



**ARIZONA STATE SENATE**  
*Fifty-Fifth Legislature, Second Regular Session*

**ENACTED**

**AMENDED**

FACT SHEET FOR H.B. 2101/S.B. 1631

electric energy; reliability; public policy

Purpose

Repeals statute that promotes competition among public power entities (entities). Establishes consumer protection measures relating to electric service (service).

Background

Statute requires, after December 31, 2000, service territories established by a certificate of convenience and necessity to be open to service competition for all retail electric customers for any electricity supplier (supplier) that obtains a certificate from the Arizona Corporation Commission (ACC) or any entity ([A.R.S. § 40-208](#)).

An *entity* is any municipal corporation, city, town or other political subdivision that: 1) is organized under statute; 2) generates, transmits, distributes or otherwise provides electricity; and 3) is not a public service corporation. An *entity* does not include: 1) a city or town with a population of fewer than 75,000 persons that does not elect by official action to sell service in the service territory of another supplier; 2) a power district, electrical district, irrigation and water conservation district or multi-county water conservation district; or 3) the Arizona Power Authority ([A.R.S. § 30-801](#)). Entities may participate in retail electric competition statewide and must open their entire service territories to competition to suppliers certified by the ACC and to providers of other services ([A.R.S. § 30-803](#)).

Entities and the ACC must coordinate their efforts in the transition to service competition. Statute confirms the ACC's authority to: 1) open the service territories of public service corporations to competitive access by other suppliers or providers of other services; 2) establish reasonable requirements for certifying and regulating suppliers that are public service corporations; 3) maintain the current service territories of public service corporations and prohibit a public service corporation from providing service in the service territories of other electric distribution utilities in Arizona; 4) require an electric distribution utility that is a public service corporation that has been granted a service territory to provide other services for the service territory that the electric distribution utility serves; 5) require the electric distribution utility that is a public service corporation to act as the supplier of last resort for service for every retail electric customer within its service territory under specified circumstances; 6) provide for the recovery of just and reasonable costs incurred by the electric distribution utilities that are public service corporations for supplying electric generation service through a distribution charge on specified retail customers; 7) investigate complaints regarding the subsidization of competitive services by any regulated rate or charge for any noncompetitive service and impose appropriate sanctions;

8) except as provided for the recovery of stranded costs, as ordered by the ACC, not consider the profits or losses associated with electric generation service when regulating electric distribution service; and 9) oversee and develop a comprehensive public education program regarding service competition (A.R.S. §§ [40-113](#) and [40-202](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

### Provisions

#### ***Consumer Protection***

1. Requires an ombudsman office established by an entity to investigate retail electric customer service complaints, rather than complaints regarding the subsidization of competitive services.
2. Allows a municipal entity to provide an alternative to the structure outlined in this legislation to address customer service and consumer protection issues.

#### ***Appealing an Entity's Governing Body Decision or Order***

3. Allows any person, rather than only a party to an action or proceeding or party in interest, to apply for a rehearing of an order or decision made by an entity's governing body in the course of ratemaking or rate design process.
4. Allows the Attorney General (AG) to file a notice of appeal in the court of appeals regarding a decision or order made by an entity's governing body in the course of a ratemaking or rate design process on behalf of any person, rather than only a party to the proceeding.
5. Allows the AG to file a notice of appeal in the court of appeals against an entity's governing body only if a rehearing is denied or deemed denied, rather than denied or granted.
6. Allows a person to commence an action in superior court against an entity's governing body only if a rehearing is denied or deemed denied, rather than denied or granted.
7. Allows a person to commence an action in superior court, or the AG to file notice of appeal in the court of appeals, against an entity's governing body to affirm the entity's order or decision in whole, rather than only in part.
8. Specifies that lack of substantial evidence or abuse of discretion, rather than unreasonableness, are acceptable grounds for the superior court to issue a decision that alters an order or decision made by an entity's governing body.
9. Allows a person to appeal an entity's governing body decision or order that was made in the course of a ratemaking or rate design process, rather than a decision or order regarding:
  - a) terms and conditions for customer selection, complaint resolution, consumer protection, stranded costs, transmission and distribution service rates and charges, system benefit charges and other related matters as determined in the reasonable discretion of the governing body; or
  - b) compliance with an intergovernmental agreement made pursuant to statute.

10. Requires an entity's governing body to hear a matter within 20 days after granting the application for a rehearing of the matter, rather than within 20 days after final submission.

#### ***Buy-through Program***

11. Requires, by January 1, 2024, an entity that is an agricultural improvement district to offer a buy-through program that:
  - a) includes terms, conditions and limitations, including a minimum qualifying load and maximum amount of program participation; and
  - b) is structured to maintain system reliability and to avoid a cost shift to nonparticipating customers.

