MICHIGAN ENERGY EMPLOYMENT ACT OF 1976

Act 448 of 1976

AN ACT to prescribe the powers and duties of municipalities and governmental units to acquire, finance, maintain, and operate generating, transmission, and distribution facilities of electric power and energy, fuel and energy sources and reserves and all necessary related properties, equipment and facilities; to permit the exercise of those powers in joint venture or joint agency agreements; to provide for the issuance of bonds and notes; to prescribe the powers and duties of the municipal finance commission or its successor agency and of certain other state officers and agencies with respect to municipal electric utility financing; to create certain funds and prescribe their operation; to provide for tax exemptions and other exemptions; and to prescribe penalties and provide remedies.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977 ;-- Am. 1983, Act 120, Imd. Eff. July 18, 1983 ;-- Am. 1998, Act 193, Eff. Mar. 23, 1999

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The People of the State of Michigan enact:

Article 1
GENERAL ADMINISTRATIVE PROVISIONS

460.801 Short title.

Sec. 1.

This act may be cited as the "Michigan energy employment act of 1976".

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

460.802 Meanings of words and phrases.

Sec. 2.

For purposes of this act, the words and phrases defined in sections 3 to 6 shall have the meanings respectively ascribed to them in those sections.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

460.803 Definitions; E to J.

Sec. 3.

(1) "Electric utility facility" means a facility which a municipality is authorized to acquire as part of a municipal electric utility system under this act or other law.

(2) "Governing body" means the council, commission, or board of trustees of a municipality, or when the charter of a municipality provides that a separate board has general management over the municipal electric utility system, "governing body" means that separate board, subject to review by the legislative body of the municipality as its charter may provide.

(3) "Governmental unit" means a municipality or a joint agency.

(4) "Joint agency" means a public body corporate and politic consisting of a combination of 2 or more municipalities, authorities, or other public bodies organized under article 3.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977 ;-- Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008

460.804 Definitions; M.

Sec. 4.

(1) "Municipal bond" means a bond or note or other evidence of indebtedness payable from ad valorem taxes which a governmental unit may issue.

(2) "Municipal electric utility system" means a system owned by a municipality or combination of municipalities to furnish heat, power, and light.

(3) "Municipality" means a city, county, incorporated village, township, or metropolitan district of this state, or a board, agency, or commission thereof, owning a system or facility for the generation, transmission, or distribution of electric power and energy for public or private use, or proposing to own such a system or facility.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

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460.805 Definitions; P.

Sec. 5.

(1) "Project" means a system or facility, inside or outside the state, or service related to a system or facility inside or outside the state, for the generation, transmission, or transformation of electricity, in whole or in part, or for sale to or use by a municipal electric utility system or joint agency by any means. Project also means stock, membership units, contractual interests, or any other interest in a system or facility, inside or outside of the state, for the generation, transmission, or transformation of electricity or in a multistate regional transmission system organization approved by the federal government and operating in this state or a transmission-owning entity which is a member of a multistate regional transmission system organization approved by the federal government and operating in this state.

(2) "Project cost" includes, but is not limited to, the cost of acquisition, construction, improvement, or extension of a project, the cost of studies, plans, specifications, surveys, and estimates of related costs and revenues, the cost of land, land rights, rights of way, easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of any required applications, engineering and inspection expenses, financing costs, working capital, fuel costs, interest on bonds, establishment of reserves, and all other costs of the municipality or joint agency that are incidental, necessary, or convenient to the acquisition, construction, improvement, or extension of a project.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977 ;-- Am. 2002, Act 513, Imd. Eff. July 23, 2002 ;-- Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008

460.806 Definitions; P to R.

Sec. 6.

(1) "Person" means an individual, corporation, association, partnership, governmental entity, or any other legal entity.

(2) "Power utility" means any person engaged or that may engage, inside or outside the state, in generating, transmitting, or distributing or furnishing electricity.

(3) "Power utility bond" means electric utility bonds, notes, or other evidences of indebtedness of a municipality, including refunding bonds issued to underwrite projects authorized by this act.

(4) "Revenues" means all fees, charges, moneys, profits, payment of principal of, or interest on, municipal or power utility bonds, or other gifts, grants, contributions and appropriations.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977 ;-- Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008

460.807 Sources of electrical energy for distribution and sale; facilities for control, abatement, or prevention of pollution or damages to environment; facilities for safe disposal of waste or by-products.

Sec. 7.

The governing body of a municipal electric utility system may purchase, acquire, construct, improve, enlarge, extend, or repair in the name of the municipality a source or sources of electrical energy for distribution and sale by the municipal electric utility system, whether the source is located within or without the state. A source may include, but not be limited to, facilities utilizing fossil fuels, garbage, trash, and other waste materials, nuclear fuels, water power (including pumped storage), solar energy, wind power, geothermal energy, energy derived from municipal waste of any kind, or other energy or fuel sources of whatever nature. The governing body may in relation to a source, purchase, acquire, construct, improve, enlarge, extend, or repair facilities for the control, abatement, or prevention of pollution or damage to the environment which might otherwise be caused by facilities for the generation of electric power, and may acquire facilities for the safe disposal of waste or by-products from the generation of electrical power.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

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460.808 Fuel sources and reserves; facilities for transportation and storage.

Sec. 8.

