

HOUSE BILL No. 5383

October 30, 2007, Introduced by Reps. Brown, Accavitti, Clemente, Angerer, Mayes, Farrah, Palsrok, Nofs, Shaffer, Opsommer, Nitz, Walker, Emmons, Booher, Moolenaar, Huizenga, Meekhof, Hopgood, Melton, Hammon, Lahti and Lemmons and referred to the Committee on Energy and Technology.

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

1 electric utility organized as a cooperative corporation under
2 sections 98 to 109 of 1931 PA 327, MCL 450.98 to 450.109, serving
3 primarily members of the cooperative electric utility.

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

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

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

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

27 Sec. 4. To become member-regulated under this act, the board

1 of directors shall comply with the following procedures:

2 (a) A director may propose to become member-regulated at any
3 properly convened meeting of the board of directors. The board may
4 not act on the proposal until 90 days has passed from the date the
5 proposal was made.

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

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

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

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

1 (f) The cooperative shall notify the commission in writing of
2 the action of the board of directors on the proposal to become
3 member-regulated within 10 days after the date of the action, and
4 the cooperative shall become member-regulated as provided for in
5 this act 90 days following the date of the notice to the
6 commission.

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

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

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

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

27 (c) Voting on the proposition to overturn the vote by the

1 board of directors to be member-regulated shall be by mail ballot,
2 and internet, provided members attending the meeting provided for
3 in subdivision (b) may execute and deliver their ballot to the
4 cooperative during or at the conclusion of the meeting. Proxy
5 voting shall not be permitted.

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

14 (e) A cooperative's members may vote no more than once every
15 24 months to overturn the vote by the board of directors to be
16 member-regulated as provided in this act.

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

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

1 (2) Notwithstanding the provisions of this act, the commission
2 shall retain jurisdiction and control over all member-regulated
3 cooperatives for rules involving safety, interconnection, code of
4 conduct, customer choice, service area, distribution performance
5 standards, and quality of service, except any penalties pertaining
6 to performance standards and quality of service shall be
7 established by the cooperative's members when voting on the
8 proposition for member-regulation or at an annual meeting of the
9 cooperative.

10 Sec. 7. (1) A cooperative electric utility that is member-
11 regulated under this act shall determine how rates and charges for
12 service provided are to be established, maintained, and applied.
13 The rates and charges shall reasonably reflect the costs of
14 providing service and shall be uniform within the classes of
15 service provided by the cooperative.

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

21 (3) Each cooperative which has elected to be member-regulated
22 shall maintain and make available to the public an electronic copy
23 of its rates, charges, accounting standards, billing practices and
24 service rules, and terms and conditions of service on a website and
25 shall maintain a paper copy at all offices of the cooperative for
26 review by the general public. In addition, the cooperative shall
27 provide a copy of the same to the commission as well as a copy of

1 the cooperative's most recent audited financial statement.

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

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

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

21 Sec. 9. (1) The commission shall retain jurisdiction over all
22 areas served and line extension disputes involving a cooperative
23 electric utility that is member-regulated under this act and a
24 regulated electric utility. A cooperative electric utility that is
25 member-regulated under this act shall operate in compliance with R
26 460.3411 of the Michigan administrative code, regarding extension
27 of electric service in areas served by 2 or more utilities.

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

7 (3) If the electric utility, after being notified under R
8 460.3411 of the Michigan administrative code believes that a
9 cooperative that is member-regulated under this act has offered an
10 unjustly preferential charge for extension of service or unjust
11 rate to a prospective customer and that prospective customer could
12 otherwise be served by the electric utility pursuant to the
13 commission's rules for extension of electric service, the affected
14 electric utility may file an objection with the commission. Any
15 objection allowed under this subsection shall be filed within 60
16 days from the date notice of the intent to extend service was
17 provided by the cooperative. If an objection is filed by the
18 utility notified under R 460.3411 of the Michigan administrative
19 code, the commission shall determine if the charges or rates
20 offered are just and reasonable based on the cooperative's cost of
21 service. That determination shall be made at a contested case
22 proceeding conducted pursuant to chapter 4 of the administrative
23 procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. A
24 cooperative's charges or rates offered to a prospective customer
25 shall be considered just and reasonable upon a showing by the
26 cooperative that the charges to extend service to a prospective
27 customer and the rates offered are equivalent to the cooperative's

1 charges to extend service and rates charged to other similarly
2 situated customers served by the cooperative. If the cooperative
3 does not provide service to other similarly situated customers, the
4 cooperative shall demonstrate that its charges to extend service
5 and the rates offered to the prospective customer are just and
6 reasonable based on the cooperative's cost of providing service to
7 the prospective customer, consistent with industry practice. The
8 member-regulated cooperative may provide service to the prospective
9 customer until the commission determines the appropriate service
10 provider.

11 (4) If the commission finds that the cooperative's charges to
12 extend service, if any, and the rates offered to the prospective
13 customer are unjust and unreasonable, the commission shall order
14 the cooperative to assess the appropriate charges to extend service
15 and assess the appropriate rates to the prospective customer.
16 Notwithstanding rules to the contrary, if the commission issues an
17 order under this subsection, any prospective customer directly
18 affected by the commission's order shall be permitted by the
19 cooperative to switch service to the objecting electric utility, if
20 the affected customer has given the cooperative written notice of
21 the customer's intent to switch within 60 days from the date of the
22 commission's order and the objecting electric utility agrees to pay
23 the cooperative the reasonable value of its facilities that will
24 continue to be used to serve the customer by the objecting electric
25 utility.