



Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bill 555 (as reported without amendment)
Senate Bill 652 (Substitute S-1 as reported)
Sponsor: Senator Mat J. Dunaskiss
Committee: Financial Services

Date Completed: 9-28-95

RATIONALE

Public Act 144 of 1909 provides that any public utility seeking to issue stocks, bonds, notes, or other debt of more than 12 months' duration is required to obtain approval from the Michigan Public Service Commission (PSC). When that Act was adopted, the potential for inappropriate securities expenses' being passed on to ratepayers was a concern. Given the current structure of Federal regulation of securities activities and PSC regulation of utilities' rate-setting practices, however, some people view the PSC's debt issuance oversight authority under Public Act 144 as unnecessary and duplicative and suggest repealing the Act. Conversely, the two generation and transmission electric cooperatives that operate in Michigan, which provide electricity to their small distributor-members for sale to rural users, reportedly rely on the PSC's debt issuance oversight authority to secure Federal loans for capital costs. Consequently, some people believe that, although Public Act 144 of 1909 should be repealed, a similar measure, applying only to generation and transmission electric cooperatives, should be enacted.

CONTENT

Senate Bill 555, would repeal Public Act 144 of 1909. Senate Bill 652 (S-1) would create a new act to regulate the issuance of securities by certain electric cooperatives. Senate Bill 652 (S-1) would be repealed on January 1, 2001.

A more detailed description of Senate Bill 652 (S-1) follows.

The bill would create a new act to regulate the issuance of stocks, bonds, and other evidences of indebtedness by a generation and transmission electric cooperative. A generation and

transmission electric cooperative could issue stocks, bonds, notes or other evidences of indebtedness, payable at a period of more than 12 months after the date of issuance, for the acquisition of property, the construction, completion, extension, or improvement of facilities, the improvement or maintenance of service, or the discharge or lawful refunding of obligations. A generation and transmission electric cooperative also could issue stock to represent accumulated earnings invested in capital assets and not previously capitalized. A cooperative could not issue the instruments, however, unless the Michigan Public Service Commission issued an order authorizing the issuance and stated that the use of the capital or property to be acquired and secured was reasonably required for the cooperative's purpose, or that the issue of stock fairly represented accumulated and undistributed earnings invested in capital assets and not previously capitalized.

A generation and transmission electric cooperative would have to apply to the PSC for approval, and the PSC could investigate, hold hearings, and examine witnesses, books, papers, documents, or contracts as it considered necessary. If the PSC were satisfied that the bill's requirements were met, it would have to grant the authority to make the issue. In granting that authority, the PSC could impose as a condition of the grant reasonable terms and conditions it considered proper. Stocks, bonds, notes, or other evidences of indebtedness issued pursuant to a PSC order would be binding in accordance with their terms, regardless of whether the order was later vacated, modified, or otherwise held to be invalid.

A generation and transmission electric cooperative that neglected, or failed to comply with, or violated

the bill or failed to perform the conditions imposed by the PSC would be liable for a fine of not less than \$1,000 or more than \$5,000 for each offense.

MCL 460.301-460.303 (S.B. 555)

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

Public Act 144 of 1909 was designed to offer consumer protection to ratepayers by regulating public utilities' financial securities practices. This oversight authority served as an assurance that utilities would not get involved in securities markets irresponsibly or unnecessarily. With the wide array of securities regulations and consumer protection laws applicable today, however, PSC approval of utilities' financing activities is not a pressing issue. Indeed, in 1988, the United States Supreme Court even ruled that Public Act 144, as it relates to natural gas companies, was preempted by the Federal Natural Gas Act of 1938 (*Schneidewind v ANR Pipeline Co.* (108 S.Ct. 1145)). Further, some utilities apparently have missed out on opportunities to enter into securities markets because of the delay caused by seeking PSC approval. Senate Bill 555 would repeal an unnecessary and burdensome State regulatory activity.

Supporting Argument

Although PSC regulation under Public Act 144 of 1909 is generally unnecessary, without State oversight of generation and transmission electric cooperatives' indebtedness, Federal officials reportedly will require a cooperative's independent distributor-members to guarantee repayment of the cooperative's Federal loans. With State regulation over these electric cooperatives' financing activities, however, the individual distributor-members of the two generation and transmission electric cooperatives that operate in Michigan are insulated from liability for those loan amounts. Senate Bill 652 (S-1) would provide the limited PSC oversight necessary to allow the individual members of a generation and transmission electric cooperative to continue to be protected from responsibility for the cooperative's debt.

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bill 555

During the last couple of years, the PSC has been involved in a number of security cases, mostly cases that involved telecommunication companies. In total, 31 securities cases have been reviewed since January 1994. Ten of these cases involved rural electric cooperatives.

This bill would reduce the workload of the PSC, and the budget for FY 1995-96 has been reduced in anticipation of the repeal of Public Act 144 of 1909.

Senate Bill 652 (S-1)

This bill would continue regulatory oversight of the indebtedness and financial security of two of the 15 electric cooperatives that operate in Michigan, one of which has not had an issuance in over 10 years and the other of which has had only two issuances in that time. This bill would not require any additional regulatory activity by the PSC over cooperative utility financial practices.

Fiscal Analyst: K. Lindquist

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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.