

MICHIGAN ELECTRIC INFRASTRUCTURE ACT

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House Bill 4575 (reported from committee as H-3)

Sponsor: Rep. Triston Cole

Committee: Energy Policy

Complete to 11-30-15

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY:

The bill creates the Michigan Electric Infrastructure Act. The new act will create a 13-member Michigan Electric Infrastructure Board and charge it with soliciting recommendations for constructing transmission lines to increase the electrical connectivity between the Upper Peninsula and Lower Peninsula, as well as reduce congestion in the electrical system and reduce the cost of delivered energy in the state, particularly in the Upper Peninsula.

The bill establishes a process by which qualified developers may submit proposals to the Board. A qualified developer who receives a Board recommendation and submits an expression of interest will be issued a notice to construct by the Board; the qualified developer may then submit documents for reviews and approval to the Midcontinent Independent System Operator (MISO). After obtaining required reviews and approvals from MISO, the qualified developer must apply to the Michigan Public Service Commission (MPSC) for an expedited siting certificate, which will enable construction of the new transmission line or lines, though the bill would not prohibit an entity from constructing a transmission line without obtaining an expedited siting certificate. "Transmission line" is defined to mean all structures, equipment, and real property necessary to transfer electricity at system bulk supply voltage of 100 kilovolts or more. The Board will be dissolved 90 days after the MPSC issues an expedited siting certificate.

FISCAL IMPACT:

House Bill 4575 (H-3) would have a fiscal impact, although indeterminate, on the Department of Licensing and Regulatory Affairs (LARA) to the extent that staff from the Michigan Agency for Energy (MAE) and Public Service Commission (PSC) would serve on and provide administrative and technical support to the Michigan Electric Infrastructure Board created by HB 4575 (H-3). Costs associated with these responsibilities would presumably be supported with existing resources.

While the Electric Transmission Line Certification Act, Public Act 30 of 1995, authorizes the PSC to assess application fees on entities applying for certification to cover the PSC's administrative costs to process applications, and authorizes the PSC to require entities applying for certifications to pay for consultants assisting the PSC in evaluating applications, HB 4575 (H-3) does not include similar authorization. Accordingly, the PSC's costs to process applications and conduct proceedings under HB 4575 (H-3) would be supported by existing fund sources.

The primary source of revenue collected by the PSC is generated by annual assessments levied on public utilities regulated by the PSC under Section 2 of Public Act 299 of 1972, which stipulates

that the PSC "shall ascertain the amount of the appropriation attributable to the regulation of public utilities...[which] shall be assessed against the public utilities" according to a statutory formula and that revenue generated by the assessments "...shall be...utilized solely to finance the cost of regulating public utilities." Consequently, revenue generated by the assessments levied on public utilities may not be available for expenditures related to HB 4575 (H-3), dependent on whether the Board's duties are interpreted as an aspect of public utility regulation.

DETAILED SUMMARY:

The bill, which creates the Michigan Electric Infrastructure Act, would take effect 90 days after enactment. A detailed description of the bill follows.

Board

The bill would create the 13-member Michigan Electric Infrastructure Board within the Department of Licensing and Regulatory Affairs (LARA). The Michigan Agency for Energy and the MPSC would serve as staff for the Board. The Board would exercise its powers, duties, and decision-making authority by a majority of the members and independently of the MPSC or any agency. Members would be appointed by the governor within 30 days of the bill's effective date as follows:

- The executive director of the Michigan Agency for Energy (would serve as chairperson).
- One representative of the Department of Environmental Quality (DEQ) and one of the Michigan Economic Development Corporation (MEDC).
- Three MPSC commissioners.
- Two residents of the Upper Peninsula and two residents of the Lower Peninsula.
- One representing municipalities (defined to mean a city, township, or village).
- One representing the attorney general.
- One representing the Utility Consumer Participation Board created in Section 6/ of Public Act 3 of 1939 (the MPSC enabling act).

The Board would be required to consider the following goals in exercising its powers, duties, and decision-making authority under the bill:

- Providing adequate resources to Michigan's electric consumers through the construction of transmission infrastructure that will reduce congestion and energy prices.
- Providing for additional transmission capacity in the state.
- Providing reliable and efficient operation of the integrated electrical transmission system in the state.

Board business must be conducted at a public meeting held in compliance with the Open Meetings Act. Lastly, the Board will be dissolved 90 days after the MPSC issues an expedited siting certificate under the bill.

