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PREVENT CROSS-SUBSIDIZATION BY PUBLIC UTILITIES

House Bill 4756
Sponsor: Rep. Michael Griffin
Committee: Public Utilities

Complete to 8-13-97

A SUMMARY OF HOUSE BILL 4756 AS INTRODUCED 5-7-97

House Bill 4756 would amend the Public Service Commission (PSC) enabling act to prevent public utilities from using cross-subsidization to support their affiliates. The bill would regulate utilities, utility contractors, and appliance service affiliates and would limit the ability of public utilities to use their resources to support or assist private affiliates or contractors in their efforts to do business.

Utilities. Utilities would be defined in the bill as public utilities that are subject to the Public Service Commission's regulation; however, the following persons or businesses would be specifically excluded from this definition:

- Persons or businesses that purchase compressed natural gas from a utility to sell at retail for use a vehicular fuel.

- Landlords or other owners or lessors who provide gas or electric service to their tenants and/or cooperative or condominium owners and don't otherwise engage in the business of a utility.

- Owners, lessors, or operators of a manufactured home or trailer park who provide gas or electric service to the occupants of those homes and do not otherwise engage in the business of a utility.

- An electric cooperative that has no more than 50,000 rate-payers in this state.

Appliance service affiliates. Appliance service affiliates would be defined as persons that control, are controlled by, or are under common control with a utility, and that are engaged in the sale, lease, rental, installation, construction, modernization, retrofitting, maintenance, or repair of any products or equipment that require the energy supplied by a utility for operation.

Utility contractors. Utility contractors would be defined as persons, other than employees or officials of a utility, who contract with a utility to provide sales and services that are engaged in by appliance service affiliates.

Restrictions On Utilities. The bill would bar a utility from doing any of the following, except in an emergency situation where the utility was seeking to correct a malfunction that could endanger life or property or otherwise affect the public safety:

• transferring assets of the utility to an affiliate or a utility contractor for less than the asset's fair market value;

• acquiring an asset from an appliance service affiliate or a utility contractor for more than the asset's fair market value;

• selling services or products, extending credit, or offering other terms and conditions to an appliance service affiliate or a utility contractor on more favorable terms than the utility offers to others;

• subsidizing or offsetting the costs of services offered by an appliance service affiliate or a utility contractor by directly or indirectly using rates or proceeds from ratepayers or selling, leasing, or transferring of rate-acquired assets;

• unless otherwise required by law, entering into or offering a contract for the sale, lease, rental, installation, construction, modernization, retrofitting, maintenance, or repair of products or equipment that are not used for delivering or measuring electric or gas service, except through an appliance service affiliate;

• referring customers to specific persons engaged in the sale or servicing of products or equipment;

• providing financial assistance to an appliance service affiliate; or

• acquiring or holding stock or other securities or interest in an appliance service affiliate unless the utility pays at least the fair market value for the interest it acquires.

A utility would be required to inform the PSC of any transfer, in whole or in part, of substantial assets, functions, or employees made by the utility to an appliance service affiliate or a utility contractor. The utility's notification would have to be carried out in accordance with the requirements set forth by the PSC, and would have to indicate the identity of the appliance service affiliate or utility contractor, describe the transaction, and describe how the transaction would affect the utility's service.

Restrictions on appliance service affiliates. Appliance service affiliates, in order to offer contracts for the sale, lease, rental, installation, construction, modernization, retrofitting, maintenance, or repair of products or equipment, would have to meet a number of conditions.

• An appliance service affiliate's name could not resemble a utility's name, and neither the affiliate nor the utility would be allowed to promote or advertise their affiliated status.

• An affiliate could not use premises owned or occupied by a utility as its place of business; further, the utility could not share its premises, equipment, inventory, personnel, or other resources with an affiliate.

• An affiliate would not be permitted to advertise, promote, or market its products or services through the utility's mailings or in advertisements which set forth the utility's name.

• Both an affiliate and a utility would have to maintain separate and distinct accounts, books, and records.

• An affiliate would have to bear its own costs and expenses, and its revenues could not be provided or disbursed to a utility.

• An affiliate's assets would have to be separate and distinct from those of a utility.

• An affiliate's business would have to be transacted separately and independently of a utility and the affiliate would be barred from gaining a competitive advantage by virtue of its status as an affiliate.

Remedies for violations. Legal actions for violation of the bill's provisions could be brought either by the attorney general or by an individual. An action to enjoin a utility or an affiliate, or both, for engaging, having engaged, or being about to engage in a violation of any of the above restrictions could be brought by either the attorney general or an individual. In addition, either the attorney general or an individual could bring an action to collect a civil fine from a utility or affiliate, or both, for violating any of the restrictions set forth in the bill. Furthermore, an individual could bring a lawsuit in circuit court to obtain a declaratory judgement that either the utility or affiliate, or both, had engaged, was engaging, or was about to engage in a violation of the bill's provisions. In cases seeking to enjoin a violation or to collect a civil fine, the attorney general would be required to bring the action in the Ingham County Circuit Court, while an individual could bring such actions in any circuit court.

In addition to any other remedy, any person could begin a legal action against a utility or affiliate for violation of the bill's provisions seeking injunctive or other equitable relief. Such legal action could be taken without regard for the status of any proceeding before the PSC. The bill's provisions would not limit or impair any other rights or remedies that might otherwise be available by law.

A utility or affiliate that violated any of the bill's restrictions would be subject to a civil fine of $10,000 for each day the utility or affiliate was in violation. When an individual brought such an action, he or she would be required to notify the attorney general of the action. The attorney general would then have 21 days after receiving the notification of the action to intervene. If the attorney general chose to intervene, then the attorney general would be required to prosecute the action through to final judgment, including collection of the fine and any appeals. In such cases, the individual who had initiated the action would be entitled to one-third of the fine and the remainder would be paid into the state's general fund. If the attorney general did not intervene, and the individual successfully prosecuted the case on his or her own, the individual would receive one-half of the fine and would also be paid a reasonable attorney's fee.

A person who had suffered an actual loss as a result of a violation could bring an action to recover three times the actual damages as well as reasonable attorney's fees.

In cases that were brought by or prosecuted by the attorney general, a final judgement or decree finding that a utility or affiliate, or both, had violated the bill's restrictions would be sufficient evidence against the utility or affiliate to establish the violation had occurred in any matters where the judgment or decree would bar the denial of the violation.

Powers and Duties of the PSC. The PSC would be required to implement the bill's provisions and would have the following powers and duties:

• to promulgate rules needed to implement the act under the Administrative Procedures Act;

• to review, inspect, and audit books, accounts, and other records kept by utilities, appliance service affiliates, or utility contractors; and

• to investigate the operations of any utilities, appliance service affiliates, or utility contractors and their relationships to each other in order to ensure compliance with the bill's restrictions.

The bill would also require the PSC to consult with interested parties and then issue an order setting forth the required form and manner for utilities to notify the PSC of any transfers of assets, functions, or employees of the utility to an appliance service affiliate or a utility contractor.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.