The governing body of a municipal electric utility system may purchase, acquire, construct, improve, enlarge, extend, or repair in the name of the municipality fuel sources and reserves it deems necessary to the continued efficient operation of the municipal electric utility system, together with the necessary facilities for transportation and storage. The fuel sources and reserves may include, but not be limited to, advance payments on contracts for nuclear fuels, and contracts for heat from facilities belonging to others. Facilities for transportation and storage of fuels shall include, but not be limited to, pipelines, conveyor systems, railroad cars, ships, storage tanks, underground storage areas, and other necessary and related appurtenances.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

460.809 Facilities for transmission of energy; contracts with other power utilities.

Sec. 9.

The governing body of a municipal electric utility system may purchase, acquire, construct, improve, enlarge, extend, or repair facilities for the transmission of energy, and may contract for the purchase, sale, exchange, interchange, wheeling, pooling, or transmission of electrical energy with another power utility for a consideration and for a period and upon other terms and conditions as may be determined by the parties to the agreement.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977 ;-- Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008

460.810 Electric utility facilities; exercise of authority by governing body.

Sec. 10.

The governing body of a municipal electric utility system may exercise its authority to plan, finance, acquire, construct, own, operate, maintain, and improve electric utility facilities, individually, in joint venture agreements authorized by article 2, or in joint agency agreements as authorized by article 3, or in other joint endeavors authorized by this act or other law, and in cooperation with 1 or more other power utilities, whether authorized by this act or other law.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

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460.811 Joint venture, joint agency agreement, or other joint endeavor; percentage of common facility to be owned; exception; defraying interest and other payments; operation and maintenance expenses.

Sec. 11.

A municipality engaging in a joint venture, joint agency agreement, or other joint endeavor described in section 10 and authorized by article 2 or article 3 shall own a percentage of any common facility equal to the percentage of the money furnished or the value of the property supplied by the municipality for the acquisition and construction of the common facility, except in the case of a facility at least 2/3 of which is owned or to be owned by a state, a political subdivision of this or another state or a Canadian province, an agency of this or another state or of a political subdivision of this state or another state, a federal agency, or a Canadian federal or provincial agency or agency of a political subdivision of a Canadian province, or any corporation or other entity controlled directly or indirectly by 1 or more of the entities listed above, in which case ownership shall be as provided in the contract between the municipality or joint agency and the entity owning or to own at least 2/3 of the facility. Each municipality in a joint endeavor shall defray its own interest and other payments required to be made in connection with a financing undertaken by it to pay its own percentage of the money furnished or the value of the property supplied by it for the planning, acquisition, and construction of a common facility, or an addition or betterment to the common facility. The agreement shall provide a uniform method of determining and allocating operation and maintenance expenses of the joint facility or agency.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977 ;-- Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008

460.812 Financing cost of electric utility facility; bonds.

Sec. 12.

A municipality may finance the cost of an electric utility facility, or its share of the cost of an electric utility facility acquired jointly pursuant to article 2 or article 3 or other law, by any

lawful means available to the municipality, including the issuance of general obligation bonds pursuant to charter authority, the issuance of revenue bonds pursuant to Act No. 94 of the Public Acts of 1933, as amended, being sections 141.101 to 141.139 of the Michigan Compiled Laws, or the issuance of mortgage bonds pursuant to charter authority. An agreement for the joint acquisition of facilities entered into under this act shall be subject to provisions contained in this and other law relating to the issuance of bonds by the municipality. It is declared to be in the public interest and for a public purpose that power utilities be permitted to participate jointly in the development of electric facilities as provided in this act as a means of achieving economies of scale and promoting the economic development of the state; and to this end the issuance of revenue bonds is a public purpose. A municipality may pledge for the payment of the principal of, premium if any, and interest on the bonds, the revenues, or a portion thereof, derived or to be derived from the ownership and operation of the municipality's system or facilities for the generation, transmission, or distribution of electric power or energy, or its interest in a joint project or projects, except that the proceeds of the bonds issued for a joint project and the faith and credit of the municipality pledged for the bonds shall be dedicated exclusively to the acquisition of the municipality's undivided share of a joint project as specified in section 11.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

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460.813 Exemption from taxation.

Sec. 13.

To the extent of ownership by governmental units or joint agencies, projects undertaken pursuant to joint venture agreements authorized by article 2 or joint agency agreements authorized by article 3 of this act are exempt from assessment, collection, and levy of general or special taxes of the state or its political subdivisions. Income produced from municipal ownership in a joint venture or a joint agency shall be exempt from taxation by the state or its political subdivisions. A joint agency corporation formed under article 3 shall not be required to pay taxes upon its income, existence, or franchise. The bonds and notes issued by a municipality in a joint venture agreement or a joint agency corporation, their transfer and the income therefrom, including a profit made on the sale of the bonds or notes, shall be exempt from taxation within this state.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

460.814 License agreements.

Sec. 14.

In connection with the ownership and operation of an electric utility facility, whether owned individually or jointly, the governing body of a municipal electric utility system may enter into the necessary license agreements with federal, state, or Canadian regulatory agencies, and comply with conditions imposed by the licensing agency, including, but not limited to, actions necessary to preserve and protect the environment, the acquisition of required public liability insurance, including waiver of defenses and payment of retrospective premiums, and other actions as may be necessary.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

460.815 Grants in aid and loans.

Sec. 15.

