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SFA



BILL ANALYSIS

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Senate Bill 937 (as enrolled)
Senate Bills 940 and 941 (as enrolled)
Senate Bill 1253 (as enrolled)
Sponsor: Senator Mat J. Dunaskiss (Senate Bills 937 & 1253)
Senator William Van Regenmorter (Senate Bill 940)
Senator Philip E. Hoffman (Senate Bill 941)
Senate Committee: Technology and Energy
House Committee: Energy and Technology

PUBLIC ACT 141 of 2000
PUBLIC ACTS 155 & 156 of 2000
PUBLIC ACT 142 of 2000

Date Completed: 10-19-00

CONTENT

Senate Bill 937 enacted the “Customer Choice and Electricity Reliability Act” within the Public Service Commission (PSC) enabling Act to do the following:

- Require the PSC, by January 1, 2002, to issue orders that allow customers of an electric utility or provider to choose an alternative electric supplier; and require the orders to provide for full recovery of a utility’s net stranded costs and implementation costs.
- Require a 5% reduction in the residential rates that were in effect on May 1, 2000, for an electric utility with 1 million or more retail customers; freeze those rates and the utility’s other rates that were in effect on May 1 until 2004; and prohibit the utility’s rates from increasing until December 31, 2013, or until the utility meets the bill’s market power test (which limits the utility’s commercial control of the generating capacity available to serve the relevant market).
- Provide that a financing order authorizing a utility to issue securitization bonds (pursuant to Senate Bill 1253) must allow the issuance of an amount sufficient to fund the 5% rate reduction.
- Require electric utilities to unbundle their commercial and industrial rate schedules and separately identify charges for discrete services.
- Require electric utilities to ensure that merchant plants are connected to the utilities’ transmission and distribution systems.
- Require investor-owned electric utilities to join a multistate transmission system organization or divest their interest in transmission facilities.
- Require electric utilities serving more than 100,000 retail customers to file a joint plan to expand available transmission capability by at least 2,000 megawatts.
- Require the PSC to license alternative electric suppliers.
- Require the governing body of a municipally owned utility to decide whether it will allow its retail customers to choose an alternative supplier; and impose certain conditions on a municipally owned utility that elects to provide generation service to customers receiving transmission or distribution from an electric utility.
- Provide for the hiring of employees upon the transfer of an electric utility’s divisions or units.
- Require the disclosure to customers of information about alternative suppliers and environmental characteristics of electricity purchased.
- Allow the use of aggregation for the purchase of electricity from an alternative electric supplier.
- Require the PSC to establish a code of conduct applicable to electric utilities and alternative suppliers.
- Prohibit electric utilities from shutting off service to eligible customers under certain circumstances.

- **Require the PSC to issue orders to ensure that a customer is not switched to another supplier or billed for any services without the customer's consent (a practice commonly called "slamming").**

Senate Bills 940 and 941 amended separate laws to limit the area in which municipal corporations and home rule cities may sell electric generation service at retail, unless a municipal corporation or home rule city is in compliance with Senate Bill 937.

Senate Bill 1253 amended the PSC enabling Act to require the PSC, if certain criteria are met, to issue a financing order that authorizes an electric utility to issue securitization bonds in order to recover qualified costs (including regulatory assets plus costs the utility will be unlikely to collect in a competitive market). The order also must approve the creation of securitization charges (nonbypassable amounts collected for electric services) and corresponding utility rate reductions.

Senate Bills 940, 941, and 1253 were tie-barred to Senate Bill 937, which was tie-barred to Senate Bill 1253. Senate Bills 937 and 1253 took effect on June 5, 2000; Senate Bills 940 and 941 took effect on June 14, 2000. A more detailed description of the bills follows.

Senate Bill 937

Customer Choice

The bill requires the PSC, by January 1, 2002, to issue orders establishing the rates, terms, and conditions of service that allow all retail customers of an electric utility or provider to choose an alternative electric supplier.

The bill states that the orders issued by the PSC before the bill's effective date that allow customers of an electric utility to choose an alternative electric supplier, including orders that determine and authorize recovery of net stranded costs and implementation costs and confirm any voluntary commitments of electric utilities, are in compliance with the Customer Choice and Electricity Reliability Act and enforceable by the Commission.

If an electric utility has not had voluntary commitments to provide customer choice previously approved by PSC orders, the utility must file a restructuring plan to allow customers to choose an alternative electric supplier by the date ordered by the Commission. The plan must propose a methodology to determine the utility's net stranded costs and implementation costs.

The bill defines "alternative electric supplier" as a person selling electric generation service to retail customers in Michigan; the term does not include a person who physically delivers electricity directly to retail customers. "Electric utility" means that term as defined in the Electric Transmission Line Certification Act, i.e., a person, partnership, corporation, association, or other legal entity whose transmission or distribution of electricity is regulated by the PSC pursuant to Public Act 106 of 1909 (the electric transmission law) or Public Act 3 of 1939 (the PSC enabling Act); the term does not include a municipal utility.

Stranded Costs/True-Up Adjustment

The PSC orders allowing customer choice must provide for full recovery of a utility's net stranded costs and implementation costs as determined by the PSC. The Commission must consider the reasonableness and appropriateness of various methods to determine net stranded costs, including all of the following:

- Evaluating the relationship of market value to the net book value of generation assets and purchased power contracts.
- Evaluating net stranded costs based on the market price of power in relation to prices assumed by the PSC in prior orders.
- Any other method the PSC considers appropriate.

After a contested case proceeding, the PSC annually must issue an order approving for each electric utility a true-up adjustment to reconcile any overcollections or undercollections of the preceding 12 months to ensure the recovery of all amounts of net stranded costs. The rates for customers remaining with an incumbent electric utility will not be affected by this true-up process. The PSC must review the electric utility's stranded cost recovery charges and securitization charges implemented for the preceding 12 months, and adjust the stranded cost recovery charge, by way of supplemental surcharges or credits, to allow the netting of stranded costs.

The true-up adjustment may not result in a modification to the securitization charge. The PSC may not adjust or change in any manner securitization charges authorized by the Commission in a financing order as a result of its review and any action taken to reconcile collections.

After the time period described below (after which rates may be increased), the rates for retail customers that remain with or leave and return to the incumbent electric utility must be determined in the same manner as the rates were determined before the bill's effective date.

Unbundling

Within one year after bill's effective date, each electric utility must apply to the PSC to unbundle its existing commercial and industrial rate schedules and separately identify and charge for its discrete services. At least one year after the bill's effective date, the PSC may order the electric utility to file an application to unbundle existing residential rate schedules. The PSC may allow the unbundled rates to be expressed on residential billings in terms of percentages in order to simplify residential billing. The PSC must allow electric utilities to recover all just and reasonable costs incurred by them to implement and administer these provisions.