Solicitation of recommendations

Within 90 days after the bill's effective date, the Board must solicit from any interested entity recommendations for transmission lines constructed wholly within Michigan that, in part, are also constructed over or under the Great Lakes that would do both of the following:

- Provide additional transmission capacity; reduce congestion, constraints, and losses on the state's electrical system; reduce the overall cost of delivered energy in the state; facilitate the deliverability of generation resources; or facilitate generation resource diversification.
- Increase the electrical connectivity between the Upper Peninsula and Lower Peninsula beyond the capability provided by the two circuits connecting the peninsulas existing on the bill's effective date by adding additional circuitry.

Hearings on recommendations and report to Legislature

Within 30 days of receiving recommendations, the Board must schedule and hold two public meetings in each of the peninsulas in order to take written and oral comments on the recommendations. The Board is required to retain a copy of all written comments as well as a transcription of all oral comments and must consider those comments in drafting any report issued by the Board.

Within 90 days after the last of the four public meetings described above, the Board must submit a report to the Legislature and governor summarizing the proposed recommendations and comments received. The report must include a statement, with associated rationale, indicating whether the board will proceed with a request for proposal (RFP) process.

Request for proposal process

If the Board determines to proceed with a RFP process, the Board must request qualified developers to submit proposals identifying any proposed transmission lines meeting the criteria described above under *Solicitations of recommendations*. A "qualified developer" means an entity that demonstrates that it:

- Has owned and operated a transmission line in the state within the MISO footprint for at least five years;
- Has been registered with the North American Electric Reliability Corporation (NERC), an organization of U.S. electrical grid operators, as a transmission owner, transmission operator, and transmission planner for the five years before a proposal is submitted; **and**.
- Has complied with NERC registration requirements and regional entity reliability standards for the five years before a proposal is submitted.

Any proposal must include:

- A preliminary cost estimate for the identified transmission line, including estimated subtotals for lines, stations, labor, and materials.
- An analysis of the estimated cost impact to retail ratepayers if the cost of the line were allocated to all Michigan retail customers located in the MISO footprint.
- Any benefits associated with the transmission line.
- A statement from the entity submitting the proposal that indicates why that entity is a qualified developer.
- Information allowing the Board to consider certain factors regarding the qualified developer's qualifications (described below).
- A summary document listing the total cost estimate of the transmission line, the terminus points of the transmission line, the voltage of the transmission line, and the estimated rate impacts to retail ratepayers. (The board would be required to make these summary documents publicly available.)

After receiving a proposal, the Board must determine whether a qualified developer should proceed with the construction of a proposed transmission line. In making the determination, the Board must consider the factors described above as well as whether the developer has demonstrated any of the following:

- Managerial expertise and capability.
- Technical and engineering qualifications and experience in the design, construction, operation, and maintenance of transmission lines.
- Financial strength and capability.
- Transmission planning expertise and capability.
- Experience in addressing public concerns regarding transmission lines.
- Construction expertise and capability.
- Operations and maintenance capability.
- Exemplary corporate citizenship demonstrated by community outreach; communication and information-sharing during all phases of transmission line development, construction, and operation; civic contributions to regional, state, and local communities; and a dedicated customer service department.

Additional information as needed could be requested by the Board.

Within 120 days after receiving a proposal, the Board must issue a letter to the qualified developer either rejecting the developer's recommendations in full, requesting more information (but must reject or recommend construction of the transmission line within 45 days of receiving the information), or recommending the construction of the proposed transmission line. The letter must include an explanation for the Board's action. Construction of a proposed transmission line could only be recommended if the Board determines the cost of the potential transmission line is appropriate given the associated qualitative and quantitative benefits.

A qualified developer receiving a letter recommending construction of the proposed transmission line must submit an expression of interest in constructing the transmission line within 30 days of the issuance date of the letter. The board would have to issue a "notice to construct" within seven days after the developer submitted an expression of interest. "Notice to construct" means a notice issued by the Board granting an entity the sole right to construct a transmission line until the notice expires. If the developer failed to submit the expression of interest within the specified time period, the board could issue a new request for submission of proposals.

Within seven days after a qualified developer submits an expression of interest, the Board must make all the proposals from qualified bidders public. However, certain information in the proposals would be excluded. Excluded information would be information containing trade secrets; proprietary, confidential, financial, or competitive commercial information; information about the security of the transmission system or transmission system operations; information containing energy market impacts; or information that qualifies as critical energy infrastructure information under Federal Energy Regulatory Commission (FERC) regulations (18 CFR 388.113).

The bill grants the Board authority to take any actions necessary and appropriate to support a transmission line for which a notice to construct has been issued; this includes coordination with MISO, supporting any out-of-cycle review request, execution of any contracts or agreements, and

preparation, submission, and support for filings related to that project before FERC or any other regulatory body.