The governing body of a municipality or the board of commissioners of a joint agency may make application and enter into contracts for, and accept grants in aid and loans from state and federal agencies and private and public organizations for any purpose authorized by this act. Pursuant to this authority, the governing body of a municipality or the board of commissioners of a joint agency may:

(a) Enter into and carry out contracts with the state or federal government or an agency or institution thereof under which the government, agency, or institution grants financial or other assistance to the municipality or joint agency.

(b) Accept assistance or funds granted or loaned by the state or federal government, with or without a contract.

(c) Agree to or comply with reasonable conditions which are imposed upon a grant or loan accepted under this section.

(d) Make expenditures from funds granted or loaned.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

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460.816 Eminent domain.

Sec. 16.

A municipality may take private property under Act No. 149 of the Public Acts of 1911, as amended, being sections 213.21 to 213.41 of the Michigan Compiled Laws, for the purposes defined in and authorized by this act, which taking and use shall be considered necessary for public purposes and for public benefit, except that a municipality shall not exercise its power of eminent domain to acquire an existing electrical generation or transmission facility or a part thereof held in private ownership, without first securing in writing the approval of the lawful private owner or owners. The acquired property may be conveyed for use in joint agency or joint venture projects authorized by this act in a manner and upon terms as the municipality deems appropriate.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

Article 2

460.821 Joint venture agreement; undivided interest in project; determination of future power requirements.

Sec. 21.

(1) A governmental unit may join in a joint venture agreement to plan, finance, develop, construct, reconstruct, acquire, improve, enlarge, better, own, operate, or maintain an undivided interest in a project situated within or without the state with 1 or more municipalities, joint agencies, or power utilities; and make plans and enter into contracts in connection with that project, not inconsistent with this act, as are necessary or appropriate.

(2) Before entering a joint venture agreement, the governing body of a municipality shall determine the needs of the municipality for power and energy based on engineering studies and reports. In determining the future power requirements of a municipality, the following shall be considered:

(a) The economies and efficiencies to be achieved in constructing on a large scale facilities for the generation and transmission of electric power and energy.

(b) The municipality's need for reserve and peaking capacity, and to meet obligations under pooling and reserve sharing agreements reasonably related to its needs for power and energy to which it is or may become a party.

(c) The estimated useful life of the project.

(d) The estimated time necessary for the planning, development, acquisition, or construction of the project, and the length of time required in advance to obtain, acquire, or construct additional power supply.

(e) The reliability and availability of existing or alternative power supply sources, and the cost of those existing or alternative power supply sources.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977 ;-- Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008

460.822 Joint venture agreement; proportion of undivided interest in project to be owned; percentage share of output and capacity; liability; restrictions as to money, property, or undivided share; acquisition of project; sources of money; providing property, services, and other considerations.

Sec. 22.

Pursuant to a joint venture agreement, each governmental unit shall own an undivided interest in a project or projects in proportion to the amount of money furnished or the value of property or other consideration supplied by the governmental unit for the planning, development, acquisition, or construction of the project, and each governmental unit shall be entitled to a percentage share of output and capacity from the project equal to its undivided interest. Each governmental unit shall be severally liable for its own acts, but shall not be jointly or severally liable for the acts, omissions or obligations of other governmental units or power utility party to the joint venture agreement, and money or property or other consideration supplied by the governmental unit shall not be credited or otherwise applied to the account of another governmental unit or power utility, nor shall the undivided share of a governmental unit in a project be charged directly or indirectly with a debt or obligation of another governmental unit or be subject to a lien as a result of a debt or obligation of another governmental unit or power utility. The acquisition of a project may include, but not limited to, the purchase or lease of an existing, completed project, or the purchase of a project under construction. A governmental unit participating in the joint planning, financing, construction, reconstruction, acquisition, improvement, enlargement, betterment, ownership, operation, or maintenance of a project under this act may furnish money derived from the proceeds of bonds, from the ownership and operation of its electrical system, or from any other source, and may provide property, both real and personal, services, and other considerations.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

460.823 Joint venture agreement; terms, conditions, and provisions; ratification of contracts by resolution; provisions of contract.

Sec. 23.

A joint venture agreement entered into by governmental units with respect to joint ownership in a project shall contain those terms, conditions, and provisions, not inconsistent with this act, as the governing bodies of the governmental units determine to be in the interest

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of the governmental units. The contracts shall be ratified by resolution of the governing body of each governmental unit in the manner as may be prescribed by law or local charter. A contract shall include provisions relating to, but not limited to, the following:

(a) The purpose or purposes of the contract.

(b) The duration of the contract.

(c) The method of appointing or employing the personnel necessary in connection with the project.

(d) The method of financing the project, including the apportionment of costs and revenues.

(e) The ownership interests of the parties in property used or useful in connection with the project, and the procedures for disposition of that property when the contract expires or is terminated, or when the project is abandoned, decommissioned, or dismantled.

(f) The prohibition or restrictions of the alienation or partition of a governmental unit's undivided interest in a project, which provisions shall not be subject to a law restricting covenants against alienation or partition.

(g) The construction of a project, which may include the determination that a governmental unit jointly participating, or a person, firm, or corporation, may construct the project as agent for all parties to the joint venture agreement.

(h) The operation and maintenance of a project, which may include a determination that a governmental unit jointly participating, or that a person, firm, or corporation, may operate and maintain the project for all parties.

(i) Detailed project costs.