Rate Reduction/Securitization Savings

Rate Freeze. The bill requires the PSC to establish the residential rates for each electric utility with 1 million or more retail customers in this State as of May 1, 2000, that will result in a 5% reduction from the rates that were authorized or in effect on that date. The reduced rates were to take effect on the bill's effective date and must remain in effect until December 31, 2003. All other electric retail rates of an electric utility with 1 million or more retail customers authorized or in effect as of May 1, 2000, must remain in effect until December 31, 2003. These provisions apply unless the rates are otherwise reduced by the PSC due to savings resulting from securitization. (That is, rates may not be increased or decreased before December 31, 2003, except that they may be decreased due to securitization savings.)

Rate Cap/Increase. On or after December 31, 2003, rates for an electric utility with 1 million or more customers in this State as of May 1, 2000, may not be increased until December 31, 2013, or until the PSC determines, after notice and hearing, that the utility meets the bill's market power test and has completed the transmission expansion required under the bill, whichever is earlier. The rates for commercial or manufacturing customers of an electric utility with 1 million or more retail customers with annual peak demands of less than 15 kilowatts may not be increased before January 1, 2005. There may be no cost shifting from customers with capped rates to customers without capped rates as a result of these requirements. In no event may residential rates be increased before January 1, 2006, over the rates established above (pursuant to the 5% reduction).

Until the end of the period described above (the end of the rate cap), the PSC may not authorize any fees or charges that will cause the residential rate reduction to be less than 5%.

Securitization Savings. If the PSC authorizes an electric utility to use securitization financing, any savings resulting from securitization must be used to

reduce retail electric rates from those authorized or in effect on May 1, 2000. A rate reduction under this provision may not be less than the 5% required above. The financing order may provide that a utility is to issue securitization bonds only in an amount equal to or less than that requested by the utility, but the PSC may not preclude the issuance of an amount sufficient to fund the 5% residential rate reduction.

Except for savings assigned to the Low-Income and Energy Efficiency Fund, securitization savings greater than those used to achieve the 5% residential rate reduction must be allocated by the PSC to further rate reductions or to reduce the level of any charges authorized by the Commission to recover an electric utility's stranded costs. The PSC must allocate approved securitization, transition, stranded, and other related charges and credits in a manner that does not result in a reallocation of cost responsibility among the different customer classes.

If securitization savings exceed the amount needed to achieve a 5% rate reduction for all residential customers, then, for six years, 100% of the excess savings, up to 2% of the electric utility's commercial and industrial revenues, must be allocated to the Low-Income and Energy Efficiency Fund administered by the PSC. The PSC must establish standards for the use of the Fund to provide shut-off and other protection for low-income customers and to promote energy efficiency by all customer classes. Every two years, the PSC must issue to the Legislature and the Governor a report regarding the effectiveness of the Fund.

Beginning January 1, 2004, annual return of and on capital expenditures in excess of depreciation levels incurred during and before the time described above (when rates will be capped), and expenses incurred by electric utilities during the same period as a result of changes in taxes, laws, or other State or Federal government actions, must be accrued and deferred for recovery. After notice and hearing, the PSC must determine the amount of reasonable and prudent costs, if any, to be recovered. The recovery period, which may not exceed five years, may not begin until after the expiration of the period described above.

Other Electric Utilities. If an electric utility serving fewer than 1 million retail customers in the State as of May 1, 2000, issues securitization bonds, it will have the same rights, duties, and obligations under these provisions as an electric utility serving 1 million or more retail customers.

Market Power Test

If an electric utility has commercial control over more than 30% of the generating capacity available to serve a relevant market (the Lower Peninsula or the Upper Peninsula), after subtracting the average

demand for each retail customer under contract that exceeds 15% of the utility's retail load in that market, the utility must do one or more of the following with respect to any generation in excess of that required to serve its firm retail sales load, including a reasonable reserve margin:

- Divest a portion of its generating capacity.
- Sell generating capacity under a contract with a nonretail purchaser for a term of at least five years.
- Transfer generating capacity to an independent brokering trustee for a term of at least five years in blocks of at least 500 megawatts, 24 hours per day.

The PSC must determine the total generating capacity available to serve the relevant market, which must equal the sum of the firm available transmission capability into that market and the aggregate generating capacity located within it, less one or more of the following:

- The generating capacity owned by a municipal utility necessary to serve the retail native load, if a municipal utility does not permit its retail customers to select alternative electric suppliers.
- Generating capacity dedicated to serving on-site load.
- The generating capacity of any multistate electric supplier jurisdictionally assigned to customers of other states.

Within 30 days after the PSC makes this determination, an electric utility that exceeds the 30% limit must apply to the Commission for approval of a market power mitigation plan. The PSC must approve the plan if it is consistent with the Act or require modifications to the plan to make it consistent. The utility will retain the right to determine what specific actions to take to achieve compliance with these requirements.

Within one year after the bill's effective date, the PSC must issue to the Governor and the Legislature a report that analyzes all aspects of market power in the Upper Peninsula. The report must include, at least, concentration of generating capacity, control of the transmission system, restrictions on the delivery of power, ability of new suppliers to enter the market, and identification of any market power problems under the existing market power test. Before issuing the report, the PSC must receive written comments and hold hearings to solicit public input.

Standby Service

The bill provides that an electric utility is obligated, with PSC oversight, to provide standby generation service for open access load (customers of alternative suppliers) on a best efforts basis until December 31, 2001, or the date on which the rate

cap ends, whichever is later. The pricing for standby generation service is equal to the retail market price of comparable standby service. An electric utility is not required to interrupt firm off-system sales or firm service customers to provide standby generation service. Until the date the rate cap ends, standby generation service must continue to be provided to nonopen access customers under regulated tariffs.

The PSC must determine the methodology for identifying the retail market price based upon market indices commonly relied upon in the electric generation industry, adjusted as appropriate to reflect retail market prices in the relevant market.

Merchant Plants

The bill requires an electric utility to take all necessary steps to ensure that merchant plants are connected to the transmission and distribution systems within its operational control. ("Merchant plant" means electric generating equipment and associated facilities with a capacity over 100 kilowatts located in this State that are not owned and operated by an electric utility.)

If the PSC finds, after notice and hearing, that an electric utility has prevented or unduly delayed the ability of a merchant plant to connect to the utility's facilities, the PSC must order remedies designed to make the plant whole, including reasonable attorney fees. The PSC also may order fines of up to \$50,000 per day that the electric utility is in violation of these requirements.

A merchant plant may sell its capacity to alternative electric suppliers, electric utilities, municipal electric utilities, retail customers, or other persons. A merchant plant making sales to retail customers is an alternative electric supplier and must obtain a license under the Act.

The PSC must establish standards for the interconnection of merchant plants with the transmission and distribution systems of electric utilities. The standards may not require an electric utility to interconnect with generating facilities with a capacity of less than 100 kilowatts for parallel operations. The standards must be consistent with generally accepted industry practices and guidelines, and be established to ensure the reliability of electric service and the safety of customers, utility employees, and the general public. A merchant plant will be responsible for all costs associated with the interconnection unless the PSC has otherwise allocated the costs and provided for cost recovery.

These provisions do not apply to interconnections or transactions that are subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC).

