

**SUBSTITUTE FOR
HOUSE BILL NO. 5705**

A bill to amend 1990 PA 100, entitled
"City utility users tax act,"
by amending section 2 of chapter 1 and sections 2 and 3 of chapter
2 (MCL 141.1152, 141.1162, and 141.1163), section 2 of chapter 1 as
amended by 2011 PA 57, and by adding sections 8a and 8b to chapter
1.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER 1

Sec. 2. (1) The governing body of a city having a population
of 600,000 or more, by a lawfully adopted ordinance that
incorporates by reference the uniform city utility users tax
ordinance set forth in chapter 2, may levy, assess, and collect
from those users in that city a utility users tax as provided in
the ordinance. However, a uniform city utility users tax ordinance
containing substantially the same provisions provided for in

1 chapter 2 adopted by the governing body of a city before June 13,
2 1990 that has not been rescinded by that governing body is
3 considered an ordinance adopted under this act and a tax imposed
4 and collected under that ordinance is revived. The governing body
5 shall set the rate of tax in increments of 1/4 of 1% that shall not
6 exceed 5%. **IF A CITY CURRENTLY ELIGIBLE TO LEVY A TAX UNDER THIS**
7 **ACT ENTERS INTO A CONTRACT WITH A LIGHTING AUTHORITY, IN WHICH IT**
8 **PLEDGES REVENUES FROM THE TAXES LEVIED UNDER THIS ACT, THE CITY IS**
9 **AUTHORIZED TO LEVY THE TAX UNDER THIS ACT UNTIL ALL RELATED**
10 **OUTSTANDING BONDS OF THE LIGHTING AUTHORITY HAVE BEEN PAID**
11 **NOTWITHSTANDING THE POPULATION OF THAT CITY.**

12 (2) A uniform city utility users tax ordinance may be lawfully
13 adopted or **UNLESS REVENUES HAVE BEEN OTHERWISE PLEDGED** rescinded by
14 the governing body at any time and its adoption shall become
15 effective on the first day of any month, following adoption of the
16 ordinance, as specified in the ordinance. The ordinance may be
17 rescinded at any time by the governing body in the same manner in
18 which the ordinance was adopted and with appropriate enforcement,
19 collection, and refund provisions with respect to liabilities
20 incurred before the effective date of its rescission. The ordinance
21 shall not be amended except as provided by the legislature. A
22 village and a city under 600,000 population shall not impose and
23 collect a utility users tax **EXCEPT AS OTHERWISE PROVIDED IN**
24 **SUBSECTION (1)**. A city that adopts or rescinds the tax shall notify
25 within 7 days by certified mail all public utilities or resale
26 customers affected by the action of the governing body. Except as
27 otherwise provided in this section, a city now having or that may

1 attain a population of 600,000 or more shall not impose a utility
2 users tax except by adopting the entire uniform city utility users
3 tax ordinance as set forth in chapter 2.

4 (3) The administrator, as that term is defined in chapter 2,
5 of the tax shall file a report indicating the total amount of
6 revenue collected in the prior fiscal year with the state revenue
7 commissioner by August 1 of each year, beginning on August 1, 1985.
8 The administrator shall make the report available to the public at
9 the same time.

10 (4) ~~The~~ **UNLESS REVENUES HAVE BEEN OTHERWISE PLEDGED TO PAY**
11 **BONDS ISSUED BY A LIGHTING AUTHORITY, THE** revenue generated from
12 this tax shall be placed directly in the budget of the police
13 department of a city described in this act and shall be used
14 exclusively to retain or hire police officers.

