



**Senate Fiscal Agency**  
**P. O. Box 30036**  
**Lansing, Michigan 48909-7536**

**BILL ANALYSIS**



**Telephone: (517) 373-5383**  
**Fax: (517) 373-1986**

Senate Bill 408 (Substitute S-1 as enrolled)  
 Senate Bills 409 through 414 (as enrolled)  
 Sponsor: Senator Mat. J. Dunaskiss (Senate Bill 408)  
           Senator Loren Bennett (Senate Bill 409)  
           Senator Jon Cisky (Senate Bill 410)  
           Senator Dianne Byrum (Senate Bill 411)  
           Senator Walter H. North (Senate Bill 412)  
           Senator Don Koivisto (Senate Bill 413)  
           Senator Jim Berryman (Senate Bill 414)  
 Committee: Technology and Energy

Date Completed: 3-28-95

**RATIONALE**

Some people believe that there should be a statutory process to regulate the siting of high voltage transmission lines (electric lines that carry power loads of 345 kilovolts or more). These lines are used by electric utilities to transport energy from the site of generation to the general area of use. Currently, it is a utility's responsibility to decide that a line is needed, decide the route, decide whether to seek public input on the proposal, acquire the land through purchase or condemnation, and ultimately build and operate the line. The State's role is limited to issuing or denying any necessary environmental permits, and ruling on the utility's request to recover its costs through rates charged to customers. Since the construction and routing of high voltage lines are not governed by a State statute, they essentially are subject to local regulation in the form of local zoning ordinances, which might expressly exclude these lines, confine them to a particular district, or, more commonly, regulate the lines indirectly by not including them within permitted uses. In addition, if a utility needs to acquire private property in order to construct lines, it is subject to the Uniform Condemnation Procedures Act, unless the utility and the landowner agree upon the sale and the compensation. As a result, the siting of high voltage lines is decided either by local officials or by the courts. Some people believe that a State-level siting authority would be preferable to what they consider a patchwork of regulations, and would ensure the uniform balancing of competing interests.

**CONTENT**

**Senate Bill 408 (S-1) would create the "Electric Transmission Line Certification Act" to establish a process under which electric utilities with at least 50,000 residential customers would have to submit a construction plan to, and obtain a certificate of public convenience and necessity from, the Public Service Commission (PSC) before constructing a major transmission line. ("Major transmission line" would mean "a transmission line of 5 miles or more in length wholly or partially owned by an electric utility through which electricity is transferred at a system bulk supply voltage of 345 kilovolts or more". "Electric utility" would not include a municipal utility.) The bill would do the following:**

- Require a utility to hold a public meeting in each municipality through which a proposed line would pass, and give notice to each affected landowner.
- Require the PSC to hold a hearing on an application for a certificate.
- Permit a utility to apply for a certificate for a proposed transmission line other than a major transmission line.
- Provide that a certificate granted under the bill would take precedence over a conflicting local ordinance.

- Provide that a circuit court could grant a utility a limited license for entry on land to conduct preconstruction activity.
- Require costs for a transmission line for which a certificate was issued to be included in the utility's rates.
- Provide that information obtained by the PSC under the bill would be a public record, but permit a utility to designate certain information as confidential.

**Senate Bills 409 through 414 would amend various laws governing public utilities and local regulations to make those statutes subject to Senate Bill 408, to which the bills are tie-barred.**

### Senate Bill 408 (S-1)

#### Construction Plan

If an electric utility that had 50,000 or more residential customers in this State planned to construct a major transmission line in Michigan in the five years after planning commenced, the utility would be required to submit a construction plan to the PSC. An electric utility with fewer than 50,000 residential customers in this State would be permitted to submit a plan. A plan would have to include the general location and size of all major transmission lines to be constructed in the five years after planning commenced; copies of relevant bulk power transmission information filed by the electric utility with any state or Federal agency, or national or regional electric reliability coalition; and additional information required by PSC rule or order that directly related to the construction plan. ("Construction" would mean any substantial action taken on a route constituting placement or erection of the foundations or structures supporting a transmission line; construction would not include preconstruction activity (defined below) or the addition of circuits to an existing transmission line.)

At the time the utility submitted a construction plan to the PSC, it would have to give a copy of the plan to each municipality in which construction was intended.

