

Legislative Analysis



MUNICIPAL UTILITIES: ELECTRIC SERVICE DELIVERED ACROSS CORPORATE LIMITS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 6428 as introduced
Sponsor: Rep. James A. Lower

Analysis available at
<http://www.legislature.mi.gov>

House Bill 6429 as introduced
Sponsor: Rep. Beau Matthew LaFave

House Bill 6430 as introduced
Sponsor: Rep. Aaron Miller

Committee: Energy Policy
Complete to 12-9-18

SUMMARY:

House Bills 6428, 6429, and 6430 would amend different acts to prohibit, in specified circumstances, a utility from providing electric service to a customer that has received service from another utility *within the previous three years* without that other utility's written consent. This restriction would apply in cases where the electric service is being delivered by a municipal utility to customers outside the city operating the municipal utility or is being delivered to customers within such a city by a utility that is not the municipal utility. The bills would uniformly define **customer** to mean the building or facilities served, rather than the individual or entity taking service. House Bills 6429 and 6430 would also remove an exception to certain limitations on a municipally owned utility's retail sales of electric generation service.

House Bill 6428 would amend Public Act 3 of 1939, the Michigan Public Service Commission (MPSC) enabling act. The act currently prohibits a person from providing electric or customer account service to a customer that is receiving that service from a municipally owned utility, or was receiving that service from a municipally owned utility as of June 5, 2000, unless the municipally owned utility gives its written consent.

The bill would instead require the municipally owned utility's written consent before a person could provide electric or customer account service to a customer that is currently receiving, or *within the previous three years* has received, the service from the municipally owned utility.

MCL 460.10y

House Bill 6429 would amend Public Act 35 of 1951, which regulates intergovernmental contracts between municipal corporations. The act currently prohibits a municipal corporation from providing electric service to a customer outside its corporate limits that is *already receiving* the service from another utility unless the other utility consents in writing.

The bill would instead prohibit a municipal corporation from providing electric service outside its corporate limits to a customer that is *currently receiving or within the previous three years has received* the service from the other utility without the other utility's written consent.

The bill would also define *customer* to mean the building or facilities served with electricity, rather than the individual or entity taking the service. [The MPSC enabling act currently uses this definition for *customer*.]

MCL 124.3

House Bill 6430 would amend the Home Rule City Act, which currently prohibits a city from providing electric service to a customer outside its corporate limits that is *already receiving* the service from another utility unless the other utility consents in writing.

The bill would instead prohibit a city from providing electric service outside its corporate limits to a customer that is *currently receiving or within the previous three years has received* the service from the other utility unless the other utility consents in writing. The bill would also define *customer* to mean the building or facilities served with electricity, rather than the individual or entity taking the service.

House Bills 6429 and 6430 would also both revise provisions concerning a municipally owned utility's retail sales of electric generation service. Currently, both Public Act 35 of 1951 and Public Act 279 of 1909 contain provisions that limit the retail sale of electric generation service outside of the municipal limits *unless the municipal utility is in compliance with section 10y(4) of the MPSC enabling act*. That referenced section pertains to written agreements between municipally owned utilities and investor-owned utilities to define the boundaries of each utility's service area. The bills would strike the italicized language, thereby removing any exception to the applicable limits in each act on the retail sale of electric generation service. Both acts define *electric generation service* as the sale of electric power and related ancillary services.

MCL 117.4f

BACKGROUND INFORMATION:

In 2011, the Coldwater Board of Public Utilities (CBPU), which operates a municipally owned utility for the city of Coldwater, purchased a parcel of property in Coldwater Township, where both CBPU and Consumers Energy Company were franchised to provide electric service. A building on the property had electric facilities owned by Consumers, but Consumers had terminated its electric service 20 days before the purchase. Although Consumers removed its facilities from the property, it objected to CBPU's providing electric service for the parcel, and the parties went to court to settle whether the utility was entitled to do so.

In *City of Coldwater v Consumers Energy Company*, 500 Mich 158 (2017), the Michigan Supreme Court ruled that the language of the law governing provision of electric service by municipally owned utilities did not prohibit CBPU from providing the service to the parcel in question.

In its decision, the Court noted that Public Act 35 of 1951 prohibited CBPU from providing electric service “to *customers* outside its corporate limits *already receiving* the service from another utility unless the serving utility consents in writing” [emphases added]. The Court determined that the phrase *already receiving* implied a continuity of service that did not apply in the Coldwater case because of the termination of service 20 days before sale of the parcel. The Court also found that the word *customer* was not explicitly defined in the law, and that its plain-language definition is “one that purchases a commodity or service,” rather than the building or facilities on the land.

FISCAL IMPACT:

House Bills 6428, 6429, and 6430 would not have an impact on expenditures or revenues for any unit of state or local government. The bills would essentially codify a Michigan Supreme Court ruling in *City of Coldwater v Consumers Energy Company*.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.