

electric energy; reliability; public policy

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HOUSE BILL 2101

AN ACT

REPEALING SECTION 9-520, ARIZONA REVISED STATUTES; AMENDING SECTIONS 10-2057, 10-2081 AND 10-2127, ARIZONA REVISED STATUTES; REPEALING SECTIONS 30-801, 30-802, 30-803 AND 30-805, ARIZONA REVISED STATUTES; AMENDING TITLE 30, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 30-801, 30-803 AND 30-805; REPEALING SECTIONS 30-806, 30-807 AND 30-808, ARIZONA REVISED STATUTES; PROVIDING FOR RENUMBERING; AMENDING SECTIONS 30-807, 30-808 AND 30-809, ARIZONA REVISED STATUTES, AS RENUMBERED; AMENDING TITLE 30, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 30-810 AND 30-811; REPEALING SECTIONS 30-813 AND 40-113, ARIZONA REVISED STATUTES; AMENDING SECTIONS 40-201 AND 40-202, ARIZONA REVISED STATUTES; REPEALING SECTIONS 40-207 AND 40-208, ARIZONA REVISED STATUTES; AMENDING SECTION 40-286, ARIZONA REVISED STATUTES; REPEALING LAWS 1998, CHAPTER 209, SECTION 35; RELATING TO ELECTRIC ENERGY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Repeal
3 Section 9-520, Arizona Revised Statutes, is repealed.
4 Sec. 2. Section 10-2057, Arizona Revised Statutes, is amended to
5 read:
6 10-2057. Powers of electric cooperative
7 A. A cooperative organized under this article may:
8 1. Sue and be sued in its corporate name.
9 2. Have perpetual existence.
10 3. Adopt and alter a corporate seal.
11 4. ~~To compete more effectively with other entities in the electric~~
12 ~~energy market,~~ Engage in the generation, manufacture, purchase,
13 acquisition, accumulation, transmission, marketing, sale, distribution,
14 supply and disposition of electric energy, either individually or jointly
15 in collaboration with other ~~corporations that have loans made or~~
16 ~~guaranteed by the United States through the administrator of the rural~~
17 ~~utilities service or that are nonprofit members of the corporation~~
18 ENTITIES.
19 5. Assist persons to whom electric energy is or will be supplied by
20 the cooperative in wiring their premises and in acquiring and installing
21 electrical and plumbing appliances, equipment, fixtures and apparatus by
22 means of financing.
23 6. Assist persons to whom electric energy is or will be supplied by
24 the cooperative in constructing, equipping, maintaining and operating
25 electric cold storage or processing plants by means of financing.
26 7. Construct, purchase, lease or otherwise acquire, and equip,
27 maintain and operate, and sell, assign, convey, lease, mortgage, pledge or
28 otherwise dispose of or encumber electric transmission and distribution
29 lines or systems, electric generating plants, lands, buildings,
30 structures, dams, plants and equipment, and any other real or personal
31 property, tangible or intangible, that is deemed necessary, convenient or
32 appropriate to accomplish any purpose for which the cooperative is
33 organized or that it elects to undertake.
34 8. Purchase, lease or otherwise acquire, and use, and exercise and
35 sell, assign, convey, mortgage, pledge or otherwise dispose of or
36 encumber, franchises, rights, privileges, licenses and easements.
37 9. Borrow money and otherwise contract indebtedness, and issue
38 notes, bonds and other evidences of indebtedness, and secure the payment
39 thereof by mortgage, pledge or deed of trust of, or any other encumbrance
40 on, any or all of its presently owned or after-acquired real or personal
41 property, assets, franchises or revenues.
42 10. Construct, maintain and operate electric transmission and
43 distribution lines along, on, under and across publicly owned lands and
44 public thoroughfares, including all roads, highways, streets, alleys,
45 bridges and causeways, and acquire for such purposes franchises, licenses,

1 permits, easements, rights-of-way and all similar rights and privileges
2 relating to such purposes.