#### Certificate for Major Transmission Lines

An electric utility could not begin construction of a major transmission line for which a plan had been submitted until the PSC issued a certificate of public convenience and necessity for that line.

Except as otherwise provided, a certificate would not be required for constructing a new transmission line other than a major transmission line or for reconstructing, repairing, replacing, or improving an existing transmission line, including the addition of circuits to an existing line.

Before applying for a certificate, a utility would have to schedule and hold a public meeting in each municipality through which a proposed major transmission line would pass. (A public meeting held in a township would satisfy the requirement that a public meeting be held in each affected village located within the township.) In the 60 days before a public meeting, the utility would have to offer to meet with the chief elected official of each affected municipality or his or her designee to discuss the utility's desire to build the major transmission line and to explore the routes to be considered.

An electric utility with 50,000 or more residential customers in this State would have to apply to the PSC for a certificate for a proposed major transmission line. An applicant could withdraw an application at any time. An application would have to contain all of the following: the planned date for beginning construction; a detailed description of the proposed line, its route, and its expected configuration and use; a description and evaluation of one or more alternate routes and a statement of why the proposed route was selected; a statement of the location and manner in which a zoning ordinance (if any) prohibited or regulated the location or development of any portion of a proposed route; the estimated overall cost of the proposed line; information supporting the need for the proposed line, including identification of known future wholesale users of the line; estimated quantifiable and nonquantifiable public benefits of the proposed line; estimated private benefits of the line to the applicant or any legal entity that was affiliated with it; information addressing potential effects of the proposed line on public health and safety; a summary of all comments received at each public meeting and the applicant's response to them; information indicating that the proposed line would comply with all applicable State and Federal environmental standards, laws, and rules; and other information reasonably required by PSC rule.

Upon applying for a certificate, the utility would have to give public notice as the PSC prescribed of an opportunity to comment on the application. Notice would have to be published in a newspaper of general circulation in the area to be affected

within a reasonable time period after an application was submitted, and would have to be sent to each affected municipality and each affected landowner on whose property a portion of the proposed line would be constructed. The notice would have to be written in plain, nontechnical, and easily understood terms and contain a title that included the utility's name and the words "NOTICE OF INTENT TO CONSTRUCT A MAJOR TRANSMISSION LINE".

The PSC would have to conduct a proceeding on the application as a contested case pursuant to the Administrative Procedures Act. Each affected municipality and each affected landowner would have to be granted full intervenor status as of right in Commission proceedings concerning the proposed line.

The PSC could assess application fees from the utility to cover the Commission's administrative costs in processing the application, and could require the utility to hire consultants chosen by the PSC to assist it in evaluating those issues the application raised.

The PSC would have to grant or deny the application within one year after its filing date. If a party submitted an alternative route for the proposed line, the Commission would have to grant the application for either the proposed route or one alternative route, or would have to deny the application. The PSC could condition its approval upon the applicant's taking additional action to assure the public convenience, health, and safety, and reliability of the proposed line.

The Commission would have to grant the application and issue a certificate if it determined all of the following:

- The quantifiable and nonquantifiable public benefits of the proposed line justified its construction.
- The proposed or alternative route was feasible and reasonable.
- The proposed line did not present an unreasonable threat to public health or safety.
- The applicant had accepted the conditions contained in a conditional grant.

A certificate would have to identify the major transmission line's route, and contain an estimated cost for the line. If construction of a proposed line were not begun within five years of the date that a certificate was granted, the certificate would be

invalid and a new certificate would be required for the line.

#### Certificate for Other Lines

An electric utility could file an application with the PSC for a certificate for a proposed transmission line other than a major transmission line. ("Transmission line" would mean all structures, equipment, and real property necessary to transfer electricity at system bulk supply voltage of 100 kilovolts or more.) If a utility applied for a certificate under this section of the bill, the utility could not begin construction of the proposed line until the PSC issued a certificate for it.

The Commission would have to proceed on an application in the same manner as provided above. Except for the requirement that a utility submit a construction plan to the PSC, the bill's provisions concerning applications and certificates for major transmission lines would apply to applications and certificates issued under this section.

#### Local Regulations

A certificate granted under the bill would take precedence over a conflicting local ordinance, law, rule, regulation, policy, or practice that prohibited or regulated the location or construction of a transmission line for which the certificate was issued. A zoning ordinance or limitation imposed after a utility filed for a certificate could not limit or impair the transmission line's construction, operation, or maintenance.