(j) The creation of a committee of representatives of the governmental units or power utility jointly participating, which committee shall have powers regarding the construction and operation of the project as the contract, not inconsistent with this act, may provide.

(k) If 1 or more of the governmental units defaults in the performance or discharge of its or their obligations with respect to the project, the other party or parties may assume, pro rata or otherwise, the obligations of the defaulting parties, and may succeed to the rights and interests of the defaulting party or parties in the project as may be agreed upon in the contract.

(l) Methods for amending the contract.

(m) Methods for terminating the contract.

(n) Any other necessary or proper matter.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

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460.824 Sale or exchange of capacity or output; licenses, permits, certificates, or approvals; contracts for electric power and energy; authority, rights, privileges, and immunities of personnel; annual report; operating and financial statement; audit.

Sec. 24.

(1) Capacity or output derived by a governmental unit from its ownership share of a project not then required by the governmental unit for its own use and for the use of its customers may be sold or exchanged by the governmental unit for a consideration and for a period and upon other terms and conditions as may be determined by the parties to the sale.

(2) Municipalities proposing to jointly plan, finance, develop, own and operate a project, may either jointly or separately apply to the appropriate agencies of the state, the federal government, another state, or another proper agency, for the necessary licenses, permits, certificates, or approvals; may construct, maintain, and operate the project in accordance with the licenses, permits, certificates, or approvals; and may obtain, hold, and use the licenses,

permits, certificates, or approvals in the same manner as the operating unit of any other power utility.

(3) Municipalities participating in a joint project or projects may enter into contracts for the purchase, sale, exchange, interchange, wheeling, pooling, or transmission of electric power and energy produced by the project or projects with a power utility.

(4) Personnel appointed by a municipality to work on a joint project shall have the same authority, rights, privileges, and immunities that the officers, agents, and employees of the appointing municipality enjoy within the jurisdictional boundaries of the municipality, whether within or without that territory, when the personnel are acting within the scope of their authority or within the course of their employment.

(5) Municipalities party to a joint project authorized by this article shall, following the end of each fiscal year, prepare an annual report of the activities of the project, including a complete operating and financial statement covering the operations of the project for that year. The municipalities shall conduct an audit of the books of records and accounts of the project to be made not less than annually by a certified public accountant, and the cost of the audit may be treated as part of the cost of construction of the project, or as part of the expense of administering the project covered by the audit.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977 ;-- Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008

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Article 3

460.831 Joint agency; formation; creation; purpose; determination of best interest.

Sec. 31.

A joint agency is formed when the governing bodies of 2 or more municipalities by resolution determine that it is in the best interest of the municipalities in accomplishing the purposes of this act to create a joint agency for the purpose of undertaking the planning, financing, development, acquisition, construction, reconstruction, improvement, enlargement, betterment, operation, or maintenance of a project or projects to supply electric power and energy for their present or future needs as an alternative or supplemental method of obtaining the benefits and assuming the responsibilities of ownership in a project. In determining whether the creation of a joint agency for this purpose is in the best interest of a municipality, the governing body of each municipality shall consider, but shall not be limited to, the following:

(a) Whether a separate entity may be able to finance the cost of projects in a more economic and efficient manner.

(b) Whether financial market acceptance may be enhanced if 1 entity is responsible for issuing and selling all of the bonds required for a project or projects in a timely and orderly manner and with a uniform credit rating, instead of multiple entities marketing their separate issues of bonds.

(c) Whether savings and other advantages may be obtained by providing a separate entity responsible for the acquisition, construction, ownership, and operation of a project or projects.

(d) Whether the existence of a separate entity will foster the continuation of joint planning and undertaking of projects, and the resulting economies and efficiencies to be realized from the joint planning and undertaking will serve the interests of the residents of the municipality. The determination made by the governing body of a municipality hereunder shall be conclusive.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977 ;-- Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008

460.832 Board of commissioners; appointment and term of commissioners.

Sec. 32.

The joint agency shall be governed by a board of commissioners appointed by the respective governing bodies of the municipalities which are members of the joint agency. The governing body of each member municipality shall, by resolution, appoint 1 commissioner who, at the discretion of the governing body, may be an officer or an employee of the municipality. Each commissioner shall serve at the pleasure of the governing body by which he was appointed.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

460.833 Board of commissioners; officers; record of proceedings; custody of records, documents, minutes, and seal; copies; certificate.

Sec. 33.

The board of commissioners of a joint agency shall annually elect 1 of the commissioners as chairperson, another as vice-chairperson, and another person or persons, who may or may not be a commissioner, as treasurer, secretary, and if desired, assistant secretary. The office of treasurer may be held by the secretary or assistant secretary. The board of commissioners may appoint additional officers as it deems necessary. The secretary or assistant secretary of the joint agency shall keep a record of the proceedings of the joint agency, and the secretary shall be the custodian of all records, books, documents, and papers filed with the joint agency, the minutes or journal of the joint agency, and its official seal. Either the secretary or the assistant secretary of the joint agency may cause copies to be made of all minutes and other records and documents of the joint agency and may give certificates under the official seal of the joint agency to the effect that the copies are true copies, and all persons dealing with the joint agency may rely upon a certificate under the official seal of the joint agency.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

460.833a Records, books, documents, and papers; exclusion from public disclosure; exception.

Sec. 33a.