Self-Service Power/Affiliate Wheeling

The bill specifies that the Customer Choice and Electricity Reliability Act does not prohibit or limit the right of a person to obtain self-service power or to engage in affiliate wheeling, and does not impose a transition, implementation, or exit fee, or any other similar charge on self-service power or a person engaged in affiliate wheeling. A person using self-service power or engaging in affiliate wheeling is not an electric supplier, electric utility, or a person conducting an electric utility business.

The bill defines "self-service power" as any of the following:

- Electricity generated and consumed at an industrial site or contiguous industrial site or single commercial establishment or single residence without the use of an electric utility's transmission and distribution system.
- Electricity generated primarily by use of by-product fuels and consumed as part of a contiguous facility, with the use of an electric utility's transmission and distribution system, if the point of receipt within the facility is not more than three miles from the point of generation.
- A site or facility with load existing on the bill's effective date that is divided by an inland body of water or by a public highway, road, or street, but that otherwise meets the contiguity requirement of this definition regardless of whether self-service power was being generated on the bill's effective date.
- A commercial or industrial facility or single residence that meets one of the first two criteria whether or not the generation facility is owned by an entity different from the owner of the commercial or industrial site or single residence.

The bill defines "affiliate wheeling" as a person's use of direct access service where an electric utility delivers electricity generated at a person's industrial site to that person or that person's affiliate at a location, or generally aggregated locations, within this State that is or was either of the following:

- Capable of being supplied by a person's cogeneration capacity within this State that has had since January 1, 1996, a rated capacity of 15 megawatts or less, was placed in service before December 31, 1975, and has been in continuous service since that date.
- For at least 90 days between January 1, 1996, and October 1, 1999, supplied by self-service power, only to the extent of the capacity reserved or load served by self-service power during that period.

"Affiliate" means a person or entity that directly, or indirectly through one or more intermediates,

controls, is controlled by, or is under common control with another specified entity. As used in this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity or the ownership of at least 7% of an entity either directly or indirectly.

Joint Transmission Plan

The bill requires electric utilities serving more than 100,000 retail customers in the State to file with the PSC a joint plan detailing measures to expand permanently, within two years of the bill's effective date, the available transmission capability by at least 2,000 megawatts over available capability in place on January 1, 2000. The joint plan must detail all actions including additional facilities required, the proposed schedule, the cost of the actions, and the proposed rate-making treatment for the costs; as well as identify all actions and facilities required of other transmission owners, including out-of-State entities, to accommodate actions described in plan.

The PSC may order modifications to the plan to make it consistent with the Act. If the electric utilities are unable to agree upon a joint plan, the PSC must conduct a hearing to establish one. The PSC must authorize recovery from benefitting customers of all reasonable and prudent costs incurred by transmission owners for authorized actions taken and facilities installed to meet these requirements that are not recovered through FERC transmission rates.

If an electric utility or an affiliate that is the owner of the transmission assets is denied recovery of the reasonable and prudent costs spent to implement the joint plan, the utility or affiliate will have no further obligation to implement the plan. If an electric utility or its affiliate is subsequently granted cost recovery, the obligation to implement the original joint plan applies. If recovery of implementation costs is denied, an electric utility or its affiliate must develop a new joint plan.

Transmission Organization or Divestiture

The bill requires each investor-owned electric utility in this State, at its option, either to 1) join a FERC-approved multistate regional transmission system organization or another FERC-approved multistate independent transmission organization, or 2) divest its interest in its transmission facilities to an independent transmission owner.

An investor-owned electric utility that is party to a legitimate filing pending before FERC on December 31, 2001, that is seeking FERC approval of a proposed multistate regional transmission system organization must be considered to be in compliance

with this requirement. The following provision applies if FERC rejects a pending filing or if the utility withdraws from the filing or from a regional transmission system organization.

If a utility has not complied by December 31, 2001, the PSC must direct it to join a FERC-approved multistate regional transmission system organization selected by the PSC.

Licensure of Alternative Suppliers

The bill prohibits a person from engaging in the business of an alternative electric supplier in this State unless the person obtains and maintains a license. The PSC must issue orders establishing a licensing procedure for all alternative electric suppliers. To ensure adequate service to customers in the State, the PSC must do the following:

- Require an alternative electric supplier to maintain an office within Michigan.
- Assure that an alternative electric supplier has the necessary financial, managerial, and technical capabilities.
- Require an alternative supplier to maintain records that the PSC considers necessary.
- Ensure an alternative supplier's accessibility to the PSC, to consumers, and to electric utilities in the State.

The PSC also must require alternative electric suppliers to agree that they will collect and remit to local units of government all applicable users, sales, and use taxes. An alternative supplier is not required to obtain any certificate, license, or authorization (such as a certificate of public convenience and necessity) from the PSC other than as required by the Act.

In addition to providing any other information required by the PSC in connection with a licensing application, an applicant must do both of the following:

- Provide information, including information as to the applicant's safety record and its history of service quality and reliability, regarding the applicant's technical ability to generate or otherwise obtain and deliver electricity, and provide any other proposed services, safely and reliably.
- Demonstrate that the employees of the applicant who will be installing, operating, and maintaining generation or transmission facilities within the State, or an entity with which the applicant has contracted to perform those functions, have the requisite knowledge, skills, and competence to perform those functions in a safe and responsible manner in order to provide safe and reliable service.

The PSC must order the applicant to post a bond or provide a letter of credit or other financial guarantee in a reasonable amount established by the Commission of at least \$40,000, if the PSC finds after an investigation and review that requiring a bond would be in the public interest.

Information Disclosure; Educational Program; Renewable Energy

The bill requires the PSC to establish minimum standards for the form and content of all disclosures, explanations, or sales information disseminated by a person selling electric service to ensure that the person provides adequate, accurate, and understandable information about the service that enables a customer to make an informed decision relating to the source and type of electric service purchased. The standards must not be unduly burdensome and must not unnecessarily delay or inhibit the initiation and development of competition for electric generation service in any market. The standards must establish different requirements for disclosures, explanations, or sales information relating to different services or similar services to different classes of customers, whenever different requirements are appropriate to carry out the purposes of these provisions.

Before January 1, 2002, the PSC must establish a funding mechanism for electric utilities and alternative electric suppliers to carry out an educational program to:

- Inform customers of the changes in the provision of electric service, including the availability of alternative electric suppliers.
- Inform customers of requirements relating to disclosures, explanations, or sales information for alternative suppliers.
- Provide assistance to customers in understanding and using the information to make reasonably informed choices about which service to purchase and from whom.

The PSC must require all electric suppliers, starting January 1, 2002, to disclose in a standardized, uniform format on a customer's bill with a bill insert, on customer contracts, or, for cooperatives, in periodicals issued by an association of rural electric cooperatives, information about the environmental characteristics of electricity purchased by the customer, including:

- The average fuel mix, including categories for oil, gas, coal, solar, hydroelectric, wind, biofuel, nuclear, solid waste incineration, biomass (dedicated crops grown for energy production and organic waste), and other fuel sources.
- The average emissions, in pounds per megawatt hour, of sulfur dioxide, carbon dioxide, and oxides

- of nitrogen.
- The average of high-level nuclear waste generated in pounds per megawatt hour.
- The regional average fuel mix and emissions profile as referred to above.

