

**SUBSTITUTE FOR
HOUSE BILL NO. 4575**

A bill to regulate the siting and construction of certain electric transmission lines; to prescribe powers and duties of certain state and local entities and officials; to create a board; to prescribe the board's powers and duties; and to provide for certain fees.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan electric infrastructure act".

3 Sec. 2. As used in this act:

4 (a) "Affiliated transmission company" means a person,
5 partnership, corporation, association, or other legal or its
6 successors or assigns, that has fully satisfied the requirements to
7 join a regional transmission organization as determined by the
8 Federal Energy Regulatory Commission, is engaged in this state in

1 the transmission of electricity using facilities it owns that were
2 transferred to the entity by an electric utility that was engaged
3 in the generation, transmission, and distribution of electricity in
4 this state on December 31, 2000, and is not independent of an
5 electric utility, or an affiliate of the utility, generating or
6 distributing electricity to retail customers in this state.

7 (b) "Board" means the Michigan electric infrastructure board
8 created in section 3.

9 (c) "Commission" means the Michigan public service commission
10 created in section 1 of 1939 PA 3, MCL 460.1.

11 (d) "Construction" means any substantial action constituting
12 placement or erection of the foundations, trenches, facilities,
13 equipment, or structures supporting a transmission line including,
14 but not limited to, the conductors, wires, or other equipment
15 attached to the structures. Construction does not include
16 preconstruction activity or the addition of circuits to an existing
17 transmission line.

18 (e) "Electric utility" means a person, partnership,
19 corporation, association, or other legal entity whose transmission
20 or distribution of electricity the commission regulates under 1909
21 PA 106, MCL 460.551 to 460.559, or 1939 PA 3, MCL 460.1 to 460.11.
22 Electric utility does not include an affiliated transmission
23 company or an independent transmission company.

24 (f) "Good cause" means an event or circumstance, whether or
25 not foreseeable, not caused by a qualified developer that prevents
26 the qualified developer from complying with an obligation under
27 this act. Good cause does not include a strike or other labor

1 unrest that affects only the qualified developer, an increase in
2 prices or other change in general economic conditions, or a change
3 in law or regulations.

4 (g) "Great Lakes" means Lake Superior, Lake Michigan, Lake
5 Huron, Lake Erie, and the connecting waters between Lake Michigan
6 and Lake Huron.

7 (h) "Independent transmission company" means a person,
8 partnership, corporation, association, or other legal entity, or
9 its successors or assigns, engaged in this state in the
10 transmission of electricity using facilities it owns that have been
11 divested to the entity by an electric utility that was engaged in
12 the generation, transmission, and distribution of electricity in
13 this state on December 31, 2000, and is independent of an electric
14 utility, or an affiliate of the utility, generating or distributing
15 electricity to retail customers in this state.

16 (i) "Municipality" means a city, township, or village.

17 (j) "Notice to construct" means a notice issued by the board
18 granting an entity the sole right to construct a transmission line
19 until the notice to construct expires.

20 (k) "Preconstruction activity" means any activity on a
21 proposed route conducted before construction of a transmission line
22 begins. Preconstruction activity includes surveys, measurements,
23 examinations, soundings, borings, sample-taking, or other testing
24 procedures, photography, appraisal, or tests of soil, groundwater,
25 structures, or other materials in or on the real property for
26 contamination. Preconstruction activity does not include an action
27 that permanently or irreparably alters the real property on or

1 across the proposed route.

2 (l) "Qualified developer" means an entity that demonstrates
3 all of the following:

4 (i) That the entity has owned and operated a transmission line
5 in this state within the Midcontinent Independent System Operator
6 footprint for at least 5 years.

7 (ii) That the entity has been registered with the North
8 American Electric Reliability Corporation as a transmission owner,
9 transmission operator, and transmission planner for the 5 years
10 before a proposal is submitted under section 5.

