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 BILL ANALYSIS

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House Bill 5383 (Substitute H-1 as passed by the House)  
Sponsor: Representative Terry Brown  
House Committee: Energy and Technology  
Senate Committee: Energy Policy and Public Utilities

Date Completed: 4-30-08

### **CONTENT**

**The bill would create the "Electric Cooperative Member-Regulation Act" to do the following:**

- **Allow the board of directors of a cooperative electric utility to elect member-regulation for rates, charges, accounting standards, billing practices, and terms and conditions of service.**
- **Prescribe procedures by which a board of directors could become member-regulated, including approval by two-thirds of the voting members of a member-regulation proposal.**
- **Prescribe procedures by which cooperative members could overturn an adopted member-regulation proposal.**
- **Provide for the Public Service Commission (PSC) to retain jurisdiction over all areas served and line extension disputes involving a member-regulated cooperative and a regulated electric utility.**

#### Adoption of Member-Regulation Proposal

The bill states, "Cooperative electric utilities, which are owned by the members they serve, are regulated by their members acting through democratically elected boards of directors. It is declared that member-regulation by a cooperative in the areas of rates, charges, accounting standards, billing practices, and terms and conditions of service may be more efficient and cost-effective." The stated purpose of the

proposed Act would be to allow the board of directors to elect member-regulation for rates, charges, accounting standards, billing practices, and terms and conditions of service.

"Cooperative electric utility" or "cooperative" would mean an electric utility organized as a cooperative corporation under the Michigan General Corporation Act, serving primarily members of the cooperative electric utility.

"Member-regulation" would mean "the board of directors of the cooperative is charged with establishing, maintaining, and applying all rates, charges, accounting standards, billing practices, and terms and conditions of service".

To become member-regulated under the proposed Act, the board of directors would have to comply with the procedures described below.

A director could propose to become member-regulated at any properly convened board meeting. The board could not act on the proposal until 90 days had passed from the date it was made.

The board could act on the proposal only at a board meeting for which written notice of the time and place had been provided to all of the members of the cooperative. The notice would have to be delivered at least 21 but not more than 60 days before the meeting date and would have to contain a copy of the proposal. The notice could be sent by first-class mail or published in a

periodical issued by an association of cooperative electric utilities and mailed to each member of record of the cooperative.

The meeting at which the proposal was to be acted upon would have to be open to all cooperative members. The board would have to give members reasonable time to address the board before it acted upon the proposal.

A roll call vote of the board with two-thirds of the members voting in support of the proposal to become member-regulated would be necessary for adoption of the proposal.

The minutes of the meeting at which the proposal was acted upon, including the roll call vote, would have to be given to the cooperative members within 60 days from the date of the meeting in the same manner as the notice of that meeting.

The cooperative would have to give the PSC written notice of the board's action to become member-regulated within 10 days after the date of the action. The cooperative would become member-regulated 90 days following the date of the notice to the PSC.

#### Overturning of Proposal

The members of a cooperative that had elected to become member-regulated could overturn the proposal adopted by the board of directors by complying with the following procedures.

An election to overturn the board's vote to become member-regulated would have to be called at least 120 days after receipt of a valid petition signed by 5% or 750 members of the cooperative, whichever was less.

The proposition to overturn the vote would have to be presented to a meeting of cooperative members, the notice of which would have to set forth the proposition for member-regulation and the time and place of the meeting. The cooperative would have to deliver written notice to members at least 21 but not more than 60 days before the meeting. The notice would have to be sent in the same manner as the notice for the meeting at which the proposal was acted upon. The cooperative would have to pay the costs to notify the members of the election.

Voting on the proposition would have to be by mail ballot, and internet, provided members attending the meeting could execute and deliver their ballot to the cooperative during or at the conclusion of the meeting. Proxy voting could not be permitted.

