

Legislative Analysis



INDEPENDENT TRANSMISSION COMPANIES

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House Bill 5807 (Substitute H-2)
Sponsor: Rep. Bill McConico

House Bill 5808 (Substitute H-1)
Sponsor: Rep. Ken Bradstreet
Committee: Energy and Technology
First Analysis (5-18-04)

BRIEF SUMMARY: The bills would, generally, make the provisions of two acts related to the construction of electrical transmission lines apply to independent transmission companies and to affiliated transmission companies. (The acts currently apply to traditional electric utilities.)

FISCAL IMPACT: There is no fiscal impact to either the state or local units of government.

THE APPARENT PROBLEM:

As a result of the enactment of Public Act 141 of 2000, the Customer Choice and Electric Reliability Act, Michigan's two largest electric utilities divested themselves of their transmission lines, which are now owned by so-called independent transmission companies. The lines once owned by DTE Energy (Detroit Edison) are now owned by International Transmission Company (ITC); Consumers Energy's transmission system was acquired by Michigan Electric Transmission Company (METC). However, statutes relating to the construction or expansion of transmission lines, which among other things allow for the condemnation of property through eminent domain and require approval of the Michigan Public Service Commission, are written to apply to traditional electric utilities. Legislation has been introduced to make these statutes apply to independent transmission companies (as well as to other transmission companies that are affiliated with and not independent of electric utilities).

THE CONTENT OF THE BILL:

The bills would amend two electric energy-related acts to acknowledge, in statute, independent electricity transmission companies and affiliated transmission companies. The bills would make two statutes apply to such companies in the same way the acts now apply to traditional electric utilities.

Definitions. Both bills would define "*independent transmission company*" to mean a person, partnership, corporation, association, or other legal entity, or its successors or assigns, engaged in the state in the transmission of electricity using facilities it owns that have been divested to the entity by an electric utility that was engaged in the generation, transmission, and distribution of electricity in the state on December 31, 2000, and is

independent of an electric utility or an affiliate of the utility, generating or distributing electricity to retail customers in the state.

The bills would define an “*affiliated transmission company*” to mean a person, partnership, corporation, association, or legal entity, or its successors or assigns, which has fully satisfied the requirements to join a regional transmission organization as determined by the federal energy regulatory commission, is engaged in the state in the transmission of electricity using facilities it owns that were transferred to the entity by an electric utility that was engaged in the generation, transmission, and distribution of electricity in the state on December 31, 2000, and is not independent of an electric utility or an affiliate of the utility, generating or distributing electricity to retail customers in the state.

House Bill 5807 (Condemnation Powers)

The bill would amend Public Act 238 of 1923 (MCL 486.253) to provide an independent transmission company or an affiliated transmission company with the power to condemn property that is necessary to transmit electric energy for public use. There would be two exceptions:

- A company could not circumvent a private agreement that existed on the effective date of the bill under which the company leases rights-of-way for its electric transmission facilities from the utility; and
- A company could not condemn property owned by an electric or gas utility in a manner which unreasonably disrupts the ability of the utility to continue to provide service to its customers. If a dispute exists over this provision, the condemnation could not proceed until the Michigan Public Service Commission determines that no unreasonable disruption is involved. The commission would make its determination under the contested case provisions of the Administrative Procedures Act and would have 180 days to make the determination. If the principal parties of record agreed the complexity of the dispute warranted it, the deadline could be extended to 210 days.

In condemning property, an independent transmission company and affiliated company would be subject to the same procedures and requirements under the act as a corporation formed under the act (i.e., an electric utility). Any procedure or requirement that is inconsistent with the Electric Transmission Line Certification Act or the Uniform Condemnation Procedure Act would not apply to an independent transmission company or an affiliated transmission company.

House Bill 5808 (Construction of Transmission Lines)

The bill would amend the Electric Transmission Line Certification Act (MCL 460.562 et al.) to extend provisions that now apply to electric utilities related to the construction of major transmission lines to independent transmission companies and to affiliated transmission companies.

The act regulates the process by which electric utilities with at least 50,000 residential customers are permitted to construct major transmission lines and requires, among other things, a utility to hold a public meeting in each affected municipality and to provide each affected landowner with notice and the Public Service Commission to hold a hearing on an application to construct a major transmission line (i.e., a line five miles or more in length through which electricity is transferred at system bulk supply voltage of 345 kilovolts or more). Electric utilities are required to obtain a certificate of public convenience and necessity from the PSC prior to beginning construction on a major transmission line. The application for the certificate must include, among other things, a detailed description of the proposed major route, a description and evaluation of any alternate routes and why the proposed route was selected, estimated public benefits, estimated cost, and potential affects on the public health and safety. The PSC must grant the certificate if it determines that the public benefits justify the construction, the route is feasible and reasonable, the proposed major transmission line does not pose an unreasonable threat to public health or safety, and the utility accepts conditions in a conditional grant. Construction must commence within five years from the date on which the certificate was granted.

ARGUMENTS:

For:

The bills would grant the companies that own the state's electric transmission lines the same powers and subject them to the same procedures as applied to traditional electric utilities when they owned the transmission lines. As a result of Public Act 141, the lines that transmit electricity are not always owned by the traditional electric utilities. Both Detroit Edison and Consumers Energy, for example, have divested themselves of their transmission lines to independent companies. Representatives of independent transmission companies say the bills are essentially technical in nature: they do not affect substantive law but update the law to reflect changes in the structure of the electric industry.

POSITIONS:

A representative of the Independent Transmission Company (ITC) testified in support of the bill before the House Committee on Energy and Technology. (5-5-04)

A representative of Michigan Electric Transmission Company (METC) testified in support of the bill. (5-5-04)

DTE Energy has indicated support for the bill. (5-12-04)

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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.