Documents submitted to the board regarding proposals would not be subject to disclosure under the Freedom of Information Act to the extent a document contains trade secrets, proprietary and confidential commercial or financial information, or information qualifying as critical energy infrastructure information under FERC regulations.

Expedited siting certificate process

Within 60 days of receiving a notice to construct, a qualified developer must submit any necessary documents to MISO or other applicable regional transmission organization (RTO) for any required review and approval.

A qualified developer is also required to apply to the MPSC for an expedited siting certificate within 120 days after obtaining any required review or approval from MISO or an RTO. Failure to do so would result in revocation of the notice to construct and allow the Board to solicit expressions of interest for the transmission line project under the RFP process. The 120-day time limit could be waived by the MPSC if it determined the qualified developer had good cause for failing to apply within the time limit. "Good cause" would mean an event or circumstance, whether or not foreseeable, not caused by a qualified developer that prevents the developer from complying with an obligation under the bill. Good cause would not include a strike or other labor dispute affecting only the developer, an increase in prices or other change in general economic conditions, or a change in law or regulations.

An application for an expedited siting certificate must include all of the following:

- Evidence of receiving a notice to construct the transmission line.
- Planned date to begin construction.
- Detailed description, route, and expected configuration and use of the line.
- Information indicating the proposed line will comply with all applicable state and federal environmental standards, laws, and rules.
- Description and evaluation of one or more alternate transmission line routes and statement why that route was selected.
- Description of the location and manner in which a zoning ordinance prohibits or regulates the location or construction of the proposed route, if applicable.
- Other information reasonably required by MPSC rules.

The applicant for an expedited siting certificate must give public notice of an opportunity to participate in a contested case hearing regarding the expedited siting certificate application.

The bill requires the MPSC to conduct a proceeding on an application for an expedited siting certificate as a contested case under the Administrative Procedures Act. Each affected municipality (city, township, or village) and each affected landowner must be granted full intervenor status as of right in MPSC proceedings concerning the proposed transmission line.

The MPSC must approve or deny an expedited siting certificate within 180 days of receiving the application. The MPSC is required to grant the expedited siting certificate if the applicant received

a notice to construct; the proposed transmission line does not represent an unreasonable threat to the public convenience, health, and safety; and the proposed or alternate route to be authorized by the expedited siting certificate is feasible and reasonable.

Precedence of expedited siting certificate/Eminent domain

The bill provides that an expedited siting certificate granted for a transmission line takes precedence over a conflicting local ordinance, law, rule, regulation, policy, or practice that prohibits or regulates the location or construction of the transmission line. A zoning ordinance or limitation imposed after application for an expedited siting certificate would not limit or impair the transmission line's construction, operation, or maintenance.

Further, the bill does not confer the power of eminent domain. However, in an eminent domain or other related proceeding arising out of or related to a transmission line for which an expedited siting certificate had been issued under the bill, the expedited siting certificate would be conclusive and binding as to the public convenience and necessity for that transmission line and its compatibility with the public health and safety or any zoning or land use requirement in effect when the application was filed.

Costs of transmission line constructed under the Michigan Electric Infrastructure Act

The costs of the transmission line for which a notice to construct had been issued would be allocated to all retail electric customers in the MISO footprint within Michigan. The revenue requirement for the transmission line would be calculated pursuant to the open access transmission, energy and operating reserve markets tariff administered by MISO.

The board would be required to cooperate with the recipient of the notice to construct, the MPSC, and MISO in making any filings necessary to implement the cost allocation established in the bill.

Miscellaneous provisions

- ❖ Except for a transmission line for which another entity holds an unexpired, valid notice to construct, the bill would not prohibit an entity from constructing a transmission line without obtaining an expedited siting certificate.
- ❖ An MPSC order relating to any matter provided for under the bill would be subject to review as provided in Section 26 of Public Act 300 of 1909, which regulates railroads.
- ❖ In administering the Michigan Electric Infrastructure Act, the MPSC would have only those powers and duties granted to it under the act.
- ❖ A one-time payment, as detailed in the bill, would be required to be made to an electric utility, affiliated transmission company, or independent transmission company owning an existing utility corridor in which a qualified developer locates a transmission line constructed under the bill, if the qualified developer does not own that utility corridor.
- ❖ The MPSC must issue an annual report, due on or before the first Monday of March of each year, to the governor and Legislature with a summary of the impact of the new act

and a list of any transmission lines constructed or approved under the bill during the previous year.

