

**SUBSTITUTE FOR
HOUSE BILL NO. 5383**

A bill to provide for the member-regulation of electric cooperatives; to prescribe the powers and duties of certain state agencies and officials; and to provide for certain penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "electric cooperative member-regulation act".

3 Sec. 2. As used in this act:

4 (a) "Board of directors" or "board" means the group of members
5 democratically elected by the members of a cooperative electric
6 utility to manage the business and affairs of the cooperative
7 electric utility.

8 (b) "Commission" means the Michigan public service commission.

9 (c) "Cooperative" or "cooperative electric utility" means an
10 electric utility organized as a cooperative corporation under
11 sections 98 to 109 of 1931 PA 327, MCL 450.98 to 450.109, serving

1 primarily members of the cooperative electric utility.

2 (d) "Electric utility" means a person, partnership,
3 corporation, association, or other legal entity whose transmission
4 or distribution of electricity the commission regulates under 1909
5 PA 106, MCL 460.551 to 460.559, or 1939 PA 3, MCL 460.1 to
6 460.10cc. Electric utility does not include a municipal utility,
7 affiliated transmission company, or independent transmission
8 company.

9 (e) "Member" means a person, partnership, corporation,
10 association, or other legal entity that purchases electricity from
11 a cooperative electric utility as a member of the cooperative.

12 (f) "Member-regulation" means the board of directors of the
13 cooperative is charged with establishing, maintaining, and applying
14 all rates, charges, accounting standards, billing practices, and
15 terms and conditions of service.

16 Sec. 3. Cooperative electric utilities, which are owned by the
17 members they serve, are regulated by their members acting through
18 democratically elected boards of directors. It is declared that
19 member-regulation by a cooperative in the areas of rates, charges,
20 accounting standards, billing practices, and terms and conditions
21 of service may be more efficient and cost-effective. The purpose of
22 this act is to allow the board of directors to elect member-
23 regulation for rates, charges, accounting standards, billing
24 practices, and terms and conditions of service.

25 Sec. 4. To become member-regulated under this act, the board
26 of directors shall comply with the following procedures:

27 (a) A director may propose to become member-regulated at any

1 properly convened meeting of the board of directors. The board may
2 not act on the proposal until 90 days has passed from the date the
3 proposal was made.

4 (b) The board may only act on the proposal to become member-
5 regulated at a meeting of the board for which written notice of the
6 time and place of the meeting has been provided to all members of
7 the cooperative. Notice to the members shall be written and
8 delivered not less than 21 or more than 60 days before the date of
9 the meeting and shall contain a copy of the proposal. Notice may be
10 sent by first-class mail or may be published in a periodical issued
11 by an association of cooperative electric utilities and mailed to
12 each member of record of the cooperative.

13 (c) The meeting of the board of directors at which the
14 proposal is to be acted upon shall be open to all members of the
15 cooperative. The board shall allow members of the cooperative
16 reasonable time to address the board prior to its acting upon the
17 proposal.

18 (d) A roll call vote of the board of directors with 2/3 of the
19 members voting in support of the proposal to become member-
20 regulated is necessary for adoption of the proposal.

21 (e) The minutes of the meeting at which the proposal is acted
22 upon, including the roll call vote, shall be provided to the
23 members of the cooperative within 60 days from the date of the
24 meeting in the same manner as the notice of the meeting at which
25 the proposal was acted upon.

26 (f) The cooperative shall notify the commission in writing of
27 the action of the board of directors on the proposal to become

1 member-regulated within 10 days after the date of the action, and
2 the cooperative shall become member-regulated as provided for in
3 this act 90 days following the date of the notice to the
4 commission.

5 (g) The board of directors may vote to rescind the proposal
6 once adopted by following the same procedures that were followed in
7 the adoption of the proposal.

8 Sec. 5. The members of a cooperative that has elected to
9 become member-regulated may overturn the proposal adopted by the
10 board of directors by complying with the following:

11 (a) An election to overturn the vote by the board of directors
12 to be member-regulated shall be called not less than 120 days after
13 receipt of a valid petition signed by 5% or 750 members of the
14 cooperative, whichever is less.

15 (b) The proposition to overturn the vote by the board of
16 directors to be member-regulated shall be presented to a meeting of
17 the members of the cooperative, the notice of which shall set forth
18 the proposition for member-regulation and the time and place of the
19 meeting. The cooperative shall deliver written notice to members
20 not less than 21 days or more than 60 days before the date of the
21 meeting. Notice shall be sent in the same manner as the notice for
22 the meeting at which the proposal was acted upon. The cooperative
23 shall pay the costs to notify the members of an election under this
24 subdivision.

