

DON'T UNPLUG FAIRNESS RULE CHANGES FOR NEW POWER PLANTS SHOULDN'T FAVOR EXISTING UTILITIES

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BY ROBERT B. NELSON

If you have ever been involved in building your own home, you know that you can withhold the final payment to the contractor until you are satisfied that the home meets the specifications in the contract. If the contractor has not substantially complied with your specifications, you may be able to walk away from the project and get fully reimbursed for all payments previously made.

The same basic principle has held true for power plant construction in the State of Michigan for more than 60 years. If a utility wanted to construct a new power plant, it had to demonstrate to the Public Service Commission that the facility was "used and useful" after construction was completed. Although some funding was available to utilities during the course of the construction, the utility was responsible for making sure that the plant was needed and operational before ratepayers bore the full financial risk for the plant.

Michigan's electric utilities want to change all that and transfer the risk of building new power plants to you, the ratepayer.

The Public Service Commission Staff has just issued a comprehensive review of the State's long term needs for electric generation. The report, required by a Commission initiative that began while I was still a member, calls for the construction of a number of baseload power plants over the next ten years in order to replace an aging fleet of existing plants and meet the demands of economic growth.

Although there may be some disagreement with the number of plants that are needed and whether some of the plants can be replaced with energy efficiency, renewable

energy or transmission upgrades, it is clear that some major new generation is needed and we should start planning today.

The fundamental questions that remain are who should build the plants that are needed and how should they be paid for.

Michigan's major electric utilities, Detroit Edison and Consumers Energy have supported, in comments filed with the Commission, "a legally binding" pre-approval process for the construction of new generation, but only for generation constructed by the *utilites*. In other words, the utilities want

to be assured that they will recover, in the rates you are charged for electricity, the costs of a plant that may appear to be needed today, but may not be needed when its completed. This will give them a tremendous advantage over any other entity that desires to build a power plant in Michigan.

In other words, the utilities want to be assured that they will recover, in the rates you are charged for electricity, the costs of a plant that may appear to be needed today, but may not be needed when its completed.

In addition, the utilities support significant recovery of the cost of a new plant during the construction process from ratepayers, something that would also not be available to competitive suppliers.

Finally, the utilities are proposing to assess customers who have chosen an alternative provider for their electricity a charge for not only new plants but existing generation as well, allowing utilities to drive competitors out of business. Pre-approval and other uncompetitive rate assessments by utilities run counter to the Legislature's intent, expressed in 2000, to "diversify the ownership of electric generation in this state" and "foster competition in this state in the provision of electric supply."

DON'T UNPLUG FAIRNESS

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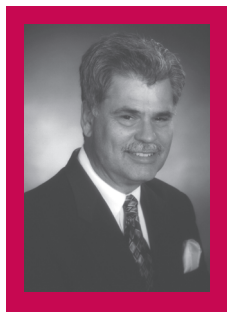
In the same way that homeowners solicit bids from contractors before deciding who should build their houses, so too should the State of Michigan solicit bids from all available suppliers before deciding who should build the next round of power plants. Renewable energy providers should be given strong consideration in this process because they will help wean us away from our dependence on increasingly expensive fossil fuels.

Equally important, no supplier should be given an undue advantage in the bidding process by charging ratepayers for a plant that has not been completed.

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Nuclear generation is controversial because we have not resolved, as a country, the issue of the ultimate disposal of the waste. If we can do so, it could be one more component to consider as Michigan moves forward to develop a comprehensive long term energy plan.

Michigan's road to economic recovery starts with the rebuilding of its infrastructure, but only if the rebuilding is done in the fairest and most cost-effective way possible.



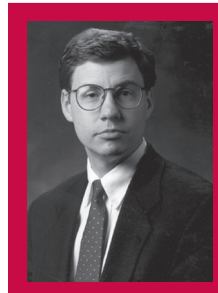
Mr. Nelson practices in the Utilities Law Department at Fraser Law Firm in the Lansing office. He served as Commissioner of the Michigan Public Service Commission from 1999 to 2005. He may be contacted at 517-377-0854 or at rnelson@fraserlawfirm.com.

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MICHIGAN LEGISLATURE DEREGULATES LOCAL TELEPHONE RATES FOR ALL MICHIGAN BUSINESSES

BY MIKE S. ASHTON

On November, 22 2005, Public Act 235 took immediate effect and amended the Michigan Telecommunications Act. The general purpose of Public Act 235 was to further encourage competition in the telecommunication industry. The single most important change impacting Michigan businesses is that the Michigan Public Service Commission no longer has any authority to regulate the local telephone rates charged to business customers. While the Commission will continue to have some limited authority to enforce quality of service and other standards, local telephone rates charged to businesses will not be determined by the Commission but instead by the competitive marketplace. Therefore, it is even more important for Michigan businesses to proactively compare various rate plans and offerings available in the market. The failure to compare pricing could result in paying excessive rates.