Electric utilities are required to provide this information no more than twice annually. They also must give the information to the PSC for inclusion on its Internet site.

In addition, the bill requires the PSC to establish the "Michigan Renewables Energy Program". The program must be designed to inform customers about the availability and value of using renewable energy generation and the potential of reduced pollution. The program also must be designed to promote the use of existing renewable energy sources and encourage the development of new facilities.

Shut-Off Protection

The bill prohibits an electric utility or alternative electric supplier from shutting off service to an eligible customer during the heating season for nonpayment of a delinquent account if the customer is an eligible senior citizen customer or pays a monthly amount equal to 7% of his or her estimated annual bill and demonstrates, within 14 days of requesting shut-off protection, that he or she has applied for State or Federal heating assistance. If an arrearage exists at the time the customer applies for shut-off protection during the heating season, the utility or supplier must permit the customer to pay the arrearage in equal monthly installments between the date of application and the start of the subsequent heating season.

An electric utility or alternative supplier may shut off service to an eligible low-income customer who does not pay the monthly amounts, after giving notice as required by rules. The utility or supplier is not required to offer a settlement agreement to an eligible low-income customer who fails to make the monthly payments.

If a customer fails to comply with these provisions, an electric utility may shut off service on its own behalf or on behalf of an alternative supplier after giving the customer a notice that contains information described in the bill. An electric utility is not required to shut off service to an eligible customer for nonpayment to an alternative electric supplier.

The PSC must establish an educational program to ensure that eligible customers are informed of the requirements and benefits of these provisions.

The bill defines "eligible customer" as an eligible low-

income customer or an eligible senior citizen customer. "Eligible low-income customer" means a customer whose household income does not exceed 150% of the Federal poverty level, or who receives assistance from a State emergency relief program, food stamps, or Medicaid. "Eligible senior citizen customer" means a utility or supplier customer who is 65 years old or older and who advises the utility of his or her eligibility.

In addition, the bill requires the PSC to monitor the extent to which Federal funds are available for low-income and energy assistance programs. If there is a reduction in the amount of Federal funds available to residents of this State, the PSC must conduct a hearing to determine the amount of funds available and the need, if any, for supplemental funding. Upon completing the hearing, the PSC must prepare a report and submit it to the Governor and the Legislature.

Worker Protections

The bill requires each electric utility operating in this State to establish an industry worker transition program that will, in consultation with employees or applicable collective bargaining representatives, provide skills upgrades, apprenticeship and training programs, voluntary separation packages consistent with reasonable business practices, and job banks to coordinate and assist placement of employees into comparable employment at no less than the wage rates and substantially equivalent fringe benefits received before the transition.

In the event of a sale, purchase, or other transfer of ownership of one or more Michigan divisions or business units, or generating stations or generating units, of an electric utility to a third party or a utility subsidiary, the electric utility's contract and agreements with the acquiring entity or persons must require all of the following for at least 30 months:

- That the acquiring entity or persons hire a sufficient number of nonsupervisory employees to operate and maintain the station, division, or unit safely and reliably, by making offers of employment to the nonsupervisory workforce of the utility's division, business unit, generating station, or generating unit.
- That the acquiring entity or persons not employ nonsupervisory employees from outside the utility's workforce unless offers of employment have been made to all qualified nonsupervisory employees of the acquired business unit or facility.
- That the acquiring entity or persons have a dispute resolution mechanism culminating in a final and binding decision by a neutral third party for resolving employee complaints or disputes over wages, fringe benefits, and working

conditions.

- That the acquiring entity or persons offer employment at no less than the wage rates and substantially equivalent fringe benefits and terms and conditions of employment that are in effect at the time of transfer of ownership of the division, business unit, or generating station or unit. The wage rates, benefits, and terms and conditions of employment must continue for at least 30 months from the time of the transfer of ownership unless the employees or, where applicable, the collective bargaining representative, and the new employer mutually agree to different terms and conditions of employment within the 30-month period.

If there is litigation concerning the sale, or other transfer of ownership, the 30-month period will begin on the date the acquiring entity or persons take control or management of the utility's divisions, business units, or generating stations or units.

The utility must offer a transition plan to employees who not offered jobs by the acquiring entity because it needs fewer workers.

The bill specifies that stranded costs include audited and verified employee-related restructuring costs that are incurred as a result of the bill or as a result of prior PSC restructuring orders, including employee severance costs, employee retraining programs, early retirement programs, outplacement programs, and similar costs and programs, that the PSC has approved and found to be prudently incurred.

Service Quality and Reliability Standards

The bill requires the PSC to adopt generally applicable service quality and reliability standards for the transmission and distribution systems of electric utilities and other entities subject to its jurisdiction, including standards for service outages, distribution facility upgrades, repairs and maintenance, telephone service, billing service, operational reliability, and public and worker safety. In setting these standards, the PSC must consider safety, costs, local geography and weather, applicable codes, national electric industry practices, sound engineering judgment, and experience. The PSC also must include provisions to upgrade the service quality of distribution circuits that historically have experienced significantly below-average performance in relation to similar distribution circuits.

Annually, each jurisdictional utility or entity must file with the PSC its report detailing actions to be taken to comply with the service quality and reliability standards during the next calendar year and its performance in relation to the standards during the prior calendar year. The annual reports must contain the data required by the PSC.

The PSC must analyze the data to determine whether the jurisdictional entities are properly operating and maintaining their systems, assess the impact of deregulation on reliability, and take corrective action if needed. The PSC is authorized to levy financial incentives and penalties upon any jurisdictional entity that exceeds or fails to meet the service quality and reliability standards.

Municipally Owned Utilities

The bill requires the governing body of a municipally owned utility to determine whether it will permit retail customers receiving delivery service from the utility the opportunity to choose an alternative electric supplier, subject to the implementation of rates, charges, terms, and conditions referred to below. ("Delivery service" means the provision of electric transmission or distribution to a retail customer.)

Except with the written consent of the municipally owned utility, a person may not provide delivery service or customer account service to a retail customer that was receiving service from the municipal utility as of bill's effective date, or is receiving the service from a municipal utility and has the opportunity to choose an alternative supplier. (For purposes of this provision, "customer" means the building or facilities served, not an individual or other entity taking service.) After December 31, 2007, this written consent requirement will not apply if the governing body of the municipal utility does not permit all of its retail customers located outside the boundaries of the municipality to choose an alternative supplier.