25 (c) Voting on the proposition to overturn the vote by the
26 board of directors to be member-regulated shall be by mail ballot,
27 and internet, provided members attending the meeting provided for

1 in subdivision (b) may execute and deliver their ballot to the
2 cooperative during or at the conclusion of the meeting. Proxy
3 voting shall not be permitted.

4 (d) If the proposition to overturn the vote by the board of
5 directors to be member-regulated is approved by the affirmative
6 vote of not less than 2/3 of the members voting on the proposition,
7 and at least 10% of the total number of members cast a vote, the
8 cooperative shall notify the commission in writing of the results
9 within 10 days after the date of the election, and the cooperative
10 shall no longer be member-regulated as provided for in this act 90
11 days following the date of the notice to the commission.

12 (e) A cooperative's members may vote no more than once every
13 24 months to overturn the vote by the board of directors to be
14 member-regulated as provided in this act.

15 (f) If the proposition to overturn the vote by the board of
16 directors to be member-regulated is approved by the members in
17 accordance with this section, the board of directors may not act on
18 a proposal to member-regulate as provided for under section 4 until
19 36 months from the date notice of the election to overturn the vote
20 of the board of directors was provided to the commission under
21 subdivision (d).

22 Sec. 6. (1) A cooperative electing to be member-regulated
23 under this act shall, by board action, establish, maintain, and
24 apply all rates, charges, accounting standards, billing practices,
25 and terms and conditions of service in accordance with this act.

26 (2) Notwithstanding the provisions of this act, the commission
27 shall retain jurisdiction and control over all member-regulated

1 cooperatives for matters involving safety, interconnection, code of
2 conduct including, but not limited to, all relationships between a
3 member-regulated cooperative and an affiliated alternative electric
4 supplier, customer choice including, but not limited to, the
5 ability of customers to elect service from an alternative electric
6 supplier under 1939 PA 3, MCL 460.1 to 460.10cc, and the member-
7 regulated cooperative's rates, terms, and conditions of service for
8 customers electing service from an alternative electric supplier,
9 service area, distribution performance standards, and quality of
10 service, including interpretation of applicable commission rules
11 and resolution of complaints and disputes, except any penalties
12 pertaining to performance standards and quality of service shall be
13 established by the cooperative's members when voting on the
14 proposition for member-regulation or at an annual meeting of the
15 cooperative.

16 Sec. 7. (1) A cooperative electric utility that is member-
17 regulated under this act shall determine how rates and charges for
18 service provided are to be established, maintained, and applied.
19 The rates and charges shall reasonably reflect the costs of
20 providing service and shall be uniform within the classes of
21 service provided by the cooperative.

22 (2) The board of directors of a cooperative electric utility
23 that is member-regulated may adopt, amend, repeal, or add to the
24 cooperative's billing practices and service rules provided it has
25 given written notice to members at least 30 days prior to the
26 effective date of any action taken.

27 (3) Each cooperative which has elected to be member-regulated

1 shall maintain and make available to the public an electronic copy
2 of its rates, charges, accounting standards, billing practices and
3 service rules, and terms and conditions of service on a website and
4 shall maintain a paper copy at all offices of the cooperative for
5 review by the general public. In addition, the cooperative shall
6 provide a copy of the same to the commission as well as a copy of
7 the cooperative's most recent audited financial statement.

8 (4) If a cooperative is member-regulated under this act, the
9 board shall give at least 10 days' notice to all members of the
10 cooperative of the time and place of any meeting of the board at
11 which an increase in rates affecting at least 5% of the members or
12 substantive changes in billing practices and service rules or terms
13 and conditions of service are to be discussed and voted on. Any
14 such meeting shall be open to all members. Notice under this
15 subsection shall be sent by first-class mail to all members or may
16 be published in a periodical issued by an association of
17 cooperative electric utilities and mailed to each member of record
18 of the cooperative electric utility.

19 Sec. 8. (1) A cooperative electric utility that is member-
20 regulated shall publish notice of any rate change or any change in
21 billing practices and service rules or terms and conditions of
22 service at least 30 days prior to the effective date of the change.

23 (2) The notice under this section shall be sent by first-class
24 mail to all members or may be published in a periodical issued by
25 an association of cooperative electric utilities and mailed to each
26 member of record of the cooperative electric utility.

27 Sec. 9. (1) The commission shall retain jurisdiction over all

1 areas served and line extension disputes involving a cooperative
2 electric utility that is member-regulated under this act and a
3 regulated electric utility. This act does not limit the
4 commission's jurisdiction over areas served and line extension
5 disputes granted to the commission under any other law or statute.
6 A cooperative electric utility that is member-regulated under this
7 act shall operate in compliance with R 460.3411 of the Michigan
8 administrative code, regarding extension of electric service in
9 areas served by 2 or more utilities. The commission shall continue
10 to possess all jurisdiction and authority necessary to administer
11 and enforce the provisions of 1929 PA 69, MCL 460.501 to 460.506,
12 and R 460.3411 of the Michigan administrative code with respect to
13 member-regulated cooperative electric utilities.

