE EXPIRATION DATE OF THE
7 AGREEMENT. ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
8 THIS SECTION, ANY PROVISIONS OF AN EXISTING FRANCHISE AGREEMENT
9 THAT ARE INCONSISTENT WITH OR IN ADDITION TO THE PROVISIONS OF A
10 UNIFORM CARRIER BY WATER LOCAL FRANCHISE AGREEMENT ARE UNREASONABLE
11 AND UNENFORCEABLE BY THE FRANCHISING ENTITY. A CARRIER, AT ITS
12 OPTION, MAY CONTINUE TO PROVIDE CARRIER BY WATER SERVICE IN THE
13 LOCAL UNIT OF GOVERNMENT BY ELECTING TO DO 1 OF THE FOLLOWING:

14 (A) TERMINATE THE EXISTING FRANCHISE AGREEMENT WITH THE LOCAL
15 UNIT OF GOVERNMENT BEFORE THE EXPIRATION DATE OF THE AGREEMENT AND
16 ENTER INTO A NEW FRANCHISE UNDER A UNIFORM CARRIER BY WATER LOCAL
17 FRANCHISE AGREEMENT.

18 (B) AMEND THE EXISTING FRANCHISE AGREEMENT TO INCLUDE ONLY
19 THOSE PROVISIONS REQUIRED UNDER A UNIFORM CARRIER BY WATER LOCAL
20 FRANCHISE AND CONTINUE UNDER THE EXISTING FRANCHISE AGREEMENT.

21 (C) CONTINUE TO OPERATE UNDER THE TERMS OF AN EXPIRED
22 FRANCHISE AGREEMENT UNTIL A UNIFORM CARRIER BY WATER LOCAL
23 FRANCHISE AGREEMENT TAKES EFFECT. A CARRIER HAS 120 DAYS AFTER THE
24 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION TO
25 FILE FOR A UNIFORM CARRIER BY WATER LOCAL FRANCHISE AGREEMENT.

26 (9) IF A FRANCHISING ENTITY AUTHORIZES 2 OR MORE CARRIERS TO
27 PROVIDE CARRIER BY WATER SERVICE THROUGH AN EXISTING FRANCHISE, A

1 UNIFORM CARRIER BY WATER LOCAL FRANCHISE AGREEMENT, OR AN AGREEMENT
2 UNDER SUBSECTION (6), THE FRANCHISING ENTITY SHALL NOT ENFORCE A
3 TERM, CONDITION, OR REQUIREMENT OF A FRANCHISE AGREEMENT THAT IS
4 MORE BURDENSOME THAN THE TERMS, CONDITIONS, OR REQUIREMENTS
5 CONTAINED IN ANOTHER FRANCHISE AGREEMENT.

6 (10) A CARRIER SHALL CALCULATE AND PAY AN ANNUAL CARRIER BY
7 WATER FRANCHISE FEE TO THE FRANCHISING ENTITY AS PROVIDED IN THIS
8 SUBSECTION. THE FEE SHALL BE PAID QUARTERLY WITHIN 45 DAYS AFTER
9 THE CLOSE OF EACH QUARTER. EACH PAYMENT SHALL INCLUDE A STATEMENT
10 EXPLAINING THE BASIS FOR THE CALCULATION OF THE FEE. THE
11 FRANCHISING ENTITY SHALL NOT DEMAND ANY ADDITIONAL FEES OR CHARGES
12 FROM A CARRIER AND SHALL NOT DEMAND THE USE OF ANY OTHER
13 CALCULATION METHOD OTHER THAN ALLOWED UNDER THIS ACT. IF A CARRIER
14 PROVIDES CARRIER BY WATER SERVICE ON A ROUTE PROVIDING SERVICE TO 2
15 FRANCHISING ENTITIES, THE FEE CALCULATED, ATTRIBUTABLE, AND PAYABLE
16 UNDER THIS SUBSECTION TO EACH FRANCHISING ENTITY FOR SERVICE ON
17 THAT ROUTE SHALL BE REDUCED BY 50%. A CARRIER MAY IDENTIFY AND
18 COLLECT AS A SEPARATE LINE ITEM FROM EACH USER OF THE CARRIER'S
19 SERVICE AN AMOUNT EQUAL TO THE PERCENTAGE ESTABLISHED UNDER THIS
20 SUBSECTION APPLIED AGAINST THE AMOUNT CHARGED BY THE CARRIER FOR
21 USE OF THE CARRIER'S SERVICE. THE FEE UNDER THIS SUBSECTION SHALL
22 BE 1 OF THE FOLLOWING:

23 (A) IF THERE IS AN EXISTING FRANCHISE AGREEMENT, AN AMOUNT
24 EQUAL TO THE PERCENTAGE OF GROSS REVENUES PAID TO THE FRANCHISING
25 ENTITY BY THE CARRIER PROVIDING SERVICE WITHIN THE LOCAL UNIT OF
26 GOVERNMENT WITH THE LARGEST NUMBER OF PASSENGERS IN THE PRIOR
27 CALENDAR YEAR.

1 (B) AFTER THE EXPIRATION OF AN EXISTING FRANCHISE AGREEMENT OR
2 IF THERE IS NO EXISTING FRANCHISE AGREEMENT, AN AMOUNT EQUAL TO THE
3 PERCENTAGE OF GROSS REVENUES OF THE CARRIER NOT TO EXCEED 1% AND
4 APPLICABLE TO ALL CARRIERS. IF A CARRIER PROVIDES CARRIER BY WATER
5 SERVICE ON A ROUTE PROVIDING SERVICE TO 2 FRANCHISING ENTITIES, THE
6 COMBINED AMOUNT ATTRIBUTABLE AND PAID TO EACH FRANCHISING ENTITY
7 MAY NOT EXCEED 1% OF THE GROSS REVENUE OF THE CARRIER GENERATED BY
8 THAT ROUTE.

9 (11) NOT MORE THAN ONCE EVERY 24 MONTHS, A FRANCHISING ENTITY
10 MAY PERFORM REASONABLE AUDITS OF A CARRIER'S CALCULATION OF THE
11 FEES PAID UNDER THIS SECTION TO THE FRANCHISING ENTITY FOR THE
12 PRECEDING 24-MONTH PERIOD ONLY. ALL RECORDS REASONABLY NECESSARY
13 FOR THE AUDITS SHALL BE MADE AVAILABLE BY THE CARRIER AT THE
14 LOCATION WHERE THE RECORDS ARE KEPT IN THE ORDINARY COURSE OF
15 BUSINESS. THE FRANCHISING ENTITY AND THE CARRIER SHALL EACH BE
16 RESPONSIBLE FOR ITS RESPECTIVE COSTS OF THE AUDIT. ANY ADDITIONAL
17 AMOUNT DUE AS VERIFIED BY THE FRANCHISING ENTITY SHALL BE PAID BY
18 THE CARRIER WITHIN 30 DAYS OF THE FRANCHISING ENTITY'S SUBMISSION
19 OF AN INVOICE FOR THE SUM. ANY CLAIMS BY A FRANCHISING ENTITY THAT
20 FEES HAVE NOT BEEN PAID AS REQUIRED UNDER THIS SECTION, AND ANY
21 CLAIMS FOR REFUNDS OR OTHER CORRECTIONS TO THE REMITTANCE OF THE
22 CARRIER, SHALL BE MADE WITHIN 3 YEARS FROM THE DATE COMPENSATION IS
23 REMITTED TO THE FRANCHISING ENTITY.

24 (12) ALL DETERMINATIONS AND COMPUTATIONS MADE UNDER THIS
25 SECTION SHALL BE PURSUANT TO GENERALLY ACCEPTED ACCOUNTING
26 PRINCIPLES.

27 (13) A FRANCHISING ENTITY SHALL PROVIDE A CARRIER WITH OPEN,

1 COMPARABLE, NONDISCRIMINATORY, AND COMPETITIVELY NEUTRAL ACCESS TO
2 THE PUBLIC RIGHTS-OF-WAY OF THE FRANCHISING ENTITY. A CARRIER SHALL
3 NOT BE REQUIRED TO COMPLY WITH, AND A FRANCHISING ENTITY MAY NOT
4 IMPOSE OR ENFORCE, ANY MANDATORY SERVICE, BUILD-OUT OR DEPLOYMENT
5 PROVISIONS, SCHEDULES, OR OTHER REQUIREMENTS, UNLESS SPECIFICALLY
6 AUTHORIZED UNDER THIS SECTION.