If a municipally owned utility elects to provide electric generation service to retail customers receiving delivery service from an electric utility, the following conditions apply:

- The municipality must give all of its retail customers located outside the boundaries of the municipality the opportunity to choose an alternative electric supplier.
- If the municipal utility and an electric utility both provide delivery service to retail customers in the same municipality located outside of the boundaries of the municipality that owns the municipal utility, the municipally owned utility must make a filing (regarding compliance with R 460.3411) or enter into an agreement (regarding territorial boundaries), as provided below.
- The municipally owned utility may provide electric generation service to retail customers receiving delivery service from an electric utility up to an amount equal to the municipal utility's retail customer load that has the opportunity of choosing an alternative supplier.
- The municipally owned utility must comply with sections of the bill governing slamming, customer

information, licensure, and shut-off protection, with respect to customers located outside of the municipal boundaries.

- The municipal utility must obtain a license under the bill.

The PSC must issue a license to the municipal utility unless it determines that the utility has adopted rates, charges, terms, and conditions for delivery service that are unduly discriminatory or reflect recovery of stranded costs in an unjust and unreasonable amount. The municipal utility must notify the PSC before modifying rates, charges, terms, and conditions for delivery service. (The bill specifies that this provision does not grant the PSC authority to set rates for the municipally owned utility.) After notice and an opportunity for a hearing, the PSC may revoke the license if the Commission determines that the municipal utility is not in compliance with these provisions.

Upon a complaint or on the PSC's own motion, if the Commission finds, after notice and hearing, that the municipal utility has not complied with a provision or order issued under a section of the bill governing slamming, customer information, licensure, or shut-off protection, the PSC must order remedies and penalties necessary to make whole the customer or another person who has suffered damages as a result of the violation, including any of the following:

- Ordering the utility to pay a fine of at least \$1,000 but not more than \$20,000 for a first offense, and not less than \$40,000 for a second or subsequent offense.
- Ordering a refund to the customer of any excess charges.
- Ordering any other remedies that would make whole a person harmed, including payment of reasonable attorney fees.
- Revoking the utility's license if the PSC finds a pattern of violation.
- Issuing cease and desist orders.

Complaints regarding the preceding requirements must be decided by the PSC subject to judicial review and enforcement.

With respect to any electric utility regarding delivery service to customers located outside of the boundaries of the municipality that owns the utility, the municipal utility's governing body may elect to operate in compliance with R 460.3411, as in effect on the bill's effective date, but compliance with R 460.3411(13) is not required. (Rule 460.3411 governs the provision of electric service in areas served by two or more utilities. Rule 460.3411(13) requires compliance with Public Act 69 of 1929, which requires a public utility to get a certificate of public convenience and necessity from the PSC before operating in a municipality where another

utility is providing the same service.) When filing this election with the PSC, the municipally owned utility must serve a copy of the election on the electric utility. Beginning 30 days after doing so, the electric utility will, as to the municipally owned utility, be subject to the terms of R 460.3411. The PSC must decide disputes arising under these provisions subject to judicial review and enforcement.

A municipally owned utility and an electric utility that provides delivery service in the same municipality may enter into an agreement to define the territorial boundaries of each utility's delivery service area and any other conditions as necessary to provide delivery service. To be effective, the agreement must be approved by the governing body of the municipal utility and the PSC. The governing body and the PSC annually must review and supervise compliance with the terms of the agreement. At the request of a party to the agreement, the PSC must decide disputes arising under these provisions subject to judicial review and enforcement.

If the governing body of a municipally owned utility establishes a program to give any of its customers the opportunity to choose an alternative electric supplier, the governing body will have exclusive jurisdiction to set delivery service rates, which must not be unduly discriminatory; determine the amount and types of, and the recovery mechanism for, stranded and transition costs; and establish rules, terms of access, and conditions appropriate for implementation of the choice program. Complaints alleging unduly discriminatory rates or other noncompliance with this provision must be filed in the circuit court for the county in which the municipal utility is located.

The bill specifies that this section does not prevent or limit a municipally owned utility from selling electricity at wholesale. A municipal utility selling electricity at wholesale is not an alternative electric supplier and is not subject to regulation by the PSC.

The bill also specifies that this section may not be construed to impair the contractual rights of a municipally owned utility or customer under an existing contract.

In addition, the bill provides that contracts or other records pertaining to the sale of electricity by a municipally owned utility that are in the possession of a public body and that contain specific pricing or other confidential or proprietary information may be exempted from public disclosure requirements by the utility's governing body. Upon a showing of good cause, a court or the PSC may order disclosure subject to appropriate confidentiality provisions.

In the event that an entity purchases one or more

divisions or business units, or generating stations or units, of a municipal electric utility, the acquiring entity's contract and agreements with the selling municipality must require all of the following for a period of at least 30 months:

- That the acquiring entity or persons hire a sufficient number of employees to operate and maintain the station, division, or unit safely and reliably, by first making offers of employment to the workforce of the municipal utility's division, business unit, or generating unit.
- That the acquiring entity or persons not employ employees from outside the municipal utility's workforce unless offers of employment have been made to all qualified employees of the acquired business unit or facility.
- That the acquiring entity or persons have a dispute resolution mechanism culminating in a final and binding decision by a neutral third party for resolving employee complaints or disputes over wages, fringe benefits, and working conditions.
- That the acquiring entity or persons offer employment at no less than the wage rates and substantially equivalent fringe benefits and terms and conditions of employment that are in effect at the time of transfer of ownership. The wage rates and substantially equivalent fringe benefits and terms and conditions of employment must continue for at least 30 months from the time of the transfer, unless the employees or, where applicable, the collective bargaining representative, and the new employer mutually agree to different terms and conditions of employment within that 30-month period.

An acquiring entity is exempt from these obligations if the selling municipality transfers all displaced municipal electric utility employees to positions of employment within the municipality at no less than the wage rates and substantially equivalent fringe benefits and terms and conditions of employment in effect at the time of the transfer. The wage rates, fringe benefits, and terms and conditions of employment must continue for at least 30 months from the time of transfer unless the employees, or collective bargaining representative, and the municipality mutually agree to different terms and conditions within that 30-month period.

Cooperative Electric Utilities

The bill provides that the PSC may not require a cooperative electric utility to give its retail customers the ability to choose an alternative electric supplier before January 1, 2005, or to unbundle its rates before July 1, 2004. Any retail customer of a cooperative with a peak load of one megawatt or more, however, must be given the opportunity to choose an alternative supplier by January 1, 2002.

The PSC also may not require a cooperative electric utility or an independent investor-owned utility with fewer than 60 employees to maintain separate facilities, operations, or personnel, used to deliver electricity to retail customers, provide retail electric service, or be an alternative electric supplier.

Any debt service recovery charge, or other charge approved by the PSC for a cooperative electric utility serving primarily wholesale may, upon application by its member cooperative(s), be assessed by and collected through the member cooperative(s).

A cooperative electric utility may not be required to provide funding for a customer educational program until July 1, 2004, or until it is providing choice to all of its retail customers, whichever is earlier.

Aggregation

The bill provides that aggregation may be used for the purchase of electricity and related services from an alternative electric supplier. ("Aggregation" means the combining of electric loads of multiple retail customers or a single customer with multiple sites to facilitate the provision of electric service to such customers.)

