

# HOUSE BILL No. 4219

February 16, 1989, Introduced by Reps. Kosteva, Gubow, Wartner, Griffin, Stallworth, Brown and Fitzgerald and referred to the Committee on Public Utilities.

A bill to amend the title of Act No. 3 of the Public Acts of 1939, entitled as amended

"An act to provide for the regulation and control of public utilities and other services affected with a public interest within this state; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law therein on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to provide for a restructuring of rates for certain utilities; to provide for appeals; to provide appropriations; to declare the effect of this act; to prescribe penalties; and to repeal all acts contrary to this act,"

as amended, being sections 460.1 to 460.8 of the Michigan Compiled Laws; and to add section 60.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. The title of Act No. 3 of the Public Acts of  
2 1939, as amended, being sections 460.1 to 460.8 of the Michigan

1 Compiled Laws, is amended and section 60 is added to read as  
2 follows:

3 TITLE

4 An act to provide for the regulation and control of public  
5 utilities and other services affected with a public interest  
6 within this state; to create a public service commission and to  
7 prescribe and define its powers and duties; to abolish the  
8 Michigan public utilities commission and to confer the powers and  
9 duties vested by law therein on the public service commission; to  
10 provide for the continuance, transfer, and completion of certain  
11 matters and proceedings; to abolish automatic adjustment clauses;  
12 to prohibit rate increases without notice and hearing; to qualify  
13 residential energy conservation programs permitted under state  
14 law for certain federal exemption; to provide for a restructuring  
15 of rates for certain utilities; TO ENCOURAGE THE UTILIZATION OF  
16 RESOURCE RECOVERY FACILITIES; to provide for appeals; to provide  
17 appropriations; to declare the effect of this act; to prescribe  
18 penalties; and to repeal all acts contrary to this act.

19 SEC. 60. (1) AS USED IN THIS SECTION:

20 (A) "RESOURCE RECOVERY FACILITY" MEANS A FACILITY THAT MEETS  
21 ALL OF THE FOLLOWING REQUIREMENTS:

22 (i) HAS MACHINERY, EQUIPMENT, AND STRUCTURES INSTALLED FOR  
23 THE PRIMARY PURPOSE OF RECOVERING ENERGY THROUGH THE INCINERATION  
24 OF QUALIFIED SOLID WASTE OR LANDFILL GAS.

25 (ii) UTILIZES AT LEAST 80% OF ITS TOTAL ANNUAL FUEL INPUT IN  
26 THE FORM OF QUALIFIED SOLID WASTE, OR AT LEAST 90% OF ITS TOTAL  
27 ANNUAL FUEL INPUT IN THE FORM OF LANDFILL GAS.

1 (iii) IS A QUALIFYING FACILITY AS DEFINED BY THE FEDERAL  
2 ENERGY REGULATORY COMMISSION PURSUANT TO THE PUBLIC UTILITY REGU-  
3 LATORY POLICIES ACT OF 1978, PUBLIC LAW 95-617, 92 STAT. 3117.

4 (B) "QUALIFIED SOLID WASTE" MEANS SOLID WASTE THAT MAY BE  
5 LAWFULLY DISPOSED OF IN A TYPE II LANDFILL AS DEFINED BY  
6 R 299.4105 OF THE MICHIGAN ADMINISTRATIVE CODE, AND WHICH IS GEN-  
7 ERATED WITHIN THIS STATE.

