

# HOUSE BILL No. 4301

March 5, 2015, Introduced by Rep. Nesbitt and referred to the Committee on Energy Policy.

A bill to amend 2008 PA 167, entitled  
"Electric cooperative member-regulation act,"  
by amending section 9 (MCL 460.39).

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 9. (1) The commission shall retain jurisdiction over all  
2 areas served and line extension disputes involving a cooperative  
3 electric utility that is member-regulated under this act and a  
4 regulated electric utility. This act does not limit the  
5 commission's jurisdiction over areas served and line extension  
6 disputes granted to the commission under any other law or statute.  
7 A cooperative electric utility that is member-regulated under this  
8 act shall operate in compliance with R 460.3411 of the Michigan  
9 administrative code, regarding extension of electric service in  
10 areas served by 2 or more utilities. The commission shall continue  
11 to possess all jurisdiction and authority necessary to administer

1 and enforce the provisions of 1929 PA 69, MCL 460.501 to 460.506,  
2 and R 460.3411 of the Michigan administrative code with respect to  
3 member-regulated cooperative electric utilities.

4 (2) When a member-regulated cooperative is required to give  
5 notice to the commission and any affected electric utility of its  
6 intention to extend service to a prospective customer as required  
7 under R 460.3411 of the Michigan administrative code, the notice  
8 shall also include the charge to extend service, if any, and the  
9 rate or rates for the service offered.

10 (3) If the electric utility, after being notified under R  
11 460.3411 of the Michigan administrative code, believes that a  
12 cooperative that is member-regulated under this act either proposes  
13 to unlawfully extend service to a prospective customer or has  
14 offered an unjustly preferential charge for extension of service or  
15 unjust rate to a prospective customer and that prospective customer  
16 could otherwise be served by the electric utility ~~pursuant to~~ **UNDER**  
17 the commission's rules for extension of electric service, the  
18 affected electric utility may file an objection with the  
19 commission. Any objection allowed under this subsection shall be  
20 filed within 60 days from the date notice of the intent to extend  
21 service was provided by the cooperative. If an objection is filed  
22 by the utility notified under R 460.3411 of the Michigan  
23 administrative code, the commission shall first determine whether  
24 the complaining utility or the cooperative, or both, have the  
25 lawful right to provide service to the prospective customer and  
26 then, if necessary, determine whether the charges or rates offered  
27 by the cooperative are just and reasonable based on the

1 cooperative's cost of service. That determination shall be made at  
2 a contested case proceeding conducted pursuant to chapter 4 of the  
3 administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to  
4 24.287. A cooperative's charges or rates offered to a prospective  
5 customer shall be considered just and reasonable upon a showing by  
6 the cooperative that the charges to extend service to a prospective  
7 customer and the rates offered are equivalent to the cooperative's  
8 charges to extend service and rates charged to other similarly  
9 situated customers served by the cooperative. If the cooperative  
10 does not provide service to other similarly situated customers, the  
11 cooperative shall demonstrate that its charges to extend service  
12 and the rates offered to the prospective customer are just and  
13 reasonable based on the cooperative's cost of providing service to  
14 the prospective customer, consistent with industry practice. At the  
15 choice of the customer, either the electric utility or the member-  
16 regulated cooperative may provide service to the prospective  
17 customer until the commission determines the appropriate service  
18 provider.

19 (4) A municipally owned utility that has entered into a  
20 service area agreement with a cooperative in accordance with  
21 section ~~10y(6)~~ ~~10Y~~ of 1939 PA 3, MCL 460.10y, may file an action in  
22 the circuit court in the district where the cooperative's main  
23 office is located alleging that a rate or charge offered by the  
24 cooperative is unjust and unreasonable. An action filed under this  
25 subsection shall be filed within 60 days after the municipally  
26 owned utility becomes aware of the rate or charge. In determining  
27 whether a rate or charge is just and reasonable, the circuit court

1 shall use the standards set forth in subsection (3) for  
2 determinations made by the commission. If the circuit court  
3 determines that the rate or charge offered to the prospective  
4 customer is unjust or unreasonable, the court shall order the  
5 cooperative to assess the appropriate rate or charge to the  
6 prospective customer. Notwithstanding any law to the contrary, if  
7 the circuit court issues an order under this subsection, any  
8 prospective customer directly affected by the order shall be  
9 permitted by the cooperative to switch service to the objecting  
10 municipally owned utility, if the affected customer has given the  
11 cooperative written notice of the customer's intent to switch  
12 within 60 days from the date of the court's order and the objecting  
13 municipally owned utility agrees to pay the cooperative the  
14 reasonable value, as determined by the circuit court, of its  
15 facilities that will continue to be used to serve the customer by  
16 the objecting municipally owned utility.

17 (5) If the commission finds that an electric utility or  
18 cooperative providing temporary service to a customer under this  
19 act is not a lawful service provider for that customer, the  
20 commission shall order service to that customer transferred to the  
21 lawful provider. That order shall require the provider acquiring  
22 the customer to pay for the reasonable cost of the facilities, as  
23 determined by the commission, constructed to serve the transferred  
24 customer, which will be used by the acquiring provider to serve the  
25 transferred customer.

26 (6) If the commission finds that the cooperative is a lawful  
27 service provider but the cooperative's charges to extend service,

1 if any, or the rates offered to the prospective customer are unjust  
2 or unreasonable, the commission shall order the cooperative to  
3 assess the appropriate charges to extend service and assess the  
4 appropriate rates to the prospective customer. Notwithstanding  
5 rules to the contrary, if the commission issues an order under this  
6 subsection, any prospective customer directly affected by the  
7 commission's order shall be permitted by the cooperative to switch  
8 service to the objecting electric utility, if the affected customer  
9 has given the cooperative written notice of the customer's intent  
10 to switch within 60 days from the date of the commission's order  
11 and the objecting electric utility agrees to pay the cooperative  
12 the reasonable value, as determined by the commission, of its  
13 facilities that will continue to be used to serve the customer by  
14 the objecting electric utility.

15 Enacting section 1. This amendatory act takes effect 90 days  
16 after the date it is enacted into law.

17 Enacting section 2. This amendatory act does not take effect  
18 unless Senate Bill No.\_\_\_\_ or House Bill No. 4298 (request no.  
19 01467'15) of the 98th Legislature is enacted into law.