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LICENSE AND REGULATE ALT. GAS SUPPLIERS

House Bill 6128 (Substitute H-2)
First Analysis (12-4-02)

Sponsor: Rep. Mike Kowall
Committee: Energy and Technology

THE APPARENT PROBLEM:

Public Act 3 of 1939 gives the Public Service Commission (PSC) jurisdiction over the regulation of the state's public utilities including natural gas utilities. Traditionally, local natural gas utilities were responsible for supplying gas and for delivering the gas to customers. Over the past several years the Public Service Commission has approved voluntary "customer choice" programs for four gas utilities: Consumers Energy, Michigan Consolidated Gas, Aquila Networks-Michigan Gas Utilities, and SEMCO. As the PSC explains on its web site, such programs allow residential and business customers of any of these four companies to choose an alternative supplier of the natural gas that they purchase. The local utility delivers the gas to the customer either way, but now customers have a choice of having the utility supply their gas or having it supplied by an alternative supplier. This choice leads to competition among the suppliers. One potential positive effect of competition for consumers is that suppliers will reduce their rates. One potential negative effect is that competition will lead alternative suppliers and utilities to engage in cutthroat business practices, doing everything they can to expand or preserve their customer bases.

Currently alternative natural gas suppliers are not licensed by the state. It has been suggested that this leaves the PSC with little authority to penalize alternative suppliers who engage in abusive practices, such as "slamming", "cramming", and hoodwinking customers into signing misleading contracts. ("Slamming" refers to the practice of switching a customer from one company to another without the customer's authorization, while "cramming" refers to the practice of providing customers with, and charging for, additional services without the customer's authorization.) Legislation has been introduced to require alternative gas suppliers to be licensed by the PSC and to prohibit alternative suppliers and gas utilities from slamming, cramming, and soliciting and entering into misleading or fraudulent contracts.

THE CONTENT OF THE BILL:

House Bill 6128 would amend Public Act 3 of 1939 to require alternative gas suppliers to be licensed and to prohibit alternative gas suppliers and natural gas utilities from "slamming", "cramming", and soliciting or entering into contracts in a misleading, fraudulent, or deceptive manner. The bill is summarized in detail below.

<u>Definitions</u>. The bill would define "customer choice program" as a program approved by the PSC on application by a natural gas utility that allows retail customers to choose an alternative gas supplier. "Alternative gas supplier" would mean a person who sells natural gas at unregulated retail rates to customers located in the state, where the gas is delivered to customers by a natural gas utility that has a customer choice program. (Retail sales in a customer choice program by an alternative gas supplier would not constitute public utility service.) "Natural gas utility" would be defined as an investor-owned business engaged in the sale and distribution of natural gas in Michigan, whose rates are regulated by the PSC.

<u>Licensure for alternative gas suppliers</u>. Under the bill, the PSC would have to issue orders establishing a licensing procedure for all alternative gas suppliers participating in any PSC-approved natural gas customer choice program. An alternative gas supplier could not do business in the state without first receiving a license.

Alternative gas suppliers would be required to maintain an office within Michigan. The PSC would be required to assure that an alternative gas supplier doing business in Michigan had the necessary financial, managerial, and technical capabilities and to require suppliers to maintain any records that the PSC considered necessary. The PSC would also have to require alternative gas suppliers to collect and remit to state and local governments all applicable users, sales, and use taxes, if the natural gas utility was not doing so on the supplier's behalf.

"Slamming" prohibited. An alternative gas supplier or natural gas utility would be prohibited from switching customers to its gas supply without the customer's authorization—a practice also known as "slamming". The PSC could issue orders to ensure that an alternative gas supplier or natural gas utility does not switch a customer to another supplier without the customer's written confirmation, confirmation through an independent third party, or other verification procedures subject to PSC approval confirming the customer's intent to switch as well as the customer's approval of the specific details of the switch. A natural gas utility could not be found in violation of either the slamming prohibition or the PSC's orders concerning confirmation of a customer's authorization to switch suppliers if the customer's service was switched by the utility either under the applicable terms and conditions of a PSC-approved gas customer choice program or as the result of the default of an alternative gas supplier.

"Cramming" prohibited. An alternative gas supplier or natural gas utility could not include or add optional services in a customer's service package without the customer's authorization. (This practice is commonly referred to as "cramming".) The PSC could issue orders to ensure that an alternative supplier or utility does not include or add optional services in a customer's service package without the customer's written confirmation, confirmation through an independent third party, or other verification procedures subject to PSC approval confirming the customer's intent to receive the optional services.

Misleading, fraudulent, or deceptive contracts prohibited. An alternative gas supplier or natural gas utility could not solicit or enter into contracts with customers in the state in a misleading, fraudulent, or deceptive manner.