11 (iii) That the entity has complied with the North American
12 Electric Reliability Corporation registration requirements and
13 regional entity reliability standards for the 5 years before a
14 proposal is submitted under section 5.

15 (m) "Route" means real property or other infrastructure on or
16 across which a transmission line is constructed or proposed to be
17 constructed.

18 (n) "Transmission line" means all structures, equipment, and
19 real property necessary to transfer electricity at system bulk
20 supply voltage of 100 kilovolts or more.

21 (o) "Utility consumer participation board" means the utility
22 consumer participation board created in section 6l of 1939 PA 3,
23 MCL 460.6l.

24 (p) "Utility corridor" means the geographic area necessary to
25 accommodate the construction and operation of 1 or more electric
26 transmission or distribution lines.

27 Sec. 3. (1) The Michigan electric infrastructure board is

1 created within the department of licensing and regulatory affairs.
2 The board shall consist of 13 members, appointed by the governor as
3 follows:

4 (a) The executive director of the Michigan agency for energy
5 to serve as chairperson of the board.

6 (b) One individual representing the department of
7 environmental quality.

8 (c) One individual representing the Michigan economic
9 development corporation.

10 (d) Three Michigan public service commissioners.

11 (e) Two residents of the Upper Peninsula.

12 (f) Two residents of the Lower Peninsula.

13 (g) One individual representing municipalities.

14 (h) One individual representing the attorney general.

15 (i) One individual representing the utility consumer
16 participation board.

17 (2) The members initially appointed under subsection (1) shall
18 be appointed within 30 days after the effective date of this act.

19 (3) The board shall exercise its powers, duties, and decision-
20 making authority by a majority of the board members and
21 independently of the commission or any agency.

22 (4) The board shall consider the following goals in exercising
23 its powers, duties, and decision-making authority under this act:

24 (a) Providing adequate resources to electric consumers in this
25 state through the construction of transmission infrastructure that
26 will reduce congestion and energy prices in this state.

27 (b) Providing for additional transmission capacity in this

1 state.

2 (c) Providing reliable and efficient operation of the
3 integrated electrical transmission system in this state.

4 (5) The Michigan agency for energy and the commission shall
5 serve as staff for the board.

6 Sec. 5. (1) Within 90 days after the effective date of this
7 act, the board shall solicit from any interested entity
8 recommendations for transmission lines constructed wholly within
9 this state that, in part, are also constructed over or under the
10 Great Lakes that would do both of the following:

11 (a) Provide additional transmission capacity; reduce
12 congestion, constraints, and losses on the electrical system in
13 this state; reduce the overall cost of delivered energy in this
14 state; facilitate the deliverability of generation resources; or
15 facilitate generation resource diversification.

16 (b) Increase the electrical connectivity between the Upper
17 Peninsula and Lower Peninsula of this state beyond the capability
18 provided by the 2 circuits connecting the Upper Peninsula and Lower
19 Peninsula of this state existing on the effective date of this act
20 by adding additional circuitry.

21 (2) Within 30 days after receiving the recommendations under
22 subsection (1), the board shall schedule and hold 2 public meetings
23 in the Upper Peninsula of this state and 2 public meetings in the
24 Lower Peninsula of this state to take written and oral comment on
25 the recommendations provided under subsection (1). The board shall
26 retain a copy of all written comments and a transcription of all
27 oral comments, and consider those comments in drafting any report

1 issued by the board.

2 (3) Within 90 days after the last public meeting held under
3 subsection (2), the board shall submit a report to the legislature
4 and governor summarizing the proposed recommendations made under
5 subsection (1) and comments received under subsection (2). The
6 report shall also include a statement, with associated rationale,
7 indicating whether the board will proceed with the request for
8 proposal process described in subsection (4).