15 (5) **NOTWITHSTANDING SUBSECTION (4) OR ANY ORDINANCE OF A CITY**
16 **TO THE CONTRARY, A CITY THAT FORMS A LIGHTING AUTHORITY SHALL PAY**
17 **\$12,500,000.00 ANNUALLY TO THAT LIGHTING AUTHORITY FROM THE**
18 **PROCEEDS OF THE TAX AUTHORIZED UNDER THIS ACT. IF THE LIGHTING**
19 **AUTHORITY ISSUES BONDS PURSUANT TO A CONTRACT WITH THE CITY UNDER**
20 **THIS ACT AND PLEDGES REVENUES FROM TAXES LEVIED UNDER THIS ACT,**
21 **THOSE REVENUES SHALL BE DEPOSITED AND USED AS PROVIDED IN THIS ACT.**
22 **AFTER A CONTRACT DESCRIBED IN THIS SUBSECTION IS ENTERED INTO, THE**
23 **TRUSTEE, AFTER SETTING ASIDE FUNDS AS REQUIRED BY THE TRUST**
24 **INDENTURE, SHALL PAY TO THE LIGHTING AUTHORITY \$12,500,000.00, LESS**
25 **THE AMOUNT SET ASIDE. THE TRUST INDENTURE SHALL PROVIDE THAT THE**
26 **REMAINING REVENUES BE RETURNED TO THE CITY. NOTHING IN THIS**
27 **SUBSECTION SHALL OBLIGATE A CITY OR TRUSTEE TO REMIT TO THE**

1 LIGHTING AUTHORITY MORE THAN IS COLLECTED FROM TAXES LEVIED UNDER
2 THIS ACT.

3 (6) ~~(5)~~—As used in this section, "police officer" means a
4 police officer, investigator, or police sergeant.

5 (7) AS USED IN THIS ACT, "LIGHTING AUTHORITY" MEANS A LIGHTING
6 AUTHORITY CREATED UNDER THE MUNICIPAL LIGHTING AUTHORITY ACT.

7 SEC. 8A. NOTWITHSTANDING ANY ORDINANCE OF A CITY LEVYING A TAX
8 AUTHORIZED BY THIS ACT, IF A CITY LEVYING THE TAX AUTHORIZED BY
9 THIS ACT ENTERS INTO A CONTRACT WITH A LIGHTING AUTHORITY, ALL OF
10 THE FOLLOWING SHALL APPLY:

11 (A) THE CITY SHALL SEND NOTICE TO EACH PUBLIC UTILITY AND
12 RESALE CUSTOMER TO REMIT TAXES COLLECTED UNDER THIS ACT TO A
13 TRUSTEE UNTIL NOTIFIED BY THAT TRUSTEE TO RETURN THE FUNDS TO THE
14 CITY.

15 (B) AFTER RECEIVING A NOTICE DESCRIBED IN SUBDIVISION (A),
16 EACH PUBLIC UTILITY AND RESALE CUSTOMER SO NOTIFIED SHALL REMIT
17 TAXES AS DIRECTED BY THE NOTICE TO THE TRUSTEE UNTIL NOTIFIED BY
18 THE TRUSTEE TO REMIT TAXES TO THE CITY.

19 (C) THE TRUSTEE SHALL NOTIFY EACH PUBLIC UTILITY AND RESALE
20 CUSTOMER TO REMIT TAXES COLLECTED UNDER THIS ACT TO THE CITY WITHIN
21 45 DAYS OF THE RETIREMENT OF DEBT SERVICE ON THE BONDS ISSUED BY A
22 LIGHTING AUTHORITY.

23 SEC. 8B. NOTWITHSTANDING ANY ORDINANCE OF A CITY LEVYING THE
24 TAX OR ANY OTHER PROVISION OF THIS ACT, ANY UTILITY, RESALE
25 CUSTOMER, OTHER ENTITY, OR PERSON THAT COLLECTS A TAX OR ANY MONEY
26 REPRESENTED TO BE A TAX AUTHORIZED UNDER THIS ACT HOLDS THE AMOUNT
27 SO COLLECTED IN TRUST FOR THE BENEFIT OF THE CITY, OR FOR

1 **BONDHOLDERS SECURED BY A PLEDGE WITH A LIGHTING AUTHORITY.**

2 CHAPTER 2

3 Sec. 2. For the purposes of this ordinance:

4 (1) The words, terms and phrases set forth below and their
5 derivations have the meanings given therein. When not inconsistent
6 with the context, words used in the present tense include the
7 future, words in the plural number include the singular number, and
8 in the singular number include the plural. "Shall" is always
9 mandatory and not merely directory. "May" is always directory.