#### ***Electric Cooperatives***

12. Allows an electric energy cooperative to collaborate with any entity, rather than only a corporation that has loans made or guaranteed by the United States through the administrator of the rural utilities service or that are nonprofit members of the corporation.

#### ***Repealed Statutes***

13. Removes the requirement that a competitive market exist in the sale of electric generation service.
14. Repeals statute that requires service territories established by a certificate of convenience and necessity to be open to service competition for all retail electric customers for any supplier that obtains a certificate from the ACC or any entity.
15. Repeals statute that outlines:
  - a) the sale of electric generation service inside and outside of a municipality's electric distribution service territory;
  - b) requirements for determining terms and conditions for competition in the retail sale of service;
  - c) requirements for entities to participate in and educate the public on retail electric competition;
  - d) requirements for determining entity distribution prices;
  - e) requirements for changing a supplier;
  - f) certification of suppliers; and
  - g) related definitions.
16. Repeals the legislative intent clause of [Laws 1998, Chapter 209](#), relating to ensuring an orderly transition to a competitive electricity market.
17. Removes the allowance for decisions made by entities regarding confidential information to be challenged pursuant to public records law.
18. Removes the requirement that the ACC order on a nondiscriminatory basis that public service corporations open their distribution territories to competition by entities to the same extent and under the same terms and conditions as authorized suppliers are granted access through ACC rules and orders.

19. Removes the confirmation of the ACC's authority to:
  - a) open the service territories of public service corporations to competitive access by other suppliers or providers of other services;
  - b) establish reasonable requirements for certifying and regulating suppliers that are public service corporations;
  - c) maintain the current service territories of public service corporations and prohibit a public service corporation from providing service in the service territories of other electric distribution utilities in Arizona;
  - d) require an electric distribution utility that is a public service corporation that has been granted a service territory to provide other services for the service territory that the electric distribution utility serves;
  - e) require the electric distribution utility that is a public service corporation to act as the supplier of last resort for service for every retail electric customer within its service territory under specified circumstances;
  - f) provide for the recovery of just and reasonable costs incurred by the electric distribution utilities that are public service corporations for supplying electric generation service through a distribution charge on specified retail customers;
  - g) investigate complaints regarding the subsidization of competitive services by any regulated rate or charge for any noncompetitive service and impose appropriate sanctions;
  - h) except as provided for the recovery of stranded costs, as ordered by the ACC, not consider the profits or losses associated with electric generation service when regulating electric distribution service; and
  - i) oversee and develop a comprehensive public education program regarding service competition.
  
20. Removes the confirmation of the ACC's authority to adopt rules to:
  - a) prohibit a public service corporation that forms an affiliate to provide services that require a licensed contractor or has employees perform these services, from advertising the services in their billing statement or in other mailings done by the electric distribution utility;
  - b) provide a separate authorization to change supplier and plain language in advertising and billing using uniform words and phrases with the same meanings so that customers can make accurate comparisons;
  - c) require a separate authorization for a change in a retail supplier, subject to statutory requirements; and
  - d) permit the aggregation of loads by multiple customers.
  
21. Removes the designation of violating rules or procedures adopted pursuant to statute confirming the ACC's authority as unlawful.
  
22. Removes the permissive authority of the ACC to exempt or partially exempt any competitive service of any public service corporation from specified statutes pertaining to public service corporations.
  
23. Removes competing more effectively with other entities in the electric energy market as a purpose for an electric energy cooperative to engage in the generation, manufacture, purchase, acquisition, accumulation, transmission, marketing, sale, distribution, supply and disposition of electric energy.

- 24. Removes the stipulation that it is the public policy of the State of Arizona that, in supervising and regulating public service corporations, the most effective manner of establishing just and reasonable rates for electricity is to permit electric generation service prices to be established in a competitive market.
- 25. Removes the application of the Uniform State Antitrust Act to competitive electric generation service and other services.
- 26. Removes related definitions.

*Miscellaneous*

- 27. Defines terms.
- 28. Makes technical and conforming changes.
- 29. Becomes effective on the general effective date.

Amendments Adopted by Committee

- 1. Removes the proposed description of the state's policy position on the role of public power entities and public service corporations in providing electrical service.
- 2. Makes conforming changes.

House Action

NREW	1/18/22	DPA	10-2-0-0	NREW	2/16/22	DPA	5-4-0
3 <sup>rd</sup> Read	2/14/22		26-29-4-1	3 <sup>rd</sup> Read	3/8/22		14-13-3
3 <sup>rd</sup> Read*	2/23/22		37-21-1-1	3 <sup>rd</sup> Read*	4/19/22		17-11-2
<i>*on reconsideration</i>				(H.B. 2101 was substituted for S.B. 1631 on 3 <sup>rd</sup> Read)			

Signed by the Governor 4/26/22  
Chapter 191

Prepared by Senate Research  
May 2, 2022  
RC/slp