9 (4) If the board determines to proceed with a request for
10 proposals process, the board shall request qualified developers to
11 submit proposals identifying any proposed transmission lines
12 constructed wholly within this state that, in part, are also
13 constructed over or under the Great Lakes necessary to do both of
14 the following:

15 (a) Provide additional transmission capacity; reduce
16 congestion, constraints, and losses on the electrical system in
17 this state; reduce the overall cost of delivered energy in this
18 state; facilitate the deliverability of generation resources; or
19 facilitate generation resource diversification.

20 (b) Increase the electrical connectivity between the Upper
21 Peninsula and Lower Peninsula of this state beyond the capability
22 provided by the 2 circuits connecting the Upper Peninsula and Lower
23 Peninsula of this state existing on the effective date of this act
24 by adding additional circuitry.

25 (5) Any proposals submitted under subsection (4) must include
26 all of the following:

27 (a) A preliminary cost estimate for the identified

1 transmission line, including estimated subtotals for lines,
2 stations, labor, and materials.

3 (b) An analysis of the estimated cost impact to retail
4 ratepayers if the cost of the transmission line were allocated to
5 all retail electric customers located in the Midcontinent
6 Independent System Operator footprint in this state.

7 (c) Any benefits associated with the transmission line.

8 (d) A statement from the entity submitting the proposal that
9 indicates why that entity is a qualified developer.

10 (e) Information that will allow the board to consider the
11 factors identified in subsection (7).

12 (f) A summary document that lists the total cost estimate of
13 the transmission line, the terminus points of the transmission
14 line, the voltage of the transmission line, and the estimated rate
15 impacts to retail ratepayers.

16 (6) The board shall make the summary documents submitted under
17 subsection (5)(f) publicly available.

18 (7) After receiving a proposal under subsection (4), the board
19 shall determine whether a qualified developer should proceed with
20 the construction of a proposed transmission line. In addition to
21 considering the factors in subsection (5), in determining whether
22 to recommend construction of the proposed transmission line, the
23 board shall consider whether the qualified developer has
24 demonstrated any of the following:

25 (a) Managerial expertise and capability.

26 (b) Technical and engineering qualifications and experience in
27 the design, construction, operation, and maintenance of

1 transmission lines.

2 (c) Financial strength and capability.

3 (d) Transmission planning expertise and capability.

4 (e) Experience in addressing public concerns regarding
5 transmission lines.

6 (f) Construction expertise and capability.

7 (g) Operations and maintenance capability.

8 (h) Exemplary corporate citizenship, as demonstrated by all of
9 the following:

10 (i) Community outreach.

11 (ii) Communication and information-sharing during all phases
12 of transmission line development, construction, and operation.

13 (iii) Civic contributions to regional, state, and local
14 communities.

15 (iv) A dedicated customer service department.

16 (8) The board may request additional information as needed to
17 make a decision on proposals submitted under this act.

18 (9) Within 120 days after receiving a proposal from a
19 qualified developer under subsection (4), the board shall issue a
20 letter to the qualified developer either rejecting the
21 recommendations of the qualified developer in full, requesting that
22 the qualified developer provide more information, or recommending
23 the construction of the proposed transmission line. A letter issued
24 by the board under this subsection shall include an explanation for
25 the action taken by the board. The board shall only recommend
26 construction of a proposed transmission line if it determines the
27 cost of the potential transmission line is appropriate given the

1 associated qualitative and quantitative benefits. If the board
2 requests more information under this subsection, the board shall,
3 within 45 days after receiving that information from a qualified
4 developer, either reject the recommendations or recommend
5 construction of the proposed transmission line. If the board issues
6 a letter recommending construction of a proposed transmission line,
7 the qualified developer receiving the letter shall, within 30 days
8 after the board issues the letter, submit an expression of interest
9 in constructing the transmission line identified by the board. If
10 the qualified developer does not submit an expression of interest
11 within 30 days after the board issues a letter under this
12 subsection, the board may issue a new request for submission of
13 proposals under subsection (4). Within 7 days after a qualified
14 developer has submitted an expression of interest, the board shall
15 issue the qualified developer that submitted the expression of
16 interest a notice to construct. Within 7 days after a qualified
17 developer has submitted an expression of interest, the board will
18 also make public all proposals from qualified bidders excluding any
19 information that contains trade secrets; proprietary, confidential,
20 financial, or competitive commercial information; information about
21 the security of the transmission system or transmission system
22 operations; information containing energy market impacts; or
23 information that qualifies as critical energy infrastructure
24 information under 18 CFR 388.113.

