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SFA**BILL ANALYSIS**

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Senate Bill 1253 (as introduced 5-9-00)
Sponsor: Senator Mat J. Dunaskiss
Committee: Technology and Energy

Date Completed: 5-11-00

CONTENT

The bill would amend the Public Service Commission (PSC) enabling Act to require the PSC, if certain criteria were met, to issue a financing order that would authorize an electric utility to issue securitization bonds in order to recover qualified costs (which would include regulatory assets plus costs the utility would be unlikely to collect in a competitive market). The order also would approve the creation of securitization charges (nonbypassable amounts collected for electric services) and corresponding rate reductions.

Definitions

“Securitization bonds” would mean bonds, debentures, notes, certificates of participation or of a beneficial interest, or other evidences of indebtedness or ownership that were issued by an electric utility, its successors, or an assignee under a financing order, that had a term of not more than 15 years, and that were secured by or payable from securitization property. (If certificates of participation, beneficial interest, or ownership were issued, references in the Act to principal, interest, or premium would refer to comparable amounts under those certificates.)

“Securitization charges” would mean nonbypassable amounts to be charged for the use or availability of electric services, approved by the PSC under a financing order to recover qualified costs, that would have to be collected by an electric utility, its successors, and assignee, or other collection agents as provided for in the financing order.

“Qualified costs” would mean an electric utility’s regulatory assets, offset by the applicable portion of related investment tax credits, plus any costs that the PSC determined the electric utility would be unlikely to collect in a competitive market, 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.

Issuance of Financing Order

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

In the financing order, the PSC would have to ensure all of the following:

- The proceeds of the securitization bonds would be used solely for the purposes of reducing the amount of qualified assets through the refinancing or retirement of debt or equity.
- Securitization would provide tangible and quantifiable benefits to customers of the utility, greater than would have been achieved without the issuance of securitization bonds.

- The structuring and pricing of the bonds would result in the lowest securitization charges consistent with market conditions and the terms of the financing order.
- The amount securitized would not exceed the net present value of the revenue requirement over the life of the proposed securitization bond associated with the qualified costs sought to be securitized.

The financing order would have to detail the amount of qualified costs to be recovered and the period over which the securitization charges were to be recovered, which could not exceed 15 years. The order also would have to include terms ensuring that the imposition and collection of securitization charges authorized in the order were nonbypassable.

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

The PSC would have to issue a financing order or an order rejecting the application for a financing order within 90 days after the utility filed its application. A financing order would not be subject to any rehearing by the PSC.

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

Appellate Review of Financing Order

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

Annual Review of Securitization Charges

A financing order would have to include a mechanism requiring securitization charges to be reviewed and adjusted 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 Charges/Property

The rights and interests of an electric utility or successor under a financing order, including the right to impose, collect, and receive securitization charges authorized in the order, would be only contract rights until they were first transferred to an assignee or pledged in connection with the issuance of securitization bonds. At that time, they would become securitization property.

Securitization property would constitute a present property right for purposes of contracts concerning the sale or pledge of property, even though the imposition and collection of securitization charges would depend on the further acts of the utility or others. The financing order would remain in effect and the property would continue to exist for the same period as the pledge of the State (described below).

All revenues and collections resulting from securitization charges would constitute proceeds only of the securitization property arising from the financing order.

The interest of an assignee or pledgee in securitization property and in the revenues and collections arising from it would not be 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 would remain in effect and unabated notwithstanding the bankruptcy of the utility, its successors, or assignees.

True Sale of Securitization Property

If an agreement by an electric utility or assignee to transfer securitization property expressly stated that the transfer was a sale or other absolute transfer, the agreement would signify that the transaction was a true sale and not a secured transaction, and that legal and equitable title passed to the entity to which the property was transferred.

A true sale under these provisions would apply regardless of whether the purchaser had any recourse against the seller, of any other term of the parties' agreement, including the seller's retention of any equity interest in the securitization property, the fact that the utility acted 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 Transition Property

A valid and enforceable lien and security interest in transition property could 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" would mean the holder of securitization bonds, including trustees, collateral agents, and other persons acting for the benefit of the holder.)

The lien and security interest would attach automatically from the time that value was received for the bonds, and would be a continuously perfected lien and security interest in the transition property. All proceeds of the transition property, whether accrued or not, would have priority in the order of filing and take precedence over any subsequent judicial and other lien creditor.

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

The priority of a lien and security interest would 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 could apply to those funds would be terminated when they were transferred to a segregated account for the assignee or a financing party. If securitization property had been transferred to an assignee, any proceeds of the property would have to be held in trust for the assignee.

If the electric utility or its assignees or successors defaulted 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, would have to order the sequestration and payment to the financing party of those revenues. This would not limit any other remedies available to the financing party. The order would 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.

Pledge of the State

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

For the benefit and protection of the financing parties and the electric utility, the State would pledge that it would not take or permit any action that would impair the value of securitization property, or (except as allowed under the Section 6 of the Act) reduce, alter, 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 had been paid and performed in full. Any party issuing securitization bonds would be authorized to include this pledge in any documentation relating to them. (Section 6 vests the PSC with power and jurisdiction to regulate public utilities in the State.)

Other Provisions

The acquisition, ownership, and disposition of any direct interest in any securitization bond could not be taken into account in determining whether a person was 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 could not be considered to be a public utility or person providing electric service solely by virtue of the transactions described in the Act.

Proposed MCL 460.10h-460.10o

Legislative Analyst: S. Lowe

FISCAL IMPACT

This bill would make securitization bonds exempt from any Michigan State or local government taxes. The cost of this tax exemption cannot be identified at this time because it is not known the dollar amount of the bonds, or when they would be issued.

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

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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.