8 (2) PUBLIC UTILITIES WITH MORE THAN 500,000 CUSTOMERS IN  
9 THIS STATE SHALL ENTER INTO POWER PURCHASE AGREEMENTS FOR THE  
10 PURCHASE OF CAPACITY AND ENERGY FROM RESOURCE RECOVERY FACILITIES  
11 THAT ARE PROCESSING QUALIFIED SOLID WASTE, SOME OF WHICH IS GEN-  
12 ERATED WITHIN THE SERVICE AREAS OF THE PUBLIC UTILITY UNDER  
13 RATES, CHARGES, TERMS, AND CONDITIONS OF SERVICE THAT, FOR THESE  
14 FACILITIES, MAY DIFFER FROM THOSE NEGOTIATED, AUTHORIZED, OR PRE-  
15 SCRIBED FOR PURCHASES FROM QUALIFYING FACILITIES THAT ARE NOT  
16 RESOURCE RECOVERY FACILITIES, INCLUDING POWER PURCHASE AGREEMENTS  
17 EXECUTED PRIOR TO SEPTEMBER 1, 1988. PROVISIONS OF THIS SECTION  
18 SHALL NOT APPLY AFTER 120 MEGAWATTS OF ELECTRIC RESOURCE RECOVERY  
19 FACILITY CAPACITY IN A UTILITY'S SERVICE TERRITORY HAVE BEEN CON-  
20 TRACTED AND ENTERED IN COMMERCIAL OPERATION. EXCLUDING RATE PRO-  
21 VISIONS, IF A PROVISION OR PROVISIONS OF A PURCHASE AGREEMENT  
22 REMAIN IN DISPUTE, EACH PARTY SHALL SUBMIT TO THE COMMISSION ALL  
23 OF THE PURCHASE AGREEMENT PROVISIONS OF THEIR LAST BEST OFFER AND  
24 A SUPPORTING BRIEF. ON EACH DISPUTED PROVISION, THE COMMISSION  
25 SHALL WITHIN 60 DAYS EITHER SELECT OR REJECT WITH RECOMMENDATION  
26 THE OFFERS SUBMITTED BY EITHER PARTY.

1       (3) A POWER PURCHASE AGREEMENT ENTERED INTO BY A PUBLIC  
2 UTILITY FOR THE PURCHASE OF CAPACITY AND ENERGY FROM A RESOURCE  
3 RECOVERY FACILITY SHALL BE FILED WITH THE COMMISSION AND A CON-  
4 TESTED CASE PROCEEDING SHALL COMMENCE IMMEDIATELY PURSUANT TO  
5 CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT  
6 NO. 306 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 24.271 TO  
7 24.287 OF THE MICHIGAN COMPILED LAWS. NOTWITHSTANDING  
8 SECTION 6J, A POWER PURCHASE AGREEMENT SHALL BE CONSIDERED  
9 APPROVED IF THE COMMISSION DOES NOT APPROVE OR DISAPPROVE THE  
10 AGREEMENT WITHIN 6 MONTHS OF THE DATE OF THE FILING OF THE AGREE-  
11 MENT, OR THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS  
12 SECTION, WHICHEVER IS LATER. APPROVAL PURSUANT TO THIS SUBSEC-  
13 TION SHALL CONSTITUTE PRIOR APPROVAL UNDER SECTION 6J(13)(B).

14       (4) THE ENERGY RATE COMPONENT OF ALL POWER SALES CONTRACTS  
15 FOR RESOURCE RECOVERY FACILITIES SHALL BE EQUAL TO THE AVOIDED  
16 ENERGY COST OF THE PURCHASING UTILITY.

17       (5) WHEN AVERAGED OVER THE TERM OF THE CONTRACT, THE CAPAC-  
18 ITY RATE COMPONENT OF ALL POWER SALES CONTRACTS FOR RESOURCE  
19 RECOVERY FACILITIES MAY BE EQUAL TO BUT NOT LESS THAN THE FULL  
20 AVOIDED COST OF THE UTILITY AS DETERMINED BY THE COMMISSION. IN  
21 DETERMINING THE CAPACITY RATE, THE COMMISSION MAY ASSUME THAT THE  
22 UTILITY NEEDS CAPACITY.

23       (6) CAPACITY PURCHASED BY A UTILITY PRIOR TO JANUARY 1, 2000  
24 UNDER A POWER SALES CONTRACT WITH A RESOURCE RECOVERY FACILITY  
25 SHALL NOT BE CONSIDERED DIRECTLY OR INDIRECTLY IN DETERMINING THE  
26 UTILITY'S RESERVE MARGIN, RESERVE CAPACITY, OR OTHER RESOURCE  
27 CAPABILITY MEASUREMENT.