25 (10) The board may take any actions necessary and appropriate
26 to support a transmission line for which a notice to construct has
27 been issued, including coordination with the Midcontinent

1 Independent System Operator, supporting any out-of-cycle review
2 request, execution of any contracts or agreements, and preparation,
3 submission, and support for filings related to that project before
4 the Federal Energy Regulatory Commission or any other regulatory
5 body.

6 (11) A document submitted to the board under this section is
7 not subject to disclosure under the freedom of information act,
8 1976 PA 442, MCL 15.231 to 15.246, to the extent it contains trade
9 secrets, proprietary and confidential commercial or financial
10 information, or information that qualifies as critical energy
11 infrastructure information under 18 CFR 388.113. The business that
12 the board may perform shall be conducted at a public meeting of the
13 board held in compliance with the open meetings act, 1976 PA 267,
14 MCL 15.261 to 15.275.

15 (12) The board is dissolved 90 days after the commission
16 issues an expedited siting certificate under section 6.

17 Sec. 6. (1) Within 60 days after receiving a notice to
18 construct under section 5, a qualified developer shall submit any
19 necessary documents to the Midcontinent Independent System Operator
20 or other applicable regional transmission organization for any
21 required review and approval.

22 (2) Within 120 days after obtaining any required reviews and
23 approvals from the Midcontinent Independent System Operator or
24 other applicable regional transmission organization, the qualified
25 developer shall apply to the commission for an expedited siting
26 certificate under this act. If a qualified developer does not apply
27 to the commission within 120 days after obtaining any required

1 reviews and approvals from the applicable regional transmission
2 organization, the commission shall revoke the notice to construct
3 and the board may solicit expressions of interest for the
4 transmission line project under section 5. The commission may waive
5 the 120-day time limit if it determines the qualified developer had
6 good cause for failing to apply to the commission for an expedited
7 siting certificate within 120 days.

8 (3) A qualified developer shall include all of the following
9 in an application for an expedited siting certificate:

10 (a) Evidence that the applicant obtained a notice to construct
11 for the transmission line under section 5.

12 (b) The planned date to begin construction of the proposed
13 transmission line.

14 (c) A detailed description, route, and expected configuration
15 and use of the proposed transmission line.

16 (d) Information indicating that the proposed transmission line
17 will comply with all applicable state and federal environmental
18 standards, laws, and rules.

19 (e) A description and evaluation of 1 or more alternate
20 transmission line routes for the proposed transmission line, and a
21 statement of why the proposed route was selected.

22 (f) If a zoning ordinance prohibits or regulates the location
23 or development of any portion of the proposed route, a description
24 of the location and manner in which the zoning ordinance prohibits
25 or regulates the location or construction of the proposed route.

26 (g) Other information reasonably required by commission rules.

27 (4) After applying for an expedited siting certificate, an

1 applicant shall give public notice in the manner and form the
2 commission prescribes of an opportunity to participate in a
3 contested case under subsection (5) regarding the application.
4 Notice shall be published in a newspaper of general circulation in
5 the municipalities through which the proposed transmission line
6 project would run within 14 days after an application is submitted
7 to the commission under subsection (2). The notice shall be sent to
8 each affected municipality and each affected landowner on whose
9 property a portion of the proposed transmission line will be
10 constructed. The notice shall be written in plain, nontechnical,
11 and easily understood terms and contain a title that includes the
12 name of the applicant and the words "Notice of Intent to Construct
13 a Transmission Line".