10 (2) "Administrator" means the official designated by the city
11 to administer the provisions of this ordinance.

12 (3) "Billed or ordinarily billable to locations within the
13 taxing city" means the location of the premises of the user for the
14 usage of the public utility services.

15 (4) "Month" means a calendar month.

16 (5) "Person" means a natural person, partnership, fiduciary,
17 association, corporation, or other entity. When used in any
18 provision imposing a criminal penalty, "person" as applied to an
19 association means the parties or members thereof, and as applied to
20 a corporation, the officers thereof.

21 (6) "Public utility services" means the providing, performing
22 or rendering of public service of ~~a telephone,~~ **AN** electric, steam,
23 or gas nature, the rates or other charges for which are subjected
24 to regulation by state public utility regulatory bodies, federal
25 public utility or regulatory bodies or both, or the rendering of
26 public service of an electric or gas nature by a government owned
27 facility.

1 (7) "Public utility" means a person who provides public
2 utility services.

3 (8) "Resale customer" means a person that purchases utility
4 services or property from a public utility for resale to a utility
5 user.

6 (9) "Utility user" or "user" means a person required to pay a
7 tax imposed under the provisions of this ordinance.

8 Sec. 3. Subject to the exclusions, adjustments, and exemptions
9 herein provided, a city utility users tax at the rate of%
10 for general revenue purposes is hereby imposed on and shall be paid
11 by the utility user. This tax shall be measured by the amounts
12 paid, not including any existing or hereafter enacted taxes
13 (including, but not limited to federal, state, city, and other
14 local taxes, directly added to or directly passed on in the users'
15 billing) paid by users for the public utility services as
16 hereinafter provided, billed or ordinarily billable to locations
17 within the taxing city:

18 ~~—— (a) The tax shall be imposed on all intrastate telephone~~
19 ~~communication services, furnished by a public utility. The term~~
20 ~~"intrastate telephone communication services" shall not include any~~
21 ~~telephone service originating or terminating outside Michigan,~~
22 ~~telephone services by coin-operated installations, directory~~
23 ~~advertising proceeds, telephone services not taxable under section~~
24 ~~4251 of Title 26 of the United States Code as of December 31, 1969,~~
25 ~~as amended, centrex and multi-line key switching systems, mobile~~
26 ~~telephone service, and any types of services or equipment,~~
27 ~~furnished by telephone companies subject to public utility~~

House Bill No. 5705 (H-1) as amended June 7, 2012

1 ~~regulation, during any period in which such services or equipment~~
2 ~~are in competition with services or equipment furnished by or~~
3 ~~available from persons other than telephone companies subject to~~
4 ~~public utility regulation.~~

5 (A) ~~(b)~~—The tax shall be on all electrical energy and steam
6 provided by a public utility or a resale customer. The term
7 "electrical energy and steam provided" shall include amounts paid
8 for metered energy and steam, and minimum charges for service,
9 including user charges, service charges, demand charges, standby
10 charges, and annual and monthly charges. The term shall not include
11 electrical energy or steam sold to or exchanged with for resale by,
12 another public utility, or used or consumed in the conduct of the
13 business of an electric or steam public utility or a combination
14 gas and electric utility.

15 (B) ~~(c)~~—The tax shall be on all gas, natural or artificial
16 provided by a public utility or a resale customer. The term "gas,
17 natural or artificial provided" shall not include any gas sold for
18 use in the generation of electrical energy by a public utility, any
19 gas sold to or exchanged with for resale by, another gas public
20 utility, or any gas used or consumed in the conduct of the business
21 of a gas public utility or a combination gas and electric utility.

[Enacting section 1. This amendatory act does not take effect
unless all of the following bills of the 96th Legislature are enacted
into law:

- (a) Senate Bill No. 970.
- (b) House Bill No. 5688.]