Local units of government, public and private schools, universities, and community colleges may aggregate for the purpose of purchasing electricity for themselves or for customers within their boundaries with the written consent of each customer aggregated. Customers within a local unit of government must continue to have the right to choose their electricity supplier and are not required to purchase electricity through the aggregator.

The bill specifies that a school district aggregating electricity for school property or an exclusive aggregator for public or private school property is not an electric utility or a public utility for the purpose of that aggregation. (As a result, the aggregating school district will not have to obtain a franchise.)

Penalties

Except for a slamming violation and as otherwise provided below, upon a complaint or on the PSC's own motion, if the Commission finds, after notice and hearing, that an electric utility or an alternative electric supplier has not complied with a provision or order issued under the Customer Choice and Electricity Reliability Act, the PSC must order remedies and penalties necessary to make whole a customer or other person who has suffered damages as a result of the violation. These include, but are not limited to, one or more of the following:

- Ordering the electric utility or alternative supplier to pay a fine of at least \$1,000 but not more than \$20,000 for a first offense; at least \$2,000 but not more than \$40,000 for a second offense; or at least \$5,000 but not more than \$50,000 for a third or subsequent offense.
- Ordering a refund to the customer of any excess charges.
- Ordering any other remedies that would make whole a person harmed, including payment of reasonable attorney fees.
- Revoking the license of the alternative supplier if the PSC finds a pattern of violations.
- Issuing cease and desist orders.

Upon a complaint or the PSC's own motion, the Commission may conduct a contested case to review allegations of a slamming violation. If the PSC finds a slamming violation, it must order remedies and penalties to protect customers and other persons who have suffered damages as a result of the violation. These include, but are not limited to, one or more of the following:

- Ordering the person to pay a fine of at least \$20,000 but more than \$30,000 for a first offense; or at least \$30,000 but not more than \$50,000 for a second or subsequent offense, or not more than \$70,000 if the PSC finds that the second or subsequent offense was knowingly committed. Each unauthorized action is a separate offense under this provision.
- Ordering between 10% and 50% of the fine to be paid directly to the customer who suffered the violation.
- Ordering an unauthorized supplier to refund to the customer any amount over what the customer would have paid to an authorized supplier.
- Ordering an unauthorized supplier to reimburse to an authorized supplier the amount paid by the customer that should have been paid to the authorized supplier.
- Ordering the refund of any amounts paid by the customer for unauthorized services.
- Revoking the license of a person licensed under the Act, if the PSC finds a pattern of slamming violations.
- Issuing cease and desist orders.

A fine may not be imposed for a slamming violation, however, if the supplier has otherwise fully complied with the switching-of-service requirement and shows that the violation was an unintentional and bona fide error (such as a clerical, calculation, computer malfunction, programming, or printing error) that occurred notwithstanding the maintenance of procedures reasonably adopted to avoid the error. An error in legal judgment with respect to a supplier's switching obligations is not a bona fide error. The burden of proving that a violation was an unintentional and bona fide error is on the supplier.

If the PSC finds that a party's position in a complaint filed under this section of the Act is frivolous, the Commission must award to the prevailing party its costs, including reasonable attorney fees, against the nonprevailing party and its attorney.

Other Provisions

The bill requires the PSC to establish rates, terms, and conditions of electric service that promote and enhance the development of new generation, transmission, and distribution technologies. The bill also requires the orders issued under the Act to include the provision of reliable and lower cost competitive rates for all customers in the State.

By February 1 of each year, the PSC must file with the Governor and the Legislature a report that includes the status of competition for supplying electricity in this State; recommendations for legislation, if any; actions taken by the PSC to implement measures necessary to protect customers from unfair or deceptive practices by utilities, alternative electric suppliers, and other market participants; and information regarding PSC-approved consumer education programs to inform customers of all relevant information regarding the purchase of electricity and related services from alternative suppliers.

Within 180 days after the bill's effective date, the PSC must establish a code of conduct that will apply to all electric utilities and alternative suppliers. The code of conduct must include, at least, measures to prevent cross-subsidization, information sharing, and preferential treatment, between a utility's regulated and unregulated services, whether those services are provided by the utility or its affiliated entities.

The bill provides that only investor-owned, cooperative, or municipal electric utilities may own, construct, or operate electric distribution facilities or electric meter equipment used in the distribution of electricity in the State. This provision does not prohibit a self-service power provider from owning, constructing, or operating electric distribution facilities or electric metering equipment for the sole purpose of providing or using self-service power. The Act does not affect the current rights, if any, of a

nonutility to construct or operate a private distribution system on private property or private easements. This does not preclude crossing of public rights-of-way.

The bill provides that the PSC may not prohibit an electric utility from metering and billing its customers for services provided by the utility.

The bill requires the PSC to take the necessary steps to ensure that all electrical power generating facilities in the State comply with all rules, regulations, and standards of the Federal Environmental Protection Agency regarding mercury emissions.

The bill provides that the rights of parties to existing contracts and agreements in effect on January 1, 2000, between electric utilities and qualifying facilities, including the right to have the charges recovered from the customers of an electric utility, or its successor, are not abrogated, increased, or diminished by the Act, and the receipt of any proceeds of the securitization bonds by an electric utility may not be a basis for any regulatory disallowance. Also, any securitization or financing order issued by the PSC that relates to a qualifying facility's power purchase contract must fully consider that facility's legal and financial interests.

The bill specifies that nothing in the Act impairs the contractual rights of electric utilities or customers under an existing contract approved by the PSC under Section 11 of Public Act 300 of 1909 (which concerns special contract rates for railroad shippers).

The bill states that if any provision of the Act is found to be invalid or unconstitutional, the remaining provisions will not be affected and will remain in full force and effect. If any provision of the Act is found to be invalid or unconstitutional in a manner that prevents the issuance of securitization bonds that would otherwise be allowed, however, the rate reductions required by the bill also will be void and the rates must return to those in effect on May 1, 2000.

Senate Bills 940 & 941

The bills limit the area in which a municipal corporation or home rule city may sell electric generation service at retail, unless the municipal corporation or home rule city is in compliance with Senate Bill 937. Senate Bill 940 amended Public Act 35 of 1951 (which authorizes intergovernmental contracts between municipal corporations) and Senate Bill 941 amended the Home Rule City Act.

Previously, a municipal corporation could sell and deliver heat, power, and light at wholesale or "other than wholesale", but sales other than wholesale were limited to the area of any city, village, or township that was contiguous to the municipal corporation on

June 20, 1974, and to the area of any other city, village, or township being served by the municipal utility on that date. Similarly, if a home rule city sold heat, power, and light at other than wholesale, the sales were limited to the area of any village or township that was contiguous to the city as of June 20, 1974, and to the area of any other village or township being served on that date. Under the bills, electric delivery service (i.e., transmission or distribution) is limited to those areas. Retail sales of electric generation service also are limited to the same areas unless the municipal corporation or home rule city is in compliance with Section 10y(4) of Senate Bill 937 (which prescribes the conditions that apply to a municipally owned utility that elects to provide electric generation service to retail customers receiving delivery service from an electric utility).