3 11. Exercise the power of eminent domain in the manner and to the
4 extent provided by the laws of this state for the exercise of such power
5 by other corporations constructing or operating electric transmission and
6 distribution lines or systems.

7 12. Become a member of other cooperatives or corporations or own
8 stock in those cooperatives or corporations or otherwise financially
9 participate and invest in those cooperatives or corporations.

10 13. Conduct its business and exercise its powers within or outside
11 this state.

12 14. Adopt, amend and repeal bylaws.

13 15. Do and perform other acts and things and have and exercise
14 other powers that may be necessary, convenient or appropriate to
15 accomplish the purpose for which the cooperative is organized or to carry
16 out its business and affairs.

17 16. Subject to any limitation imposed by federal law, invest its
18 own monies, make loans or guarantees or participate in rural community
19 infrastructure projects, in job creation activities and in other
20 activities to promote economic development in rural areas if the rural
21 development activities are approved by the rural utilities service.

22 17. Directly or through an affiliate, construct, operate, maintain,
23 lease and license fiber-optic cables and other facilities to provide
24 broadband service over, under, across, on or along real property, personal
25 property, rights-of-way, easements and licenses and other property rights
26 that are owned, held or used by the cooperative, including easement or
27 other property rights owned, held or used by the cooperative to provide
28 electricity or other services.

29 B. The authority granted in subsection A, paragraph 16 OF THIS
30 SECTION shall be used only for economic development in rural areas, and
31 the electric cooperative shall not use monies intended for rural economic
32 development to purchase or acquire electrical works or electrical
33 facilities, whether real or personal property, or both, by the exercise of
34 the right of eminent domain or condemnation nor shall such monies be used
35 to purchase, construct, lease or acquire any electrical works or
36 electrical facilities or make any extensions or additions designed to
37 serve areas or territories already being lawfully served. ~~It~~ FOR THE
38 PURPOSES OF subsection A, paragraph 16 OF THIS SECTION and this
39 subsection:

40 1. "Economic development" includes project feasibility studies,
41 start-up costs, incubator projects and other reasonable expenses for the
42 purpose of fostering rural economic development.

43 2. "Invest" means to commit monies to earn a financial return on
44 assets that are not expected to be used or useful in furnishing electric
45 service. The total amount that the electric cooperative invests, loans or

1 uses as a guarantee is limited to those monies authorized under federal
2 law for rural development programs.

3 3. "Job creation activities" includes providing technical,
4 financial and managerial assistance.

5 4. "Rural community infrastructure projects" includes water and
6 waste systems and garbage collection services.

7 C. ~~Beginning on January 1, 1999,~~ The indemnification of members,
8 directors, officers, employees and agents of a cooperative shall be in
9 accordance with chapter 31, article 5 of this title.

10 Sec. 3. Section 10-2081, Arizona Revised Statutes, is amended to
11 read:

12 10-2081. Exemption from antitrust statutes

13 ~~The provisions of~~ Title 44, chapter 10, article 1 ~~do~~ DOES not apply
14 to any conduct or activity of a cooperative organized pursuant to this
15 article, if the conduct or activity is approved by a statute of this state
16 or of the United States or by the corporation commission or an
17 administrative agency of this state or of the United States that has
18 jurisdiction of the subject matter. ~~This section does not apply to the~~
19 ~~provision of competitive electric generation service and other services.~~

20 Sec. 4. Section 10-2127, Arizona Revised Statutes, is amended to
21 read:

22 10-2127. Powers of a generation and transmission cooperative

23 A. A generation and transmission cooperative may:

24 1. Sue and be sued and complain and defend in its corporate name.

25 2. Have perpetual existence by its corporate name.

26 3. Adopt a corporate seal and alter the seal at its pleasure, and
27 use the seal by causing it, or a facsimile of it, to be impressed or
28 affixed or in any other manner reproduced, but failure to have or to affix
29 a corporate seal does not affect the validity of any instrument or any
30 action taken in pursuance of or in reliance on the seal.