The PSC could by order establish minimum standards for the form and content of all disclosures, explanations, or sales information relating to the sale of a natural gas commodity in a customer choice program and disseminated by an alternative supplier or utility to ensure that they contain accurate and understandable information and that they enable a customer to make an informed decision relating to the purchase of a natural gas commodity. The standards could not be "unduly burdensome" and could not "unnecessarily delay or inhibit" the initiation and development of competition among alternative suppliers or utilities in any market. Further, the standards would have to establish different requirements for disclosures, explanations, and sales information relating to different services or to similar services to different natural gas supply classes of customers, whenever such different requirements were appropriate to carry out the provisions of this section of the bill.

Rules. The PSC could adopt rules to implement the section of the bill prohibiting slamming, cramming, and misleading, fraudulent or deceptive contracts under the Administrative Procedures Act of 1969.

Violations, remedies, and penalties. If, after notice and hearing, the PSC found that a person had violated this section of the bill, the PSC could order remedies and penalties to protect and make whole another person who had suffered an economic loss as a result of the violation. Remedies and penalties for the first offense could include ordering the person to pay a fine of not less than $20,000 or more than $30,000. For a second and any subsequent offense, the PSC would have to order the person to pay a fine of not less than $30,000 or more than $50,000. If the PSC found that the second or any of the subsequent offenses were knowingly made in violation of the slamming and cramming prohibitions, the PSC would have to order the person to pay a fine of not more than $70,000. Each switch made in violation of the slamming prohibition or each service added in violation of the cramming prohibition would constitute a separate offense. The PSC could also order a portion between 10 and 50 percent of any such fines assessed be paid directly to the customer who suffered a violation of the slamming and cramming prohibitions.

The PSC's remedies and penalties could also include the following:

- ordering an unauthorized supplier to refund to the customer any amount greater than the customer would have paid to an authorized supplier;

- ordering the person to reimburse an authorized supplier an amount equal to the amount paid by the customer that should have been paid to the authorized supplier;

- if the person is licensed under the act, revoking the license if the commission found a pattern of violations of the slamming or cramming prohibitions; and

- issuing cease and desist orders.

In no case could the PSC impose a fine for a violation if the person showed that the violation was an unintentional and bona fide error that occurred in spite of the person's maintenance of procedures reasonably adopted to avoid the error. Further, a natural gas utility could not be found in violation of the slamming and cramming prohibitions if the unauthorized switch or addition of services was made under the request or notice of an alternative gas supplier that was responsible under a customer choice program for obtaining the customer's approval.

MCL 460.9 and 460.9b

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the PSC would incur licensing-related and enforcement-related costs as a result of the bill. It is likely that any licensing-related costs would be met out of existing resources. While the bill allows the PSC to order fines for violations of the bill and also allows the PSC to order that a certain portion of the fines be paid directly to a consumer who suffered a violation, any funds retained by the PSC would be used to meet enforcement-related costs. Since the PSC's costs are met primarily through assessments on public utilities, any new costs not covered by fine revenue would be met through assessment revenue. (12-4-02)

ARGUMENTS:

For:

The voluntary unbundling of natural gas services by several of the state's largest gas utilities has provided customers with the opportunity to choose to buy their gas from one of several suppliers. While the competition has lowered many customers' gas bills, it has also led some gas suppliers and utilities (or telemarketers acting on their behalf) to engage in unsavory business practices, such as slamming and cramming. Some companies require telemarketers to follow a standard script when trying to sign up a new customer or sell a customer new services. Some people think that the problem lies with overzealous telemarketers who are generally paid on the basis of how much business they solicit and therefore may have an incentive to make a sale, even if they have to deviate from the script to do so. Others suggest that customers simply are not listening carefully enough to the solicitation. Regardless of who is at fault in any given situation, the competitive marketplace creates a climate where some gas companies may be tempted to go to great lengths to make a sale.

The bill would protect consumers by prohibiting companies from acting without a customer's consent. As described in an April 25, 2002 Grand Rapids Press article, the PSC can prohibit an alternative supplier who engages in slamming or cramming from doing business in the state and the attorney general's office can levy fines against such a supplier. By licensing alternative suppliers and expressly prohibiting suppliers and utilities from slamming, cramming, and soliciting and entering into misleading or fraudulent contracts, however, the PSC would have clear statutory authority to issue a range of penalties, depending on whether the company is a first-time offender or a repeat offender. The PSC already has specific authority to punish similar abuses committed by alternative electric suppliers, and it is important to the long-term success of unbundling of natural gas services that customers be protected from such abuses as well.

POSITIONS:

The Public Service Commission supports the bill. (12-4-02)

The Michigan Electric and Gas Association supports the bill. (12-4-02)

Consumers Energy supports the bill. (12-4-02)

DTE Energy supports the bill. (12-4-02)

A representative of SEMCO Energy Gas indicated support for the bill. (12-3-02)

Analyst: J. Caver

■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.