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BILL ANALYSIS

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Senate Bill 612 (as introduced 7-15-03)
Sponsor: Senator Laura M. Toy
Committee: Technology and Energy

Date Completed: 9-16-03

CONTENT

The bill would amend the Customer Choice and Electricity Reliability Act to do the following:

-- **Make an exception to electric utilities' code of conduct, under certain circumstances, for a utility's repair and servicing program.**
-- **Require the Public Service Commission (PSC) to ensure that the regulated rates of a regulated utility did not subsidize programs offered by the utility for the repair and servicing of heating and cooling systems or other appliances.**
-- **Prohibit a regulated utility from promoting such service programs through use of utility bill inserts or other promotional materials included in customer utility bills.**

Public Act 141 of 2000 required the PSC to develop a code of conduct that applies to all electric utilities, and includes measures to prevent cross-subsidization, information sharing, and preferential treatment between a utility's regulated and unregulated services. (According to the code of conduct, a service is "regulated" if the PSC has the authority to set the price for the service.) Under the bill, the code of conduct would not apply to a utility's repair and servicing program if the utility had less than 30% of the market share for the repair and servicing of heating and cooling systems or other appliances within the utility's service area. The bill specifies that, for purposes of its provisions, a subsidy would not exist if the revenues of the repair and servicing program exceeded the incremental costs of the program and the program revenues were credited to utility customers in general rate cases.

BACKGROUND

Under Public Act 141 of 2000, the PSC was required to establish a code of conduct, applicable to all electric utilities and alternative electric suppliers, to promote fair competition. On December 4, 2000, the PSC adopted a code that contains, but is not limited to, the following "separation" provisions:

-- An electric utility may not offer unregulated services or products except through one or more affiliates or through other entities within the corporate structure, such as divisions.
-- An electric utility's regulated services may not subsidize, directly or indirectly, the unregulated business of its affiliates or other separate entities within the corporate structure.
-- An electric utility must maintain its books and records separately from those of its affiliates or other entities within its corporate structure.
-- An electric utility and its affiliates or other entities within the corporate structure may not share facilities, equipment, or operating employees, but may share computer hardware and software with documented protection to prevent discriminatory access to competitively sensitive information.

-- An electric utility's operating employees and the operating employees of its affiliates must function independently of each other and maintain separate offices.
-- An electric utility may not finance or co-sign loans for affiliates.
-- An electric utility and its affiliates or other entities within the corporate structure offering both regulated and unregulated services or products in Michigan may not engage in joint advertising, marketing, or other promotional activities related to the provision of regulated and unregulated services, nor may they jointly sell regulated and unregulated services.

All electric utilities were required to file a code of conduct compliance plan within 90 days of the PSC's order. (In January 2001, the PSC extended the filing deadline in response to requests from the industry to examine and clarify how the code of conduct would affect utilities' appliance repair programs. Under the new deadline, electric utilities had up to 60 days after the Commission's final order on rehearing, reconsideration, and clarification to file their compliance plans.)

In December 2002, Consumers Energy requested an extension of a temporary waiver of the requirement to separate its appliance service plan (ASP) program, through which the company provides repair service for heating and cooling systems and major appliances. The PSC extended the waiver through April 3, 2003. In February 2003, Consumers Energy sought another extension of the waiver through April 3, 2004. The PSC again granted the extension, but only until December 31, 2003, at which time Consumers must either have terminated its ASP program or have completed the full functional separation of the program from its regulated activities. The Commission granted the extension on the condition that the company stop including promotional material for the program with customers' bills and that the program bear the full cost of promotional activities through use of separate mailings by December 31, 2003.

At the time it granted the latest extension, the PSC also cited Consumers Energy for violating the code of conduct by jointly advertising unregulated programs with regulated programs, and ordered the company immediately to discontinue promoting the ASP program with inserts and bills provided through ratepayer funds.

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FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

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