In addition, a municipal corporation or home rule city previously could not render heat, power, or light to customers outside its corporate limits already receiving that service from another utility unless the serving utility consented in writing. Under Senate Bills 940 and 941, a municipal corporation or home rule city may not render electric delivery service for heat, power, or light to those customers without the utility's written consent. Senate Bill 941 also specifies that a home rule city may not render retail electric generation service to customers outside its corporate limits receiving that service from another supplier except in compliance with Section 10y(4).

The bills define "electric generation service" as the sale of electric power and related ancillary services. The bills provide that "electric delivery service" has the same meaning as "delivery service" under Senate Bill 937, i.e., the provision of electric transmission or distribution to a retail customer.

Senate Bill 1253

Definitions

The bill defines "financing order" as an order of the PSC approving the issuance of securitization bonds and the creation of securitization charges and any corresponding utility rate reductions. "Securitization bonds" means bonds, debentures, notes, certificates of participation, certificates of a beneficial interest, certificates of ownership, or other evidences of indebtedness that are issued by an electric utility, its successors, or an assignee under a financing order, that have a term of not more than 15 years, and that are secured by or payable from securitization property. (If certificates of participation, beneficial interest, or ownership are issued, references in the Act to principal, interest, or premium refer to comparable amounts under those certificates.)

"Securitization charges" means nonbypassable amounts to be charged for the use or availability of

electric services, approved by the PSC under a financing order to recover the full amount of qualified costs, that must be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in the financing order.

“Qualified costs” means an electric utility’s regulatory assets as determined by the PSC, adjusted by the applicable portion of related investment tax credits, plus any costs that the PSC determines the electric utility would be unlikely to collect in a competitive market, including but not limited to retail open access implementation costs and the costs of a PSC-approved restructuring, buyout or buy-down of a power purchase contract, together with the costs of issuing, supporting, and servicing securitization bonds and any costs of retiring and refunding the utility’s existing debt and equity securities in connection with the issuance of those bonds. Qualified costs also include taxes related to the recovery of securitization charges.

Issuance of Financing Order

Upon an electric utility’s application, the PSC must issue a financing order to allow the utility to recover qualified costs, if the PSC finds that the net present value of the revenues to be collected under the order is less than the amount that would be recovered over the remaining life of the qualified costs using conventional financing methods, and if the PSC finds that the order is consistent with the standards described below.

In the financing order, the PSC must ensure all of the following:

- The proceeds of the securitization bonds are used solely for the purpose of refinancing or retiring debt or equity.
- Securitization provides tangible and quantifiable benefits to customers of the utility.
- The expected structuring and pricing of the bonds will result in the lowest securitization charges consistent with market conditions and the terms of the financing order.
- The amount securitized does not exceed the net present value of the revenue requirement over the life of the proposed securitization bonds associated with the qualified costs sought to be securitized.

The financing order must detail the amount of qualified costs to be recovered and the period over which the securitization charges are to be recovered, which may not exceed 15 years. The order also must include terms ensuring that the imposition and collection of securitization charges authorized in the order are a nonbypassable charge (i.e., a charge payable by a customer to an electric utility or its assignees or successors regardless of the identity of the customer’s electric generation supplier).

The bill provides that a financing order is effective according to its terms. The order, together with the securitization charges authorized in it, is irrevocable and not subject to reduction, impairment, or adjustment by further action of the PSC (except to correct overcollections or undercollections, as provided below).

After an expedited contested case proceeding, the PSC must issue a financing order or an order rejecting the application for a financing order within 90 days after the utility files its application. A financing order is subject to a rehearing by the PSC only on the motion of the applicant for securitization.

At the request of an electric utility, the PSC may adopt a financing order providing for retiring and refunding securitization bonds if the Commission finds that the future securitization charges required to service the new bonds, including transaction costs, will be less than the future securitization charges required to service the bonds being refunded. On the retirement of the refunded bonds, the PSC must adjust the related securitization charges accordingly.

The PSC has the authority to retain financial or legal services to assist in the issuance of a financing order, and may require the electric utility to pay the cost of the services. The payments are included as qualified costs as defined in the bill.

Appellate Review of Financing Order

Notwithstanding any other provision of law, the Court of Appeals may review a financing order upon a filing by a party to the PSC proceeding within 15 days after the order is issued. All appeals must be heard and determined as expeditiously as possible with lawful precedence over other matters. Review on appeal must be based solely on the record before the PSC and briefs to the court, and limited to whether the order conforms to the Constitution and laws of Michigan and the United States and is within the PSC’s authority under the Act.

Annual Review of Securitization Charges

A financing order must include a mechanism requiring securitization charges to be reviewed and adjusted by the PSC at least annually, within 45 days of the anniversary of the issuance of the securitization bonds, to correct any overcollections or undercollections of the preceding 12 months, and to ensure the expected recovery of amounts sufficient to provide timely payments of all debt service and other required amounts and charges in connection with the securitization bonds.

Securitization Property

Securitization property consists of the rights and

interests of an electric utility, or its successors, under a financing order, including without limitation all of the following:

- The right to impose, collect, and receive securitization charges authorized in the order in an amount necessary to provide the full recovery of all qualified costs.
- The right to obtain periodic adjustments of securitization charges.
- All revenue, collections, payments, money, and proceeds arising out of the rights and interests described above.

The bill specifies that securitization property constitutes a present property right even though the imposition and collection of securitization charges depend on the further acts of the utility or others. The rights of an electric utility to securitization property before its sale to any assignee must be considered a property interest in a contract. The financing order will remain in effect and the securitization property will continue to exist until the PSC-approved securitization bonds and related expenses have been paid in full.

The interest of an assignee or pledgee in securitization property and in the revenues and collections arising from it is not subject to setoff, counterclaim, surcharge, or defense by the electric utility or any other person or in connection with the bankruptcy of the utility or any other entity. A financing order will remain in effect and unabated notwithstanding the bankruptcy of the utility, its successors, or assignees.

True Sale of Securitization Property

The bill states that, if an agreement by an electric utility or assignee to transfer securitization property expressly states that the transfer is a sale or other absolute transfer, the agreement signifies that the transaction is a true sale and not a secured transaction, and that legal and equitable title has passed to the entity to which the property is transferred.

A true sale under these provisions applies regardless of whether the purchaser has any recourse against the seller, or any other term of the parties' agreement, including the seller's retention of an equity interest in the securitization property, the fact that the utility acts as a collector of securitization charges related to the property, or the treatment of the transfer as a financing for tax, financial reporting, or other purposes.

Security Interest in Securitization Property

A valid and enforceable lien and security interest in securitization property may be created only by a

financing order and the execution and delivery of a security agreement with a financing party in connection with the issuance of securitization bonds. ("Financing party" means a holder of securitization bonds, including trustees, collateral agents, and other persons acting for the benefit of the holder.)

The lien and security interest will attach automatically from the time that value is received for the bonds, and will be a continuously perfected lien and security interest in the securitization property. All proceeds of the property, whether accrued or not, will have priority in the order of filing when a financing statement has been filed with respect to the security interest in accordance with the Uniform Commercial Code (UCC), and take precedence over any subsequent judicial and other lien creditor. In addition to the rights and remedies provided by the Act, all rights and remedies with respect to a security interest provided by the UCC apply to the securitization property.