BACKGROUND AND BRIEF DISCUSSION OF THE ISSUES:

The bill establishes a process by which a Board, whose members are appointed by the governor, could initially vet applicants to build one or more electric transmission lines connecting the Upper and Lower Peninsulas. Applicants receiving the Board's approval, via a notice to construct, could then apply to MISO and the MPSC for final approval to construct the transmission line or lines. Costs to construct the transmission line or lines would be borne by all ratepayers within the MISO footprint in the state, not just the ones benefitting directly by the increased electrical connectivity.

Comments in Support

The committee-passed substitute incorporates amendments to address some concerns raised during the committee process, such as protecting proprietary information included in the applications from public disclosure yet providing appropriate transparency of Board activities. Also, including the executive director of the Michigan Agency for Energy, three MPSC commissioners, and an individual representing the Utility Consumer Participation Board on the Michigan Electric Infrastructure Board raises the level of expertise of the Board—very important considering the complexity involved in the planning of new transmission lines. In addition, the bill was amended to focus on building capacity as well as transmission. Further, the definition of "qualified developer" was amended to broaden the pool of entities eligible to submit a proposal for construction of a new transmission line.

According to supporters of the bill, a new high-voltage transmission line or lines that would link the Upper Peninsula with the Lower Peninsula is crucial for a number of reasons. Though currently linked by two transmission lines, the Upper and Lower Peninsulas essentially operate as separate electric systems. Electric power generated in one Peninsula or geographic area cannot easily flow to the other. The result is that the Upper Peninsula experiences problems with reliability (meaning more frequent power outages or insufficient capacity to support population growth and business investment). Some say renewable energy development in the Upper Peninsula is also thwarted by the current constraints of the transmission system. Constructing a new transmission line could increase both reliability and capacity, and could also reduce reliance on out-of-state electric generation and transmission companies.

Reportedly, a new electric connection between the Peninsulas is projected to be quite costly—perhaps in the millions and even up to a billion dollars. Yet, without a defined project that can more accurately estimate costs, it is hard to know for sure what the costs will be. However, even if the costs of connectivity do rise to the level of around a billion dollars, because the costs would be borne by all ratepayers in the MISO footprint, residential and commercial alike, the average residential customer would likely pay less than \$1 a month. Even if the ratepayer doesn't benefit directly from the increased electric reliability, all residents of the state will see benefits from the economic growth and population growth that such reliability is likely to spur.

Opposition

Though the H-3 version is an improvement over the bill as introduced, critics still have some concerns. For instance, the bill in essence creates a one-time process for a specific purpose—a new transmission line linking the two Peninsulas—that is outside the current MISO and MPSC regulatory process. Reportedly, the primary reason a new transmission line hasn't already been approved by these two agencies is because no cost/benefit analysis of a specific proposal has been shown to be sustainable. In other words, say critics, it is just too expensive in relation to the benefits derived.

Though the new definition of "qualified developer" includes more players, it is still very narrowly written and will exclude many potential bidders. And though the expertise level of the Board has been increased, it was mainly done by including the three MPSC commissioners—the very ones who would be reviewing proposals submitted under the current regulatory scheme. Protecting information from public disclosure under FOIA relating to critical energy infrastructure is important to prevent terrorist attacks on crucial infrastructure, but the bill could still allow some important information to be accessible by the public, such as the costs of a project to be hidden under the bill's disclosure exceptions.

In addition, one of the factors that the Board is to consider in accepting a proposal is whether a qualified developer demonstrated exemplary corporate citizenship, which in turn is demonstrated by, among other things, civic contributions to regional, state, and local communities. It is hoped that the level of financial contribution to charities and civic groups would not carry more weight than factors such as how the entity complies with MIOSHA regulations, complies with environmental regulations, or pays taxes, all of which may be a more objective standard of an applicant's worthiness as a good neighbor. Lastly, Michigan is not contained wholly within the MISO footprint as some areas of the state are served by a different regional transmission organization. Thus, though the costs of a transmission line constructed under the bill would be borne by all ratepayers in the MISO footprint, the costs will not be borne by all Michigan residents.

POSITIONS:

The following testified or submitted testimony in *support of*, or indicated *support for*, various versions of the bill:

DTE Energy
Consumers Energy
Michigan Chapter, National Electrical Contractors Association
Michigan Electric Cooperative Association
ITC Michigan
St. Marys Cement
Wolverine Power Cooperative
Verso Corporation
City of Marquette
International Brotherhood of Electrical Workers (IBEW) Local 876
M.J. Electric
National Electric Contractors Association

The following testified or submitted testimony in *opposition to*, or indicated *opposition to*, various versions of the bill:

Michigan Electric and Gas Association
American Transmission Company
ABATE (Association of Businesses Advocating Tariff Equity)
Indiana Michigan Power
LS Power Development
Michigan Municipal Electric Association

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Paul B.A. Holland

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