If the proposition to overturn the board's vote to be member-regulated were approved by the affirmative vote of at least two-thirds of the members voting on it, and at least 10% of the members cast a vote, the cooperative would have to give the PSC written notice of the results within 10 days. The cooperative would no longer be member-regulated 90 days following the date of notice to the Commission.

A cooperative's members could not vote more than once every 24 months to overturn the board's vote to be member-regulated.

If the members approved the proposition to overturn the board's vote, the board could not act on a proposal to member-regulate until 36 months from the date notice of the election to overturn the vote was given to the PSC.

#### Member-Regulation; Cooperative Practices

A cooperative that elected to be member-regulated, by board action, would have to establish, maintain, and apply all rates, charges, accounting standards, billing practices, and terms and conditions of service in accordance with the proposed Act.

Notwithstanding the Act's provisions, the PSC would retain jurisdiction and control over all member-regulated cooperatives for matters involving safety; interconnection; code of conduct, including all relationships between a member-regulated cooperative and an affiliated alternative electric supplier (AES); customer choice, including the ability of customers to elect service from an AES under Public Act 3 of 1939 (the PSC law), and the member-regulated cooperative's rates, terms, and conditions of service for customers electing service from an AES; service area; distribution performance standards; and quality of service, including interpretation of applicable Commission rules and resolution of complaints and disputes. Any penalties pertaining to performance standards and quality of

service would have to be established by the cooperative's members when voting on the proposition for member-regulation or at an annual cooperative meeting.

A cooperative electric utility that was member-regulated under the proposed Act would have to determine how rates and charges for service were to be established, maintained, and applied. The rates and charges would have to reflect reasonably the costs of providing service and be uniform within the classes of service the cooperative provided.

The board of directors could adopt, amend, repeal, or add to the cooperative's billing practices and service rules, provided it had given written notice to members at least 30 days before the effective date of any action taken.

Each cooperative that had elected to be member-regulated would have to maintain and make available to the public an electronic copy of its rates, charges, accounting standards, billing practices and service rules, and terms and conditions of service on a website, as well as maintain a paper copy at all offices for review by the general public. In addition, the cooperative would have to give the PSC a copy of the specified information and a copy of the cooperative's most recent audited financial statement.

If a cooperative were member-regulated, the board would have to give at least 10 days' notice to all members of the time and place of any board meeting at which an increase in rates affecting at least 5% of the members or substantive changes in billing practices and service rules or terms and conditions of service were to be discussed and voted on. Notice would have to be sent by first-class mail to all members or could be published in a periodical issued by an association of cooperative electric utilities and mailed to each member of record of the cooperative.

A member-regulated cooperative would have to publish notice of any rate change or any change in billing practices and service rules or terms and conditions of service at least 30 days before the effective date of the change. The notice would have to be sent by first-class mail to all members or could

be published in a periodical issued by a cooperative association.

#### Areas Served & Line Extension Disputes

The PSC would retain jurisdiction over all areas served and line extension disputes involving a cooperative that was member-regulated under the proposed Act and a regulated electric utility. The Act would not limit the PSC's jurisdiction over areas served and line extension disputes granted to the PSC under any other law or statute. A member-regulated cooperative would have to operate in compliance with R 460.3411 of the Michigan Administrative Code regarding extension of electric service in areas served by two or more utilities. The PSC would continue to possess all jurisdiction and authority necessary to administer and enforce the provisions of Public Act 69 of 1929 (which governs the certificate of convenience and necessity for public utilities) and R 460.3411 with respect to member-regulated cooperative electric utilities.

When a member-regulated cooperative was required to give notice to the PSC and any affected electric utility of its intention to extend service to a prospective customer as required under R 460.3411, the notice also would have to include the charge to extend service, if any, and the rate or rates for the service offered.