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BRIAN MORLEY NAMED SHAREHOLDER

Brian P. Morley has recently been elected shareholder Fraser Law Firm. He practices in the firm's Litigation Department with a focus on Criminal and Family Law.

Mr. Morley, a former police officer for the City of Flint, has practiced with Fraser Law Firm for the past eight years. He is Chairperson of the State Bar of Michigan District E Character and Fitness Committee, a member of the National Association of Criminal Defense Lawyers and the Criminal Defense Attorneys of Michigan.



FRASER LAW FIRM PARTICIPATES IN LEGISLATIVE PROCESS TO REDUCE MICHIGAN FRANCHISE FEES

BY IRIS K. LINDER

Fraser Law Firm attorney, Iris Linder, is a member of the Legislative Committee of the Michigan Venture Capital Association (“MVCA”). In 2005, one of the goals of the MVCA was to alleviate the franchise tax burden on Michigan companies who authorize large numbers of shares. Michigan’s law was somewhat unique in that it “front loaded” the franchise fees for Michigan corporations and foreign corporations authorized to do business in Michigan. Whereas many states have a fairly substantial annual franchise fee that is based upon the par value of the outstanding shares, Michigan has only a nominal annual fee requirement. Instead, there is a substantial franchise fee imposed at the time that the shares are authorized whether or not shares are issued.

Early negotiations with the legislature resulted in SB 298, which provided relief for certain early-stage technology companies, but was not broad based. Ms. Linder testified in support of the legislation at a hearing before the Senate Economic Development, Small Business and Regulatory Reform Committee. Subsequent negotiations suggested that a more broad based approach to reducing the franchise fees would be better accepted. However, using this approach, some method for allowing the Department of Labor and Economic Growth to recover lost revenues was needed.

In the year 2004, for several months Michigan corporations, limited partnerships and limited liability companies, were unable to make expedited filings due to a staff shortage. The shortage was caused by a combination of an unexpected death of one staff member, and the simultaneous maternity leaves of several other staff members. Due to budgetary shortfalls in the State of Michigan, the head of the Department of Labor and Economic Growth would not authorize overtime in order to make up for the staffing shortfall. At that time, Ms. Linder had been in touch with the head of the Corporations Division and had indicated her opinion that corporations would be willing to pay an expedite fee for expedited service, comparable to that imposed by other states.

The compromise to allow for the reduction of the franchise fee at the time shares are authorized was to add expedite fees for expedited filings. Ms. Linder submitted written testimony before the House of Representatives Committee on Commerce in support of this compromise. As a result of this compromise, public act numbers 212, 217, 218, 219 and 220 were enacted. These were signed

by the Governor on November 21, 2005, and became effective January 1, 2006.

Under these new public acts, the franchise fee for Michigan businesses and foreign corporations doing business in Michigan is as follows:

- For 60,000 or fewer authorized shares - \$50
- For more than 60,000 and fewer than 1,000,001 authorized shares - \$100
- For more than 1,000,000 and fewer than 5,000,001 authorized shares - \$300
- For more than 5,000,000 and fewer than 10,000,001 authorized shares - \$500
- For more than 10,000,000 authorized shares - \$500 plus an additional \$1,000 for each additional 10,000,000 or portion of 10,000,000 authorized shares in excess of the initial 10,000,000 authorized shares

The following examples illustrate the extent of the change:

	<u>Fee in 2005</u>	<u>Fee in 2006</u>
1,000,000 shares authorized	\$1,460	\$100
10,000,000 shares authorized	\$5,000	\$500
50,000 shares authorized	\$65,000	\$4,500

Under public act numbers 217, 218, 219 and 220, filings with respect to corporations, limited liability companies, nonprofit corporations, and limited partnerships may be expedited upon payment of a nonrefundable expedite fee as follows:

- 1 hour - \$1,000
- 2 hours - \$500
- Same day (with no specific deadline) - \$100
- Any other expedite request to be completed on the same day of the request - \$200
- Any filing to be completed within 24 hours - \$50 or \$100 depending upon the nature of the filing

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**FRASER LAW FIRM PARTICIPATES IN LEGISLATIVE
PROCESS CONTINUED**

Thus, as a result of these new acts, expedited filings are guaranteed as needed, and the cost of authorizing shares is significantly reduced.

The Fraser Law Firm is proud to have been involved in getting these acts through the Michigan legislature.



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A SUMMARY OF RECENT AMENDMENTS TO THE SINGLE BUSINESS TAX

By ED J. CASTELLANI, J.D., C.P.A.