(1) Records, books, documents, and papers of a joint agency or a municipal electric utility system, including those maintained electronically, may be exempted from public disclosure by the board of commissioners of the joint agency or the governing body of the municipal electric utility system if any of the following apply:

(a) They contain specific pricing or other confidential or proprietary information.

(b) They pertain to the development, construction, financing, or leasing of a project.

(c) They contain information which was received from a power utility or other person and which is subject to a confidentiality agreement.

(2) Upon a showing of good cause, disclosure subject to appropriate confidentiality provisions may be ordered by a court.

History: Add. 2008, Act 21, Imd. Eff. Mar. 7, 2008

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460.834 Joint agency as public body politic and corporate; essential public function; articles of incorporation; amendments.

Sec. 34.

(1) A joint agency formed for the purposes provided in this article is a public body politic and corporate and the powers conferred by this act are considered to be the performance of an essential public function.

(2) Any combination of 2 or more municipalities described in section 31 may incorporate a joint agency by the adoption of articles of incorporation by resolution of the governing body of each municipality. The fact of adoption shall be endorsed on the articles of incorporation by the chief executive officer and clerk of the municipality, in form substantially as follows:

The foregoing articles of incorporation
were adopted by the _____,
of the _____, of _____ county,
Michigan, at a meeting duly held on the _____ day
of _____, _____.
_____
_____ of said
_____
_____ of said
_____.

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(3) The articles of incorporation shall be published at least once in a newspaper or newspapers designated in the articles and generally circulating within the area of each municipality. One printed copy of the articles of incorporation, certified as a true copy by the person or persons designated in the articles, with the date and place of the publication, shall be filed with the county clerk or clerks of the county or counties in which the incorporating municipalities are located and the secretary of state. The incorporation of the joint agency shall become effective at the time provided in the articles of incorporation. The validity of the joint agency incorporation shall be conclusive unless questioned in a court of competent jurisdiction within 60 days after the filing of certified copies with the county clerk or clerks and the secretary of state.

(4) The articles of incorporation shall state the name of the joint agency, the names of the various incorporating municipalities, the purpose or purposes for which it is created, the powers, duties, and limitations of the joint agency and its officers, the method of selecting its governing body, officers, and employees, the person or persons who are charged with the responsibility for causing the articles of incorporation to be published and filed or who are charged with the responsibility in connection with the incorporation of the joint agency, the place of publication, and all other matters which the incorporating municipalities consider advisable, all of which shall be subject to article 3 of this act and of the constitution and laws of the state.

(5) The board of commissioners of a joint agency may, by resolution, authorize the establishment of 1 or more classes of associate membership in the joint agency. A municipality admitted as an associate member shall have participatory and other rights and obligations as provided in the resolution establishing the associate membership class or classes.

(6) A municipality described in section 31 which did not join in the original incorporation of a joint agency may become a member or an associate member of the joint agency by the

adoption of a resolution by the governing body of the municipality and by a resolution unanimously adopted by all members of the board of commissioners of the joint agency. The resolution of the board of commissioners may provide that a municipality shall become a member or an associate member at a future date or upon the occurrence of a future event and may provide further that the decision of the board of commissioners may not be revoked without the consent of the governing body of the municipality being added as a member or associate member. Upon the addition of a new member or associate member, the articles of incorporation shall be conformed by the board of commissioners to show the addition of the new member or associate member and, if the municipality is being added as an associate member, the rights and obligations of the municipality as an associate member. Other amendments may be made to the articles of incorporation if adopted by the governing body of each municipality of which the joint agency is composed. An amendment shall be endorsed, published and certified and printed copies filed in the same manner as the original articles of incorporation, except an amendment showing only the addition of a new member or associate member and the rights and obligations of a new associate member need not be published.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977 ;-- Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008

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460.835 Board of commissioners; quorum; effect of vacancy; action authorized by resolution; expenses.

Sec. 35.

A majority of the commissioners of a joint agency shall constitute a quorum for the transaction of business of the joint agency. A vacancy in the board of commissioners of the joint agency shall not impair the rights of a quorum to exercise all the rights and perform all the duties of the joint agency. Action taken by the joint agency under this article shall be authorized by resolution at any regular or special meeting, and each resolution shall take effect immediately. A vote of the majority of the commissioners on the board of commissioners shall be necessary to take action, or pass a resolution. A commissioner of a joint agency shall not receive compensation for the performance of his duties but may be reimbursed for actual and necessary expenses incurred while engaged in the performance of his duties.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

460.836 Other municipality as member of joint agency; application; resolution; withdrawal.

Sec. 36.

After the creation of a joint agency, another municipality may become a member of the joint agency upon application to the joint agency after the adoption of a resolution of the governing body of the municipality as prescribed in section 31 of this article authorizing the municipality to participate, and with the unanimous consent of the members of the joint agency as provided in section 34(6). A municipality may withdraw from a joint agency, except that all contractual rights acquired and obligations incurred while a member municipality remain in full force and effect.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977 ;-- Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008

460.836a Municipal unit or other political subdivision of another state or Canadian province as member of joint agency; rights, privileges, and obligations.

Sec. 36a.