7 (14) A FRANCHISING ENTITY MAY IMPOSE ON A CARRIER A PERMIT FEE
8 ONLY TO THE EXTENT IT IMPOSES THE SAME FEE ON ALL OTHER CARRIERS
9 AND THE FEE DOES NOT EXCEED THE ACTUAL, DIRECT COSTS INCURRED BY
10 THE FRANCHISING ENTITY FOR ISSUING THE RELEVANT PERMIT. A
11 FRANCHISING ENTITY SHALL NOT IMPOSE A FEE UNDER THIS SUBSECTION IF
12 THE CARRIER ALREADY HAS PAID A PERMIT FEE OF ANY KIND IN CONNECTION
13 WITH THE SAME ACTIVITY THAT WOULD OTHERWISE BE COVERED BY THE
14 PERMIT FEE UNDER THIS SUBSECTION, OR IS OTHERWISE AUTHORIZED BY LAW
15 OR CONTRACT TO PLACE THE FACILITIES USED BY THE CARRIER IN THE
16 PUBLIC RIGHTS-OF-WAY OR FOR GENERAL REVENUE PURPOSES.

17 (15) EXCEPT UNDER THE TERMS OF A MANDATORY PROTECTIVE ORDER,
18 TRADE SECRETS AND COMMERCIAL OR FINANCIAL INFORMATION SUBMITTED
19 UNDER THIS ACT TO A FRANCHISING ENTITY OR COMMISSION ARE EXEMPT
20 FROM DISCLOSURE UNDER SECTION 13(1)(D) OF THE FREEDOM OF
21 INFORMATION ACT, 1976 PA 442, MCL 15.243. IF INFORMATION IS
22 DISCLOSED UNDER A MANDATORY PROTECTIVE ORDER, THEN THE FRANCHISING
23 ENTITY OR COMMISSION MAY USE THE INFORMATION FOR THE PURPOSE FOR
24 WHICH IT IS REQUIRED, BUT THE INFORMATION SHALL REMAIN
25 CONFIDENTIAL. THERE IS A REBUTTABLE PRESUMPTION THAT COST STUDIES,
26 CUSTOMER USAGE DATA, MARKETING STUDIES AND PLANS, AND CONTRACTS ARE
27 TRADE SECRETS OR COMMERCIAL OR FINANCIAL INFORMATION PROTECTED

1 UNDER THIS SUBSECTION. THE BURDEN OF REMOVING THE PRESUMPTION UNDER
2 THIS SUBSECTION IS WITH THE PARTY SEEKING TO HAVE THE INFORMATION
3 DISCLOSED.

4 (16) THIS ACT DOES NOT PROHIBIT A LOCAL UNIT OF GOVERNMENT AND
5 A CARRIER FROM ENTERING INTO A VOLUNTARY FRANCHISE AGREEMENT THAT
6 INCLUDES TERMS AND CONDITIONS DIFFERENT FROM THOSE REQUIRED UNDER
7 THIS ACT, INCLUDING, BUT NOT LIMITED TO, A REDUCTION IN THE
8 FRANCHISE FEE UNDER SUBSECTION (10) IN RETURN FOR THE CARRIER
9 MAKING AVAILABLE TO THE FRANCHISING ENTITY SERVICES, EQUIPMENT,
10 CAPABILITIES, OR OTHER VALUABLE CONSIDERATION. THIS SUBSECTION DOES
11 NOT APPLY UNLESS IT IS TECHNICALLY FEASIBLE AND COMMERCIALY
12 PRACTICABLE FOR EACH CARRIER SERVICING THE FRANCHISING ENTITY TO
13 COMPLY WITH SIMILAR TERMS AND CONDITIONS IN THE FRANCHISE AGREEMENT
14 AND THE FRANCHISE AGREEMENT IS OFFERED TO EACH CARRIER.