Governor Jennifer Granholm recently signed a package of bills that amended the single business tax. Below is a brief overview of the changes prepared by our State and Local Tax Group:

- **Apportionment Factor** – Under current law, the apportionment factor, which is used to calculate an interstate business' activity in Michigan, is the weighted average of the business' percentage share of sales, property, and payroll that occur in Michigan. For 2006 and 2007 sales factor is weighted at 92.5% and property and payroll are each weighted at 3.75%. Under the new law, after January 1, 2008, the weight of the sales factor would increase to 95% and the weights on the property and payroll factors would decrease to 2.5%..

- **Industrial Personal Property Tax Credit** – A new tax credit for property taxes paid on industrial personal property is created. The credit is refundable and is equal to 15% of personal property taxes paid by industrial businesses. The credit applies to years beginning on or after January 1, 2006 and before January 1, 2010.

- **Transferred Jobs/Personal Property Tax Credit** – The law creates a new credit against the single business tax equal to 100% of the personal property taxes paid on personal property new to Michigan used directly by workers transferred to Michigan from other states or countries. This credit could be claimed only during the first year that the taxpayer paid property taxes on the personal property and would be available only for taxes paid in 2007, 2008 or 2009. This credit would apply to jobs and personal property directly being used for high-technology and manufacturing activity

- **Spun Off Corporations**- The new law amends the Single Business Tax Act to extend for four years a provision which allows a corporation which has been "spun off" from another corporation to exclude sales made to its immediately preceding former parent corporation from its sales factor. There are certain eligibility requirements for this provision that result in it being applicable primarily to Delphi and Visteon.

Please call a member of our State and Local Tax Group to discuss what this new proposal may mean to your business.

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This information is only a summary of a number of complex laws. Taxpayers should consult their tax adviser on the impact of these new laws and how they may affect their business.

NEW MICHIGAN SOCIAL SECURITY NUMBER PRIVACY ACT

As of January 1, 2006, any individual or entity which obtains social security numbers in the ordinary course of business must create and implement a written privacy policy that 1) ensures the confidentiality of the social security numbers, 2) prohibits unlawful disclosure of the social security numbers, 3) limits who has access to information or documents that contain the social security numbers, 4) describes how to properly dispose of documents that contain social security numbers, and 5) establishes penalties for violation of the privacy policy. Violations of the Act, including the failure to create a written privacy policy, may subject the offender to both civil liability and criminal penalties.

The Michigan Social Security Number Privacy Act can be found at http://www.michigan.gov/documents/Social_Security_Number_Privacy_Act_118553_7.pdf. If you have any questions regarding the Act, or if you would like assistance in drafting a privacy policy, please call John Loose at (517) 482-5800.

21ST CENTURY JOBS FUND RFPs NOW POSTED

By Vincent M. Pecora

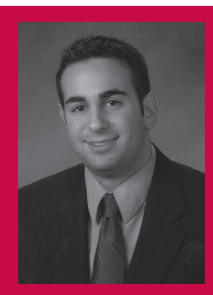
In January, the Michigan Economic Development Corporation ("MEDC") released requests for proposals ("RFP's") for the *21st Century Jobs Fund* (the "Fund"), an integral component of Governor Jennifer Granholm's *Jobs Today, Jobs Tomorrow* plan. The Michigan Legislature has allocated a total of \$394 million for fiscal years 2005 and 2006 to the Fund, the principal purpose of which is to foster growth in Michigan's economy and encourage job growth by promoting investment in select business and technology fields. The Legislature has also committed \$75 million per year for fiscal years 2008 through 2015 in order to continue the Fund and related initiatives.

The Fund's resources are focused toward the fulfillment of three objectives: (i) encouraging the development and commercialization of "competitive-edge technologies"; (ii) increasing capital investment activity; and (iii) increasing commercial lending activity. The RFP's currently available relate to the first objective. The MEDC expects to address the second and third objectives later this year.

The Legislature has appropriated up to \$200,228,000 toward diversifying and growing Michigan's technological sector by investing in basic research at universities and nonprofit research institutions, applied research, university technology transfer, and the commercialization of products, processes, and services. Four categories of "competitive-edge technologies" are eligible to apply: (a) life sciences; (b) alternative energy; (c) advanced automotive, manufacturing and materials; and (d) homeland security and defense. Detailed definitions of each of these technology categories may be found on the MEDC's website. Basic and applied research projects may qualify for grants. Commercialization projects will not be eligible for grants, but may be eligible for investments of equity or convertible loans.

For additional information about the Fund and the competition process, the MEDC has provided an overview at www.michigan.org/21stCentury. Those wishing to enter the competition should visit the Fund's website at <https://medc.constellagroup.com/>, review the newly-released RFP's, and submit a letter of intent to the MEDC by no later than 5:00 p.m., Eastern Standard Time on Friday, February 17, 2006.

We would be happy to assist you in responding to the RFP's. Please give us a call if you would like our assistance.



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