(1) A municipal unit or other political subdivision of another state or Canadian province owning a system for the generation, transmission, or distribution of electric power and energy for public or private use or proposing to own such a system may become a member or an associate member of, and may withdraw from, a joint agency in the same manner as a municipality under sections 34(6) and 36. However, in addition to complying with the requirements set forth in sections 34(6) and 36, the municipal unit or political subdivision of another state or Canadian province shall provide to the joint agency an opinion acceptable to the joint agency from an individual licensed to practice law in that state or province attesting to the following:

(a) That the laws applicable to the prospective member or associate member do not preclude the prospective member or associate member from joining the joint agency.

(b) That the prospective member or associate member has the legal authority under laws applicable to the prospective member or associate member to enter into valid, binding, and enforceable agreements with the joint agency and members and associate members of the joint agency.

(2) Except as otherwise provided by the board of commissioners of the joint agency, a member or an associate member located in another state or Canadian province has the same rights, privileges, and obligations as other members or associate members of the joint agency.

History: Add. 2018, Act 687, Eff. Mar. 29, 2019

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460.837 Joint agency; rights and powers generally.

Sec. 37.

A joint agency shall have the rights and powers necessary and convenient to effectuate this article, including, but not limited to, 1 or more of the following:

(a) To adopt bylaws for the regulation of the affairs and conduct of its business, and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties.

(b) To adopt and alter an official seal.

(c) To maintain 1 or more offices.

(d) To sue and be sued.

(e) To receive, administer, and comply with the conditions and requirements respecting a gift, grant, or donation of property or money.

(f) To acquire by purchase, lease, gift, or otherwise or to obtain options for the acquisition of real or personal property, or any interest in real property.

(g) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for the disposal of any real or personal property or an interest in such property.

(h) To pledge or assign money, rents, charges, or other revenues or the proceeds derived by the joint agency from the sales of real or personal property, insurance, or condemnation awards.

(i) To issue bonds of the joint agency for the purpose of providing funds for any of its corporate purposes.

(j) To study, plan, finance, construct, reconstruct, acquire, participate in by contract or otherwise, improve, enlarge, extend, better, own, operate, or maintain, 1 or more projects, and

to pay all or a part of the costs of the projects from the proceeds of bonds of the joint agency or from other funds made available to the joint agency.

(k) To authorize the construction, operation, or maintenance of a project or projects by a person, firm, or corporation, including a political subdivision or agency of another state.

(l) To acquire by lease, purchase, or otherwise an existing project or a project under construction.

(m) To sell or otherwise dispose of a project or projects.

(n) To fix, charge, and collect rents, rates, fees, and charges for electric power or energy or other services, facilities, or commodities sold, furnished, or supplied through a project.

(o) To generate, produce, transmit, deliver, exchange, purchase or sell for resale electric power or energy.

(p) To negotiate and to enter into contracts for the generation, production, purchase, sale, exchange, interchange, wheeling, pooling, transmission, delivery, or use of electric power and energy with a power utility.

(q) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint agency under this article.

(r) To apply to and obtain from the appropriate state or federal agency the necessary permits, licenses, certificates, or approvals to construct, maintain, and operate projects.

(s) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors, and other persons as may be required by the joint agency.

(t) To do all acts and things necessary, convenient, or desirable to carry out the purposes, and to execute the powers granted to the joint agency under this act.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977 ;-- Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008

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460.838 Board of commissioners; retention of general manager of joint agency; policies; retention of independent certified public accounting firm; rules.

Sec. 38.

Not more than 90 days after the initial election of officers of the board of commissioners of the joint agency, the board of commissioners shall:

(a) Retain a general manager of the joint agency, on either an acting or permanent basis.

(b) Establish broad policies covering all major operations of the joint agency.

(c) Retain an independent certified public accounting firm to provide annual financial audits.

(d) Adopt rules specifying quality control standards for contractual professional services in accordance with rules establishing those criteria promulgated by the department of licensing and regulation or a board or commission within that department.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

460.839 General manager as chief executive and operating officer of joint agency; powers and duties generally.

Sec. 39.

(1) The general manager shall be the chief executive and operating officer of the joint agency. The general manager shall exercise the management of the properties and business of the joint agency and its employees. The general manager shall direct the enforcement of all resolutions, rules, and regulations of the board of commissioners, and shall enter into contracts

as necessary under the general control and direction of the board of commissioners. The general manager shall serve at the pleasure of the board of commissioners.

(2) Subject to the approval of the board of commissioners, the general manager may appoint the officers, employees, and agents necessary to carry out the general purposes of the joint agency. If the joint agency operates a project described in section 5(1), the general manager shall classify all the offices, positions, and grades of regular employment required in the project.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

460.840 Determining future power requirements; considerations.

Sec. 40.

Before undertaking a project for the construction or acquisition of facilities for the transmission or generation of electric power and energy, a joint agency shall, based upon engineering studies and reports meeting the standards required under section 38(d), determine that the project is required to provide for the projected needs for power and energy of its members from the date the project is estimated to be placed in normal and continuous operation and for a reasonable period of time thereafter. In determining the future power requirements of members of a joint agency, the joint agency shall consider all of the following:

(a) The economies and efficiencies to be achieved in constructing facilities for the generation and transmission of electric power and energy.

(b) The needs of the joint agency for reserve and peaking capacity, and to meet obligations under pooling and reserve sharing agreements reasonably related to its needs for power and energy to which the joint agency is or may become a party.

(c) The estimated useful life of the project.

(d) The estimated time necessary for the planning, development, acquisition, or construction of the project and the length of time required in advance to obtain, acquire, or construct additional power supply for members of the joint agency.