If the electric utility, after being notified, believed that the member-regulated cooperative either proposed to extend service to a prospective customer unlawfully or had offered an unjustly preferential charge for extension of service or unjust rate to a prospective customer, and that prospective customer otherwise could be served by the electric utility pursuant to the PSC's rules for extension of electric service, the electric utility could file an objection with the PSC. Any objection would have to be filed within 60 days after the cooperative provided notice of the intent to extend service. If an objection were filed, the PSC first would have to determine whether the complaining utility or the cooperative, or both, had the lawful right to provide service to the prospective customer and then, if necessary, would have to determine whether the charges or rates offered by the cooperative were just and reasonable based on its cost of service. The determination

would have to be made at a contested case proceeding under the Administrative Procedures Act (APA). A cooperative's charges or rates offered to a prospective customer would have to be considered just and reasonable upon a showing by the cooperative that the charges to extend service to a prospective customer and the rates offered were equivalent to its charges to extend service and rates charged to other similarly situated customers serviced by it. If the cooperative did not provide service to other similarly situated customers, it would have to demonstrate that its charges to extend service and the rates offered were just and reasonable based on its cost of providing service to the prospective customer, consistent with industry practice. Upon the customer's choice, either the electric utility or the member-regulated cooperative could provide service to the prospective customer until the PSC determined the appropriate service provider.

A municipally owned utility that had entered into a service area agreement with a cooperative in accordance with Section 10y(6) of the PSC law (described below) could file an action in the circuit court in the district where the cooperative's main office was located alleging that a rate or charge offered by the cooperative was unjust and unreasonable. An action would have to be filed within 60 days after the municipally owned utility became aware of the rate or charge. In determining whether a rate or charge was just and reasonable, the circuit court would have to use the standards set forth above for determinations made by the PSC. If the court determined that the rate or charge was unjust or unreasonable, it would have to order the cooperative to assess the appropriate rate or charge to the prospective customer. Notwithstanding any law to the contrary, if the court issued an order, the cooperative would have to permit any prospective customer directly affected by the order to switch service to the objecting utility, if the customer gave the cooperative written notice of the intent to switch within 60 days from the date of the court's order and the utility agreed to pay the cooperative the reasonable value, as determined by the court, of its facilities that the utility would continue to use to serve the customer.

(Under Section 10y(6) of the PSC law, a municipally owned utility and an electric

utility that provides delivery service in the same municipality as the municipally owned utility may enter into a written agreement to define the territorial boundaries of each utility's delivery service area and any other terms and conditions necessary to provide delivery service. The agreement is not effective unless approved by the governing body of the municipally owned utility and the PSC.)

If the PSC found that an electric utility or cooperative providing temporary service to a customer was not a lawful service provider for that customer, it would have to order service to that customer transferred to the lawful provider. The order would have to require the provider acquiring the customer to pay for the reasonable cost of the facilities, as determined by the Commission, constructed to serve the transferred customer, which the acquiring provider would use to serve that customer.

If the PSC found that the cooperative was a lawful service provider but that its charges to extend service, if any, or the rates offered to the prospective customer were unjust or unreasonable, the Commission would have to order the cooperative to assess the appropriate charges to extend service and assess the appropriate rates to the prospective customer. Notwithstanding rules to the contrary, if the PSC issued an order under this provision, the cooperative would have to permit any prospective customer directly affected by the order to switch service to the objecting electric utility, if the customer had given the cooperative written notice of the intent to switch within 60 days from the date of the order and the utility agreed to pay the cooperative the reasonable value, as determined by the Commission, of its facilities that the utility would continue to use to serve the customer.

Legislative Analyst: Julie Cassidy

#### **FISCAL IMPACT**

The bill would reduce the administrative costs of the Public Service Commission by an unknown amount. To the extent that electric cooperatives changed to member-regulation pursuant to the bill, the costs currently incurred by the PSC for some aspects of regulating these utilities would be reduced. The PSC, however, would retain

many regulatory responsibilities for member-regulated utilities, including those for safety and customer service. The administrative costs of the PSC are appropriated in the budget for the Department of Labor and Economic Growth and are funded by assessments on regulated utilities.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.