15 (17) AFTER NOTICE AND HEARING, IF THE COMMISSION FINDS THAT A
16 PERSON HAS VIOLATED THIS ACT, THE COMMISSION SHALL ORDER REMEDIES
17 AND PENALTIES TO PROTECT AND MAKE WHOLE PERSONS WHO HAVE SUFFERED
18 DAMAGES AS A RESULT OF THE VIOLATION, INCLUDING, BUT NOT LIMITED
19 TO, 1 OR MORE OF THE FOLLOWING:

20 (A) ORDER THE PERSON TO PAY A FINE OF NOT LESS THAN \$500.00 OR
21 MORE THAN \$1,000.00 FOR THE FIRST OFFENSE. FOR A SECOND AND ANY
22 SUBSEQUENT OFFENSE, THE COMMISSION SHALL ORDER THE PERSON TO PAY A
23 FINE OF NOT LESS THAN \$1,000.00 OR MORE THAN \$5,000.00.

24 (B) IF THE PERSON HAS RECEIVED A UNIFORM CARRIER BY WATER
25 LOCAL FRANCHISE, REVOKE THE FRANCHISE.

26 (C) ISSUE A CEASE AND DESIST ORDER.

27 (18) NOTWITHSTANDING SUBSECTION (17), THE COMMISSION SHALL NOT

1 IMPOSE A FINE FOR A VIOLATION OF THIS ACT IF THE CARRIER HAS
2 OTHERWISE FULLY COMPLIED WITH THIS ACT AND SHOWS THAT THE VIOLATION
3 WAS AN UNINTENTIONAL AND BONA FIDE ERROR NOTWITHSTANDING THE
4 MAINTENANCE OF PROCEDURES REASONABLY ADOPTED TO AVOID THE ERROR.
5 EXAMPLES OF A BONA FIDE ERROR INCLUDE, BUT ARE NOT LIMITED TO,
6 CLERICAL, CALCULATION, COMPUTER MALFUNCTION, PROGRAMMING, OR
7 PRINTING ERRORS. AN ERROR IN LEGAL JUDGMENT WITH RESPECT TO A
8 PERSON'S OBLIGATIONS UNDER THIS ACT IS NOT A BONA FIDE ERROR. THE
9 CARRIER BEARS THE BURDEN OF PROVING THAT A VIOLATION WAS AN
10 UNINTENTIONAL AND BONA FIDE ERROR. IF THE COMMISSION FINDS THAT A
11 PARTY'S COMPLAINT OR DEFENSE FILED UNDER THIS SECTION IS FRIVOLOUS,
12 THE COMMISSION SHALL AWARD TO THE PREVAILING PARTY COSTS, INCLUDING
13 REASONABLE ATTORNEY FEES, AGAINST THE NONPREVAILING PARTY AND HIS
14 OR HER ATTORNEY. ALL PARTIES OF INTEREST HAVE THE SAME RIGHTS TO
15 APPEAL AND REVIEW AN ORDER OR FINDING OF THE COMMISSION.

16 (19) THE AUTHORITY OF A FRANCHISING ENTITY AND THE COMMISSION
17 TO ADMINISTER THIS ACT IS LIMITED TO THE POWERS AND DUTIES
18 EXPLICITLY PROVIDED FOR UNDER THIS ACT, AND NEITHER A FRANCHISING
19 ENTITY NOR THE COMMISSION HAS THE AUTHORITY TO REGULATE OR CONTROL
20 A CARRIER UNDER THIS ACT AS A PUBLIC UTILITY.