(e) The reliability and availability of existing alternative power supplies and the cost of those existing alternative power supplies.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977 ;-- Am. 2002, Act 533, Imd. Eff. July 25, 2002

460.841 Tax levy prohibited; pledging credit or taxing power; financing projects of joint agencies.

Sec. 41.

A joint agency may not levy taxes nor may it pledge the credit or taxing power of the state or a political subdivision, except for the pledging of receipts of taxes, special assessments, or charges collected by the state or a political subdivision and returnable and payable by law or by contract to the joint agency, and except for the pledge by a political subdivision of the state of its full faith and credit in support of its contractual obligations to the joint agency as authorized by law. Projects of joint agencies shall be financed, in addition to other methods of financing provided by law, as follows:

(a) By rents, rates, fees, and charges authorized pursuant to section 37(n).

(b) By other income or revenues from whatever source available, including contributions or appropriations of whatever nature, or other revenues of the member municipalities of the joint agency.

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(c) By grants, loans, or contributions from federal, state, or other governmental units, and grants, contributions, gifts, bequests, or other devices from public or private sources.

(d) By the proceeds of taxes, special assessments, or charges imposed pursuant to law by member municipalities of the joint agency, then returned or paid to the joint agency pursuant to law or contract.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

460.842 Bonds; contractual obligations; resolution; bonds subject to revised municipal finance act; contracts or notes as to moneys advanced or property delivered; contracts pledging full faith and credit of municipality.

Sec. 42.

(1) A joint agency may issue bonds to pay all or part of project costs of the joint agency. The bonds shall be payable from and may be issued in anticipation of payment of the proceeds of any of the methods of financing described in section 41 or elsewhere in this act or as may be provided by law. A member municipality of the joint agency may contract as provided in section 43 or may contract to make payments, appropriations, or contributions to the joint agency of the proceeds of taxes, special assessments, or charges imposed and collected by the member municipality or out of other funds legally available, and may pledge its full faith and credit in support of its contractual obligation to the joint agency. The contractual obligation shall not constitute an indebtedness of the municipality within a statutory or charter debt limitation. If the joint agency issues bonds in anticipation of payments, appropriations, or contributions to be made to the joint agency pursuant to contract by a political subdivision having the power to levy and collect ad valorem taxes, the political subdivision may obligate itself by the contract, and thereupon may levy a tax on all taxable property within the political subdivision, which tax as to rate or amount will not be subject to limitation, as provided in section 6 of article IX of the state constitution of 1963, for contract obligations in anticipation of which bonds are issued to provide sufficient money to fulfill its contractual obligation to the joint agency. The contract is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(2) The bonds may be:

(a) Issued for any period of years not exceeding 50.

(b) Issued for a consideration other than cash.

(c) For an amount that includes interest capitalized for a period of not more than 10 years after the date of the bonds.

(d) Secured by revenues, contract payments, funds or investments and securities as determined by the joint agency.

(3) The resolution authorizing bonds may provide for the appointment of 1 or more trustees for bondholders and a trustee may be an individual or corporation domiciled or located within or without this state and may be given appropriate powers whether with or without the execution of an indenture.

(4) Bonds issued by any joint agency under this act are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(5) A municipality or governmental unit may advance money or deliver property to the joint agency to enable it to carry out or finance any of its powers and duties. The joint agency may agree to repay an advance or pay for the property within a period of not more than 10 years, from the proceeds of its bonds or from other funds legally available for that purpose, with or without interest as may be agreed at the time of the advance or delivery. The obligation of the

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joint agency to make the repayment or payment may be evidenced by contract or note, which contract or note may pledge a source of payment determined by the joint agency.

(6) A municipality desiring to enter into a contract under this section pledging the full faith and credit of the municipality shall authorize, by resolution of its governing body, the execution of the contract. Subsequent to the adoption of the resolution a notice of the contract shall be published in a newspaper of general publication in the municipality, which notice shall state:

(a) That the governing body has adopted a resolution authorizing execution of the contract.

(b) The purpose of the contract.

(c) The source of payment of the municipality's contractual obligation.

(d) The right of referendum on the contract.

(e) Any other information that the governing body determines to be necessary to adequately inform all interested persons of the nature of the obligation.

(7) The contract may be executed and delivered by the municipality upon approval by its governing body without a vote of the electors, but the contract shall not become effective until the expiration of 45 days after the date of publication of the notice. If within the 45-day period a petition signed by at least 10% or 15,000, whichever is the lesser, of the registered electors residing within the limits of the municipality is filed with the clerk of the municipality requesting a referendum upon the contract, the contract shall not become effective until approved by the vote of a majority of the electors of the municipality qualified to vote and voting on the question at a general or special election, which election shall be held within 180 days after the filing of a petition. When a contract described in this section is to be entered into by any township only on behalf of the unincorporated area of the township, only the registered electors residing within the unincorporated area of the township shall be qualified to sign the petition and vote at the election.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977 ;-- Am. 1983, Act 120, Imd. Eff. July 18, 1983 ;-- Am. 2002, Act 358, Imd. Eff. May 23, 2002

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460.842a Violation of MCL 168.1 to 168.992 applicable to petitions; penalties.

Sec. 42a.