31 4. Own, operate, lease or control plants, property and facilities
32 for the generation or transmission, sale or furnishing of electricity for
33 light, heat or power or other uses, and generate, manufacture, purchase,
34 acquire, accumulate and transmit electric energy.

35 5. ~~To compete more effectively with other entities in the electric~~
36 ~~energy market,~~ Engage in, individually or jointly in collaboration with
37 other ~~corporations that have loans made or guaranteed by the United States~~
38 ~~through the administrator of the rural utilities service or that are~~
39 ~~nonprofit members of the corporation~~ ENTITIES, the acquisition, purchase,
40 marketing, sale, supply and disposition of electric energy to or for its
41 members and persons, entities, governmental agencies and political
42 subdivisions and other electric utilities.

43 6. Purchase, take, receive, subscribe for or otherwise acquire,
44 own, hold, vote, exercise rights arising out of the ownership or
45 possession, use, employ, sell, assign, transfer, convey, mortgage, lend,

1 pledge, hypothecate or otherwise use and deal in and with shares, rights,
2 memberships or other interests in, or notes, bonds, debentures, mortgages,
3 passbooks, certificates of deposit or other obligations of other domestic
4 or foreign corporations, associations, partnerships, limited partnerships
5 or individuals, or direct or indirect obligations or securities of
6 individuals, associations, cooperatives, partnerships, corporations or of
7 the United States or of any other government, state, territory,
8 governmental district or municipality or of any instrumentality thereof.

9 7. Construct, purchase, take, receive, lease as lessee or otherwise
10 acquire, and own, hold, improve, use, equip, maintain and operate, and
11 sell, assign, transfer, convey, exchange, lease as lessor, mortgage,
12 pledge or otherwise dispose of or encumber electric transmission lines and
13 systems, electric generating plants, lands, buildings, structures, dams,
14 plants and equipment, and any and all kinds and classes of real or
15 personal property, tangible or intangible, that are deemed necessary,
16 convenient or appropriate to accomplish the purpose for which the
17 generation and transmission cooperative is organized or that it elects to
18 undertake.

19 8. Purchase or otherwise acquire, and own, hold, use and exercise
20 and sell, assign, transfer, convey, mortgage, pledge, hypothecate or
21 otherwise dispose of or encumber franchises, rights, privileges, licenses,
22 rights-of-way and easements.

23 9. Make contracts and guarantees and incur liabilities, borrow
24 money and otherwise contract indebtedness, and issue its notes, bonds and
25 other evidence of indebtedness, and secure the payment of any indebtedness
26 by mortgage, pledge, deed of trust, assignment, security agreement or any
27 other hypothecation or encumbrance on any or all of its real or personal
28 property, assets, franchises, revenue or income.

29 10. Construct, maintain and operate electric transmission lines
30 along, on, under and across publicly owned lands and public thoroughfares,
31 including all roads, highways, streets, alleys, bridges and causeways, and
32 acquire for such purposes franchises, licenses, permits, easements,
33 rights-of-way and all similar rights and privileges relating to such
34 purposes.

35 11. Exercise the power of eminent domain in the manner and to the
36 extent provided by the laws of this state for the exercise of such power
37 by other corporations constructing or operating electric transmission
38 lines or systems.

39 12. Become a member of other cooperative organizations or
40 corporations or own stock in or otherwise financially participate and
41 invest in those other organizations or corporations.

42 13. Conduct its business, carry on its operations, have offices and
43 exercise the powers granted by this article in any state, territory,
44 district or possession of the United States or in any foreign country.

45 14. Adopt, amend and repeal bylaws consistent with this article.

1 15. Cease its corporate activities and surrender its corporate
2 franchise.

3 16. Do and perform other acts and things, and have and exercise
4 other powers, that may be necessary, convenient or appropriate to
5 accomplish the purpose for which the generation and transmission
6 cooperative is organized or to carry out its business and affairs.