In an eminent domain or other related proceeding arising out of or related to a transmission line for which a certificate was issued, the certificate would be conclusive and binding as to the public convenience and necessity for that line and its compatibility with the public health and safety, or any zoning or land use requirements in effect when the application was filed.

#### Preconstruction Activity

In a civil action in the circuit court pursuant to Section 4 of the Uniform Condemnation Procedures Act (which governs cases in which the acquisition of a portion of a parcel destroys the value or utility of the remainder of the parcel), the court could grant a limited license to an electric utility for entry on land to conduct preconstruction activity related to a proposed major transmission line or a transmission line if the utility had

scheduled or held a public meeting in connection with a certificate sought under the bill, and if written notice of the intent to enter the land had been given to each affected landowner on whose property the utility wished to enter. ("Preconstruction activity" would mean any activity on a proposed route conducted before construction of a transmission line began, including surveys, measurements, examinations, soundings, borings, sample-taking, or other testing procedures, photography, appraisal, or tests for contamination of soil, groundwater, structures, or other materials in or on the real property. Preconstruction activity would not include an action that permanently or irreparably altered the real property on or across the proposed route.)

A limited license could be granted upon such terms as justice and equity required. The license would have to include a description of the purpose of entry, the scope of activities permitted, and the terms and conditions of entry with respect to the time, place, and manner of entry. The court could not deny a limited license for entry to conduct preconstruction activity for any of the following reasons:

- A disagreement over the proposed route existed.
- The utility had not yet applied for a certificate.
- The PSC had not yet granted or denied the application.
- A lack of public convenience or necessity was alleged.

An electric utility that obtained a limited license would have to give a copy of it to each affected landowner.

#### Cost Recovery

Reasonable and prudent costs for a transmission line for which a certificate was issued would have to be included in an electric utility's rates. The PSC could not disallow construction costs that did not exceed the amount set forth in the certificate unless the Commission determined that the actual costs were imprudently and unreasonably incurred, based upon substantial evidence presented in opposition to the utility's rate request. Excess costs would have to be included in the utility's rates if reasonably and prudently incurred based upon substantial evidence presented in support of the rate request.

#### Public Disclosure

Except as provided below, information obtained by the PSC under the bill would be a public record as provided in the Freedom of Information Act (FOIA).

An electric utility could designate information received from a third party that the utility submitted to the PSC in an application for a certificate or in other documents required by the Commission for purposes of certification, as being only for the confidential use of the Commission. The PSC would have to notify the utility of a request for public records under the FOIA if the scope of the request included information designated as confidential. The utility would have 10 days after receiving the notice to demonstrate to the PSC that the designated information should not be disclosed because it was a trade secret or secret process, or was production, commercial, or financial information whose disclosure would jeopardize the competitive position of the utility or the person from whom the information was requested. The PSC could not grant the request for the information if the utility demonstrated to the Commission's satisfaction that the information should not be disclosed for such a reason. If the PSC decided to grant a request, the information could not be released until three days had elapsed after notice of the decision was given to the utility.

If any person used information described above to forecast electrical demand, the person would have to structure the forecast so the third party was not identified unless the third party waived confidentiality.

#### Rules

The PSC could promulgate rules to implement the bill pursuant to the Administrative Procedures Act. The rules could contain standards to determine a proposed major transmission line's health and safety aspects, including standards for permissible additions to electric and magnetic fields produced by the line. Until rules were promulgated, the PSC would have to consider and determine any health or safety issue a party raised in a proceeding concerning a certificate application.

#### Appellate Review

A PSC order under the bill would be subject to review as provided in Section 26 of Public Act 300

of 1909 (which provides for an appeal of right from PSC orders to the Court of Appeals).

### **Senate Bills 409 through 414**

Senate Bill 409 would amend the Uniform Condemnation Procedures Act to specify that the granting of a certificate of public convenience and necessity by the Public Service Commission pursuant to the Electric Transmission Line Certification Act would be binding on the court in an action with respect to acquisition by a private agency.

Senate Bill 410 would amend the PSC enabling Act to provide that the rates of an electric utility would be subject to the Electric Transmission Line Certification Act.