The transfer of an interest in securitization property to an assignee will be perfected against all third parties, including subsequent judicial and other lien creditors, when a financing statement has been filed with respect to the transfer in accordance with the UCC.

The priority of a lien and security interest under these provisions will not be impaired by any later modification of the financing order or by the commingling of funds arising from securitization charges with other funds. Any other security interest that may apply to those funds will be terminated when they are transferred to a segregated account for the assignee or a financing party. If securitization property has been transferred to an assignee, any proceeds of the property must be held in trust for the assignee.

If the electric utility or its successor defaults in the payment of revenues arising with respect to securitization property, the PSC or a court of appropriate jurisdiction, upon the application of the financing party, must order the sequestration and payment to the financing party of those revenues. This will not limit any other remedies available to the financing party. The order will remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor, or transferor of the property.

The bill specifies that changes in the financing order or in the customer's securitization charges do not affect the validity, perfection, or priority of the security interest in the securitization property.

The bill also states that the description of securitization property in a security agreement or other agreement or a financing statement is sufficient

if it refers to the Act and the financing order establishing the securitization property.

In addition, the bill provides that this Act controls in any conflict between it and any other law of the State regarding the attachment and perfection and the effect of perfection and priority of any security interest in securitization property. Notwithstanding the provisions of the UCC, the law of the State of Michigan governs the perfection and the effect of perfection and priority of any security interest in securitization property.

Pledge of the State

Securitization bonds are not a debt or obligation of the State or a charge on its full faith and credit or taxing power.

The bill provides that, for the benefit and protection of the financing parties and the electric utility, the State pledges that it will not take or permit any action that would impair the value of securitization property, reduce or alter (except as allowed for annual adjustments by the PSC), or impair the securitization charges to be imposed, collected, and remitted to financing parties, until the principal, interest and premium, and any other charges incurred and contracts to be performed in connection with the related securitization bonds have been paid and performed in full. Any party issuing securitization bonds is authorized to include this pledge in any documentation relating to them.

Other Provisions

The bill specifies that securitization property constitutes an account as that term is defined in the UCC. For purposes of the Act and the UCC, securitization property is in existence whether or not the revenue or proceeds in respect to the property have accrued and whether or not the value of the property right depends on the receipt of service by the customers of an electric utility.

The acquisition, ownership, and disposition of any direct interest in any securitization bond may not be taken into account in determining whether a person is subject to any income tax, single business tax, franchise tax, business activities tax, intangible property tax, excise tax, stamp tax, or any other tax imposed by this State or any agency or political subdivision of the State.

An assignee or financing party may not be considered to be a public utility or person providing electric service solely by virtue of the transactions described in the Act.

Effective on the date the first securitization bonds are issued under the Act, if any provision of the Act or

portion of it is held to be invalid or is invalidated, superseded, replaced, or repealed, or expires for any reason, that occurrence will not affect the validity or continuation of the bill, of any part of those provisions, or any other provision of the Act that is relevant to the issuance, administration, payment, retirement, or refunding of securitization bonds or to any actions of the electric utility, its successors, an assignee, a collection agent, or a financing party, which will remain in full force and effect.

MCL 460.6l et al. (S.B. 937)
124.3 (S.B. 940)
117.4f (S.B. 941)
460.10h et al. (S.B. 1253)

Legislative Analyst: S. Lowe

FISCAL IMPACT

Senate Bill 937

This bill will make significant changes in the structure of Michigan's electric industry, which will affect such things as the price of electricity, industry profits, and generating and transmission capacity. Some of these changes will occur in the short term, but many will not occur for several years. These changes will have repercussions on three major taxes - the sales, single business, and property taxes; however, given the fundamental and significant changes that potentially may occur under this bill, it is not possible to make reasonable estimates of how many of these changes, particularly the long-term changes, will affect tax revenues. The major ways electric industry restructuring, as provided in this bill, will affect tax revenue are summarized below.

Sales Tax

Price Changes. The 5% reduction in residential electric rates required immediately in this bill will reduce sales tax collections. This rate reduction is required for electric utilities with 1 million or more retail customers, which therefore applies to rates charged by Detroit Edison and Consumers Energy. The rate reduction took effect June 5, 2000, and as a result sales tax collections will be reduced an estimated \$1.8 million in FY 1999-2000 and \$5.0 million in FY 2000-01. This loss in sales tax revenue in FY 2000-01 will be distributed as follows: School Aid Fund revenue will decline an estimated \$3.0 million from what it otherwise would be, revenue sharing will decline \$1.8 million, and General Fund/General Purpose revenue will decline \$0.2 million. Other provisions in this bill also may have potential effects on the price of electricity, and therefore sales tax collections. Future price declines beyond the 5% residential rate cuts, also will be possible under this bill due to the increased competition that will occur in the electric utility

industry and the use of securitization bonds, which will help spread some financial burdens that these changes will place on existing electric companies over a long period of time. It is also possible that electric rates will increase once the rate cuts and caps expire, but residential rates will not be allowed to increase before January 1, 2006. There is not enough information available at this time to make reasonable estimates of the effects these other potential price changes will have on sales tax collections.

Nexus Issues. Under this bill, retail customers will have more choice in where to purchase their electricity, including out-of-state companies, and as a result, nexus issues will likely develop, which will hinder the collection of sales and use taxes. While this bill requires anyone selling electric generation service to customers in Michigan to maintain an office in Michigan, and therefore have a physical presence in Michigan, this will not necessarily eliminate collection problems related to nexus. In addition, as more customers choose to purchase their electricity from a company other than their current regulated electric utility, the resulting unbundled price of electricity also might present sales tax collection problems. Because current sales tax law does not define the price of electricity as the price of generation, transmission, distribution, and other related charges, it might not be possible to assess the sales tax on separate billings for the nongeneration-related cost of electricity under current law, and this will have potentially large impacts on sales tax collections. There is no way to quantify the effects these nexus and unbundling issues will have on sales tax collections at this time.

Other Taxes

The changes that will occur in the electric industry under this bill also have revenue implications for other taxes. This bill probably will reduce the size of some existing electric companies, while new generating and distribution companies will emerge, and new electric generating facilities will be constructed, while the value of some of the older less efficient generating facilities will decline, and the transmission infrastructure will be expanded. All of these changes will have potential positive and negative effects on the single business and property taxes, but there are too many unknowns to quantify the net impact these changes will have on tax collections.

Senate Bills 940 & 941

The bills will have no fiscal impact on State or local government.

Senate Bill 1253

The securitization bonds by themselves will have no fiscal impact on the State or local governments, but as a component of the overall restructuring of the electric industry, these bonds will have potential indirect fiscal impacts.

The bill will have no fiscal impact on the Department of Consumer and Industry Services.

Fiscal Analyst: J. Wortley

M. Tyszkiewicz

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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.