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PREVENT CROSS-SUBSIDIZATION BY PUBLIC UTILITIES

House Bill 5916

Sponsor: Rep. Susan Munsell

Committee: Public Utilities

Complete to 8-15-96

A SUMMARY OF HOUSE BILL 5916 AS INTRODUCED 5-29-96

House Bill 5916 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:

- a. Persons or businesses that purchase compressed natural gas from a utility to sell at retail for use as a vehicular fuel.
- b. 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.
- c. 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.
- d. 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 which 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, if left uncorrected, 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. A utility or affiliate that violated any of the above restrictions would be subject to a civil fine of up to \$25,000 for each separate and distinct violation. If the utility or affiliate defaulted in its payment of a civil fine or costs ordered under the act, the default could be remedied by any means allowed under the Revised Judicature Act.

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. Such an action would have to be brought in the circuit court where the utility's headquarters were located or where the affiliate was located or, if the utility or affiliate were a nonresident corporation, where its agent designated for service of process was located.

Powers and Duties of the PSC. In order to implement the bill's provisions, the PSC 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 and the rules promulgated by the PSC under the bill.

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.

Analyst: W. Flory

■ 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.