14 (2) When a member-regulated cooperative is required to give
15 notice to the commission and any affected electric utility of its
16 intention to extend service to a prospective customer as required
17 under R 460.3411 of the Michigan administrative code, the notice
18 shall also include the charge to extend service, if any, and the
19 rate or rates for the service offered.

20 (3) If the electric utility, after being notified under R
21 460.3411 of the Michigan administrative code, believes that a
22 cooperative that is member-regulated under this act either proposes
23 to unlawfully extend service to a prospective customer or has
24 offered an unjustly preferential charge for extension of service or
25 unjust rate to a prospective customer and that prospective customer
26 could otherwise be served by the electric utility pursuant to the
27 commission's rules for extension of electric service, the affected

1 electric utility may file an objection with the commission. Any
2 objection allowed under this subsection shall be filed within 60
3 days from the date notice of the intent to extend service was
4 provided by the cooperative. If an objection is filed by the
5 utility notified under R 460.3411 of the Michigan administrative
6 code, the commission shall first determine whether the complaining
7 utility or the cooperative, or both, have the lawful right to
8 provide service to the prospective customer and then, if necessary,
9 determine whether the charges or rates offered by the cooperative
10 are just and reasonable based on the cooperative's cost of service.
11 That determination shall be made at a contested case proceeding
12 conducted pursuant to chapter 4 of the administrative procedures
13 act of 1969, 1969 PA 306, MCL 24.271 to 24.287. A cooperative's
14 charges or rates offered to a prospective customer shall be
15 considered just and reasonable upon a showing by the cooperative
16 that the charges to extend service to a prospective customer and
17 the rates offered are equivalent to the cooperative's charges to
18 extend service and rates charged to other similarly situated
19 customers served by the cooperative. If the cooperative does not
20 provide service to other similarly situated customers, the
21 cooperative shall demonstrate that its charges to extend service
22 and the rates offered to the prospective customer are just and
23 reasonable based on the cooperative's cost of providing service to
24 the prospective customer, consistent with industry practice. At the
25 choice of the customer, either the electric utility or the member-
26 regulated cooperative may provide service to the prospective
27 customer until the commission determines the appropriate service

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1 provider.

[(4) A municipally owned utility that has entered into a service area agreement with a cooperative in accordance with section 10y(6) of 1939 PA 3, MCL 460.10y, may file an action in the circuit court in the district where the cooperative's main office is located alleging that a rate or charge offered by the cooperative is unjust and unreasonable. An action filed under this subsection shall be filed within 60 days after the municipally owned utility becomes aware of the rate or charge. In determining whether a rate or charge is just and reasonable, the circuit court shall use the standards set forth in subsection (3) for determinations made by the commission. If the circuit court determines that the rate or charge offered to the prospective customer is unjust or unreasonable, the court shall order the cooperative to assess the appropriate rate or charge to the prospective customer. Notwithstanding any law to the contrary, if the circuit court issues an order under this subsection, any prospective customer directly affected by the order shall be permitted by the cooperative to switch service to the objecting municipally owned utility, if the affected customer has given the cooperative written notice of the customer's intent to switch within 60 days from the date of the court's order and the objecting municipally owned utility agrees to pay the cooperative the reasonable value, as determined by the circuit court, of its facilities that will continue to be used to serve the customer by the objecting municipally owned utility.

2 (5) If the commission finds that an electric utility or

3 cooperative providing temporary service to a customer under this

4 act is not a lawful service provider for that customer, the

5 commission shall order service to that customer transferred to the

6 lawful provider. That order shall require the provider acquiring

7 the customer to pay for the reasonable cost of the facilities, as

8 determined by the commission, constructed to serve the transferred

9 customer, which will be used by the acquiring provider to serve the

10 transferred customer.

11 [(6) If the commission finds that the cooperative is a lawful

12 service provider but the cooperative's charges to extend service,

13 if any, or the rates offered to the prospective customer are unjust

14 or unreasonable, the commission shall order the cooperative to

15 assess the appropriate charges to extend service and assess the

16 appropriate rates to the prospective customer. Notwithstanding

17 rules to the contrary, if the commission issues an order under this

18 subsection, any prospective customer directly affected by the

19 commission's order shall be permitted by the cooperative to switch

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20 service to the objecting electric utility, if the affected customer
21 has given the cooperative written notice of the customer's intent
22 to switch within 60 days from the date of the commission's order
23 and the objecting electric utility agrees to pay the cooperative
24 the reasonable value, as determined by the commission, of its
25 facilities that will continue to be used to serve the customer by
26 the objecting electric utility.