21 (20) WITHIN 30 DAYS AFTER AN APPROPRIATION TO THE COMMISSION,
22 THE COMMISSION SHALL ASCERTAIN THE AMOUNT OF THE APPROPRIATION
23 ATTRIBUTABLE TO THE ACTUAL COSTS TO THE COMMISSION IN EXERCISING
24 ITS DUTIES UNDER THIS ACT. THIS AMOUNT SHALL BE ASSESSED AGAINST
25 EACH CARRIER DOING BUSINESS IN THIS STATE. EACH CARRIER SHALL PAY A
26 PORTION OF THE TOTAL ASSESSMENT IN THE SAME PROPORTION THAT THE
27 CARRIER'S GROSS REVENUE FOR THE PRIOR CALENDAR YEAR DERIVED FROM

1 OPERATIONS IN THIS STATE BEARS TO THE TOTAL GROSS REVENUE OF ALL
2 CARRIERS DERIVED FROM DOING BUSINESS IN THIS STATE DURING THE SAME
3 CALENDAR YEAR. EACH CARRIER SHALL PAY A MINIMUM ASSESSMENT OF NOT
4 LESS THAN \$50.00. THIS SUBSECTION DOES NOT APPLY AFTER DECEMBER 31,
5 2016.

6 (21) AS USED IN THIS SECTION:

7 (A) "FRANCHISING ENTITY" MEANS A LOCAL UNIT OF GOVERNMENT
8 WITHIN WHICH A CARRIER OFFERS CARRIER BY WATER SERVICE THROUGH A
9 FRANCHISE.

10 (B) "GROSS REVENUES" MEANS ALL CONSIDERATION OF ANY KIND OR
11 NATURE, INCLUDING, WITHOUT LIMITATION, CASH, CREDITS, PROPERTY, AND
12 IN-KIND CONTRIBUTIONS RECEIVED BY A CARRIER FROM USERS FOR THE
13 PROVISION OF CARRIER BY WATER SERVICE WITHIN THE GEOGRAPHIC AREA OF
14 A FRANCHISING ENTITY. GROSS REVENUES INCLUDE ALL OF THE FOLLOWING:

15 (i) ALL CHARGES AND FEES PAID BY USERS FOR THE PROVISION OF
16 CARRIER BY WATER SERVICE, INCLUDING FEES ATTRIBUTABLE TO CARRIER BY
17 WATER SERVICE WHEN SOLD INDIVIDUALLY OR AS PART OF A PACKAGE OR
18 BUNDLE, OR FUNCTIONALLY INTEGRATED, WITH SERVICES OTHER THAN
19 CARRIER BY WATER SERVICE.

20 (ii) A FRANCHISE FEE IMPOSED ON THE CARRIER THAT IS PASSED ON
21 TO USERS.

22 (iii) COMPENSATION RECEIVED BY THE CARRIER FOR THE PROMOTION OR
23 EXHIBITION OF ANY PRODUCTS OR SERVICES OVER THE CARRIER BY WATER
24 SERVICE.

25 (iv) ALL REVENUE DERIVED BY THE CARRIER FROM COMPENSATION
26 ARRANGEMENTS FOR ADVERTISING ATTRIBUTABLE TO THE LOCAL FRANCHISE
27 AREA.

1 (v) ADVERTISING COMMISSIONS PAID TO AN AFFILIATED THIRD PARTY
2 FOR CARRIER BY WATER ADVERTISING.

3 (vi) REVENUE OF AN AFFILIATE OF A CARRIER, BUT ONLY TO THE
4 EXTENT THAT THE TREATMENT OF THE REVENUE AS REVENUE OF THE
5 AFFILIATE HAS THE EFFECT OF EVADING THE PAYMENT OF FRANCHISE FEES
6 THAT WOULD OTHERWISE BE PAID FOR BY THE CARRIER.

7 (C) "GROSS REVENUES" DO NOT INCLUDE ANY OF THE FOLLOWING:

8 (i) REVENUE NOT ACTUALLY RECEIVED BY A CARRIER, EVEN IF BILLED,
9 SUCH AS BAD DEBT NET OF ANY RECOVERIES OF BAD DEBT.

10 (ii) REFUNDS, REBATES, CREDITS, OR DISCOUNTS TO USERS TO THE
11 EXTENT NOT ALREADY OFFSET BY SUBPARAGRAPH (i) AND TO THE EXTENT THE
12 REFUND, REBATE, CREDIT, OR DISCOUNT IS ATTRIBUTABLE TO THE CARRIER.

13 (iii) ANY REVENUES RECEIVED BY THE CARRIER OR ITS AFFILIATES
14 FROM THE PROVISION OF SERVICES OR CAPABILITIES OTHER THAN CARRIER
15 BY WATER SERVICE.