Senate Bill 411 would amend Public Act 106 of 1909, which regulates the transmission of electricity through public places, to provide that the Act, and rate-making pursuant to the Act, would be subject to the Electric Transmission Line Certification Act.

Senate Bills 412, 413, and 414 would amend the County Rural Zoning Enabling Act, the Township Rural Zoning Act, and Public Act 207 of 1921 (which provides for city and village zoning ordinances), respectively, to specify that an ordinance adopted under the amended Act would be subject to the Electric Transmission Line Certification Act.

MCL 213.56 (S.B. 409)  
Proposed MCL 460.6p (S.B. 410)  
MCL 460.554 & 460.557 (S.B. 411)  
125.201 (S.B. 412)  
125.271 (S.B. 413)  
125.581 (S.B. 414)

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

High voltage transmission lines are said to provide the most efficient method of transporting electric power and the most economical use of land resources. Regulating these lines at the local level, however, exposes multicounty projects to the siting whims and uncertainties of each local jurisdiction traversed by the proposed line.

Reportedly, this local-level involvement recently has led to either the redesign of planned lines or the abandonment of a specific project. Clearly, this can stymie the utilities' ability to meet the growing consumer demand for electricity, and ultimately can inhibit economic investment. Michigan reportedly is one of only seven states that do not have a centralized siting authority.

By establishing a process under which the Public Service Commission would decide whether a proposed high voltage line was necessary and in the public interest, the bills would create the needed siting authority. As the body constituted to determine the adequacy of energy available, the PSC is the agency best equipped to evaluate the need for a proposed line. By providing that a PSC-issued certificate would preempt local ordinances and would be binding upon the court in a condemnation action, the bills would eliminate the current patchwork of local regulation and judicial decision-making. At the same time, the legislation would ensure public participation throughout the process, by requiring a utility to give notice of a proposed construction plan to, and hold a public meeting in, each affected municipality; offer to meet with local elected officials; publish notice of an opportunity to comment on an application; and give notice to each affected landowner. Once the utility took these actions, the PSC would have to hold a hearing on the application, in which each affected municipality and landowner could intervene. The PSC's responsibility to issue a certificate would depend on whether the proposed line presented an unreasonable threat to public health or safety, and the PSC could condition its approval upon the utility's taking additional action to assure public health and safety. Unlike the present situation, the system proposed by the bills would balance competing interests, ensure public safety, and meet consumer demands.

#### **Opposing Argument**

This legislation in large part is designed to preempt local zoning regulations that affect the siting of high voltage lines. Although Senate Bill 408 (S-1) would, indeed, require notice to municipalities and landowners, and would require public meetings, this input simply would be informational: It would neither determine whether a utility was granted a certificate nor control a utility's actions.

**Response:** An application for a certificate would have to include a summary of the comments received at each public meeting, so the PSC could consider any input generated at the local level. The Commission would have to hold a hearing on

the application as a contested case pursuant to the Administrative Procedures Act, and any affected municipality or landowner could intervene in the proceeding.

**Opposing Argument**

It would not be fair to exclude utilities with fewer than 50,000 residential customers, or municipal utilities operating outside of their jurisdiction, from the mandatory provisions of Senate Bill 408 (S-1). If a utility that had to comply with the bill and a utility that did not have to comply both wanted to construct a line in the same place, the affected landowner could be forced to deal not only with the proposed administrative proceedings, but also with local zoning regulations and judicial condemnation procedures.

**Opposing Argument**

The bills could generate additional workload for the PSC. Although only three utilities (Detroit Edison, Consumers Power, and Indiana Michigan) would be mandated to comply with the proposed siting process, additional utilities could choose to use it for any transmission line. Rather than dealing with local regulations and the issue of public convenience and necessity in condemnation suits, they might find it to their advantage to follow the proposed notice and hearing procedures and obtain a certificate that preempted local ordinances and judicial discretion. In that event, the PSC could be facing an unpredictable increase in workload. This would come at a time when the Governor has recommended cutting 50 full-time equated positions and \$2.1 million from the Commission's budget.

Legislative Analyst: S. Margules

**FISCAL IMPACT**

Any added cost that would be incurred by the Public Service Commission would be handled from existing resources.

Fiscal Analyst: K. Lindquist

A9596\S408A

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.