A petition under section 42, including the circulation and signing of the petition, is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488. A person who violates a provision of the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, applicable to a petition described in this section is subject to the penalties prescribed for that violation in the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

History: Add. 1998, Act 193, Eff. Mar. 23, 1999

460.843 Contract for purchase of capacity and output; payments; default; furnishing money, personnel, equipment, and property; advances or contributions; repayment.

Sec. 43.

(1) A municipality which is a member of a joint agency may contract to buy power and energy and transmission or other related rights from the joint agency, and separately, or through the joint agency, from any other power utility, required for the municipality's present or future requirements, including the capacity and output of 1 or more specified projects. The contract may provide that the member municipality or the joint agency, or both, shall be

obligated to make the payments required by the contract whether or not a project is completed, operable, or operating, and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for, and that the payments under the contract shall not be subject to a reduction whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint agency or power utility or another member of the joint agency, or any other participant in a project within or outside the state, under the contract or other instrument. A contract with respect to the sale or purchase of capacity or output of a project entered into between a joint agency and its member municipalities, or between a joint agency or 1 or more of its members and another power utility, may also provide that if 1 or more of the members of the joint agency or other participants in a project of a power utility default in the payment of its or their obligations with respect to the purchase of the capacity or output, then the remaining member municipalities and other participants which are purchasing capacity and output under the contract are, subject to such conditions and limitations, if any, as the contract may provide, required to accept and pay for and shall be entitled proportionately to and may use or otherwise dispose of the capacity or output which was to be purchased by the defaulting municipality or other participant.

(2) Payments by a municipality under a contract for the purchase of capacity and output from a joint agency or other power utility shall be made solely from the revenues derived from the ownership and operation of the electric system of the municipality, and an obligation under the contract shall not constitute a legal or equitable pledge, charge, lien, or encumbrance upon property of the municipality or upon the municipality's income, receipts, or revenues, except the revenues of its electric system. Subject to any debt or debt-related contracts or indentures of a municipality or joint agency, payments described in this subsection shall be made as part of the operating and maintenance costs of the municipality's or agency's system. A municipality is obligated to fix, charge, and collect rents, rates, fees, and charges for electric power and energy and other services, facilities, and commodities, sold, furnished, or supplied through its electric systems sufficient to provide revenues adequate to meet its obligations under the contract, and to pay other amounts payable from or constituting a charge and lien upon those revenues, including amounts sufficient to pay the principal of and interest on general obligation bonds issued by the municipality for purposes related to its electric system.

(3) A municipality which is a member of a joint agency may furnish the joint agency with money derived solely from the ownership and operation of its electric system or facilities and provide the joint agency with personnel, equipment, and property, both real and personal. A member municipality may also provide services to a joint agency.

(4) A member municipality of a joint agency may contract for, advance, or contribute funds derived solely from ownership of its electric system or facilities to a joint agency as may be agreed upon by the joint agency and member municipality, and the joint agency shall repay the advance or contribution from the proceeds of bonds, from operating revenues, or from other funds of the joint agency, together with interest thereon as may be agreed upon by the member municipality and the joint agency.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977 ;-- Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008

460.844 Sale or exchange of excess capacity or output.

Sec. 44.

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(1) A joint agency may sell or exchange the excess capacity or output of a project not required by any of its members for consideration upon terms and conditions as determined by the parties.

(2) A joint agency may do 1 or more of the following:

(a) Transfer all or part of its interest in or functional control of transmission facilities to a multistate regional transmission system organization approved by the federal government and operating in this state or to 1 or more of its transmission-owning members.

(b) Purchase, acquire, sell, or otherwise transfer stock, membership units, or any other interest in a multistate regional transmission system organization approved by the federal government and operating in this state or in 1 or more of its transmission-owning members.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977 ;-- Am. 2002, Act 532, Imd. Eff. July 25, 2002 ;-- Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008

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460.845 Eminent domain.

Sec. 45.

A joint agency may take private property under Act No. 149 of the Public Acts of 1911, as amended, or any other applicable law as determined necessary by a joint agency for carrying out its purpose, except that a joint agency shall not exercise its power of eminent domain to acquire an existing electrical generation or transmission facility or a part thereof held in private ownership, including, without limitation, nonprofit corporation, without first securing in writing the approval of the lawful private owner or owners.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

460.846 Dissolution of joint agency; resolution; vesting of title to funds and other properties.

Sec. 46.

When the board of commissioners of a joint agency and the governing bodies of its member municipalities shall by resolution determine that the purposes for which the joint agency was formed have been substantially fulfilled and that bonds issued and other obligations incurred by the joint agency have been fully paid or satisfied, the board of commissioners and governing bodies may declare the joint agency to be dissolved. On the effective date of the resolution, the title to the funds and other properties owned by the joint agency at the time of the dissolution shall vest in the member municipalities of the joint agency as provided in this article and the bylaws of the joint agency, and in accordance with section 11 of this act.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

460.847 Annual report.

Sec. 47.

A joint agency shall, following the close of each fiscal year, submit a report of its activities for the preceding year to the governing bodies of its member municipalities. The annual report shall set forth a complete operating and financial statement covering the operations of the joint

agency during the preceding year, together with an audit of its operations as prescribed in section 48.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

460.848 Annual audit.

Sec. 48.

The joint agency shall annually cause an audit of its books of records and accounts by a certified public accountant, and the cost of the audit may be treated as part of the cost of construction of a project or projects, or as part of the expense of administration of a project covered by the audit.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977

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