16 (iv) ANY AMOUNTS ATTRIBUTABLE TO THE PROVISION OF CARRIER BY
17 WATER SERVICE TO CUSTOMERS AT NO CHARGE, INCLUDING THE PROVISION OF
18 CARRIER BY WATER SERVICE TO PUBLIC INSTITUTIONS WITHOUT CHARGE.

19 (v) ANY TAX, FEE, OR ASSESSMENT OF GENERAL APPLICABILITY
20 IMPOSED ON THE CUSTOMER OR THE TRANSACTION BY A FEDERAL, STATE, OR
21 LOCAL GOVERNMENT OR ANY OTHER GOVERNMENTAL ENTITY, COLLECTED BY THE
22 CARRIER, AND REQUIRED TO BE REMITTED TO THE TAXING ENTITY,
23 INCLUDING, BUT NOT LIMITED TO, ANY APPLICABLE SALES AND USE TAXES.

24 (vi) ANY FORGONE REVENUE FROM THE PROVISION OF CARRIER BY WATER
25 SERVICE AT NO CHARGE TO ANY PERSON, EXCEPT THAT ANY FORGONE REVENUE
26 EXCHANGED FOR TRADES, BARTERS, SERVICES, OR OTHER ITEMS OF VALUE
27 SHALL BE INCLUDED IN GROSS REVENUES.

1 (vii) SALES OF CAPITAL ASSETS OR SURPLUS EQUIPMENT.

2 (viii) REIMBURSEMENT BY PROGRAMMERS OF MARKETING COSTS ACTUALLY
3 INCURRED BY THE CARRIER.

4 (ix) THE SALE OF CARRIER BY WATER SERVICE FOR RESALE TO THE
5 EXTENT THE PURCHASER CERTIFIES IN WRITING THAT IT WILL RESELL THE
6 SERVICE AND PAY A FRANCHISE FEE WITH RESPECT TO THE SERVICE.

7 (D) "LOCAL UNIT OF GOVERNMENT" MEANS A CITY, VILLAGE, OR
8 TOWNSHIP.

9 (E) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, ASSOCIATION,
10 PARTNERSHIP, LIMITED LIABILITY COMPANY, GOVERNMENTAL ENTITY, OR ANY
11 OTHER LEGAL ENTITY.

12 (F) "PUBLIC RIGHTS-OF-WAY" MEANS THE AREAS ON, BELOW, OR ABOVE
13 A PUBLIC ROADWAY, HIGHWAY, STREET, SIDEWALK, ALLEY, WATERWAY, OTHER
14 PUBLIC PLACE, OR UTILITY EASEMENTS DEDICATED FOR COMPATIBLE USES.

15 (G) "UNIFORM CARRIER BY WATER LOCAL FRANCHISE AGREEMENT" OR
16 "FRANCHISE AGREEMENT" MEANS THE FRANCHISE AGREEMENT REQUIRED UNDER
17 THIS ACT TO BE THE OPERATING AGREEMENT BETWEEN EACH FRANCHISING
18 ENTITY AND CARRIER IN THIS STATE.

19 SEC. 10. AS USED IN THIS ACT:

20 (A) "CARRIER BY WATER" OR "CARRIER" MEANS A PERSON ENGAGED IN,
21 OR INDICATING TO THE PUBLIC THAT THE PERSON IS ENGAGED IN, THE
22 BUSINESS OF TRANSPORTING PASSENGERS, FREIGHT, EXPRESS, OR OTHER
23 PROPERTY BY WATER WHOLLY WITHIN THIS STATE, INCLUDING, BUT NOT
24 LIMITED TO, A FERRY OPERATOR.

25 (B) "COMMISSION" MEANS THE MICHIGAN PUBLIC SERVICE COMMISSION
26 ESTABLISHED IN 1939 PA 3, MCL 460.1 TO 460.11.

27 (C) "PUBLIC ACT" INCLUDES A PUBLIC ACT OF THE LEGISLATURE OF

1 THIS STATE OR A LOCAL ACT OF THE LEGISLATURE OF THIS STATE.