14 (5) The commission shall conduct a proceeding on an
15 application for an expedited siting certificate as a contested case
16 under the administrative procedures act of 1969, 1969 PA 306, MCL
17 24.201 to 24.328. Upon receiving an application for a certificate,
18 the commission shall grant each affected municipality and each
19 affected landowner full intervener status as of right in commission
20 proceedings concerning the proposed transmission line.

21 (6) The commission shall grant an expedited siting certificate
22 under this act if the commission determines that all of the
23 following requirements are met:

24 (a) The applicant has received a notice to construct for the
25 proposed transmission line under section 5.

26 (b) The proposed transmission line does not represent an
27 unreasonable threat to the public convenience, health, and safety.

1 (c) The proposed or alternate route to be authorized by the
2 expedited siting certificate is feasible and reasonable.

3 (7) If the commission grants an expedited siting certificate
4 for a transmission line under this act, the certificate takes
5 precedence over a conflicting local ordinance, law, rule,
6 regulation, policy, or practice that prohibits or regulates the
7 location or construction of the transmission line. A zoning
8 ordinance or limitation imposed after a qualified developer applied
9 for an expedited siting certificate shall not limit or impair the
10 transmission line's construction, operation, or maintenance.

11 (8) In an eminent domain or other related proceeding arising
12 out of or related to a transmission line for which an expedited
13 siting certificate is issued under this act, an expedited siting
14 certificate issued under this act is conclusive and binding as to
15 the public convenience and necessity for that transmission line and
16 the transmission line's compatibility with the public health and
17 safety or any zoning or land use requirements in effect when the
18 application was filed.

19 (9) The commission shall grant or deny an expedited siting
20 certificate within 180 days after receiving an application under
21 this section.

22 Sec. 8. If a transmission line constructed under this act is
23 located within an existing utility corridor owned by an electric
24 utility, affiliated transmission company, or independent
25 transmission company other than the qualified developer
26 constructing the transmission line, in addition to any fees or
27 payments related to acquiring the rights to use the utility

1 corridor, the qualified developer constructing the transmission
2 line under this act shall make a 1-time payment to the electric
3 utility, affiliated transmission company, or independent
4 transmission company owning that corridor. The payment shall be
5 equal to 50% of the tax assessed to the electric utility,
6 affiliated transmission company, or independent transmission
7 company in the prior tax year under the general property tax act,
8 1893 PA 206, MCL 211.1 to 211.155, for the utility corridor in
9 which the transmission line constructed under this act is located.

10 Sec. 9. (1) The costs of a transmission line for which a
11 notice to construct is issued under this act shall be allocated to
12 all retail electric customers located in the Midcontinent
13 Independent System Operator footprint within this state.

14 (2) The revenue requirement for a transmission line for which
15 a notice to construct is issued shall be calculated pursuant to the
16 open access transmission, energy and operating reserve markets
17 tariff administered by the Midcontinent Independent System
18 Operator.

19 (3) The board shall cooperate with the recipient of the notice
20 to construct, the commission, and the Midcontinent Independent
21 System Operator in making any filings necessary to implement the
22 cost allocation established in this section.

23 Sec. 10. The commission shall issue a report to the governor
24 and the legislature on or before the first Monday of March of each
25 year. The report shall include both of the following:

26 (a) A summary of the impact of this act.

27 (b) A list of any transmission lines constructed or approved

1 under this act during the previous year.

2 Sec. 11. Except for a transmission line for which another
3 entity holds a valid notice to construct that has not expired under
4 this act, this act does not prohibit an entity from constructing a
5 transmission line without obtaining an expedited siting
6 certificate.

7 Sec. 12. (1) A commission order relating to any matter
8 provided for under this act is subject to review as provided in
9 section 26 of 1909 PA 300, MCL 462.26.

10 (2) In administering this act, the commission has only those
11 powers and duties granted to it under this act.

12 Sec. 13. This act does not confer the power of eminent domain.

13 Enacting section 1. This act takes effect 90 days after the
14 date it is enacted into law.