7 17. Directly or through an affiliate, construct, operate, maintain,
8 lease and license fiber-optic cables and other facilities to provide
9 broadband service over, under, across, on or along real property, personal
10 property, rights-of-way, easements and licenses and other property rights
11 owned, held or used by the generation and transmission cooperative,
12 including easement or other property rights that are owned, held or used
13 by the cooperative to provide electricity or other services.

14 B. ~~Beginning on January 1, 1999,~~ The indemnification of members,
15 directors, officers, employees and agents of a cooperative shall be in
16 accordance with chapter 31, article 5 of this title.

17 Sec. 5. Heading change

18 The chapter heading of title 30, chapter 6, Arizona Revised
19 Statutes, is changed from "ELECTRIC POWER COMPETITION" to "ELECTRIC ENERGY
20 RELIABILITY".

21 Sec. 6. Repeal

22 Sections 30-801, 30-802, 30-803 and 30-805, Arizona Revised
23 Statutes, are repealed.

24 Sec. 7. Title 30, chapter 6, article 1, Arizona Revised Statutes,
25 is amended by adding new sections 30-801, 30-803 and 30-805, to read:

26 30-801. Definitions

27 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

28 1. "ELECTRICITY" OR "ELECTRIC SERVICE" MEANS ELECTRIC ENERGY,
29 ELECTRIC CAPACITY OR ELECTRIC CAPACITY AND ENERGY.

30 2. "PUBLIC POWER ENTITY":

31 (a) MEANS ANY MUNICIPAL CORPORATION, CITY, TOWN OR OTHER POLITICAL
32 SUBDIVISION THAT IS ORGANIZED UNDER STATE LAW, THAT GENERATES, TRANSMITS,
33 DISTRIBUTES OR OTHERWISE PROVIDES ELECTRICITY AND THAT IS NOT A PUBLIC
34 SERVICE CORPORATION.

35 (b) DOES NOT INCLUDE:

36 (i) A CITY OR TOWN WITH A POPULATION OF LESS THAN SEVENTY-FIVE
37 THOUSAND PERSONS.

38 (ii) A POWER DISTRICT, ELECTRICAL DISTRICT, IRRIGATION AND WATER
39 CONSERVATION DISTRICT OR MULTI-COUNTY WATER CONSERVATION DISTRICT
40 ESTABLISHED PURSUANT TO TITLE 48, CHAPTER 11, 12, 19 OR 22.

41 (iii) THE ARIZONA POWER AUTHORITY.

42 3. "RETAIL ELECTRIC CUSTOMER" MEANS A PERSON THAT PURCHASES
43 ELECTRICITY FOR THAT PERSON'S OWN USE, INCLUDING USE IN THAT PERSON'S
44 TRADE OR BUSINESS, AND NOT FOR RESALE, REDISTRIBUTION OR RETRANSMISSION.

1 INFORMATION COULD GIVE A MATERIAL ADVANTAGE TO ANOTHER ENTITY, ARE NOT
2 OPEN TO PUBLIC INSPECTION AND MAY NOT BE MADE PUBLIC EXCEPT BY ORDER OF
3 THE PUBLIC POWER ENTITY'S GOVERNING BODY. THE INFORMATION PROTECTED AS
4 CONFIDENTIAL UNDER THIS SECTION IS ANY INFORMATION THAT IS SIMILAR TO THE
5 INFORMATION THAT WOULD BE CONFIDENTIAL UNDER SECTION 40-204 IF REPORTED BY
6 A PUBLIC SERVICE CORPORATION TO THE ARIZONA CORPORATION COMMISSION.

7 Sec. 8. Repeal

8 Sections 30-806, 30-807 and 30-808, Arizona Revised Statutes, are
9 repealed.

10 Sec. 9. Renumber

11 Section 30-809, Arizona Revised Statutes, is renumbered as section
12 30-806.

13 Sec. 10. Section 30-810, Arizona Revised Statutes, is renumbered as
14 section 30-807, and as so renumbered, is amended to read:

15 30-807. Application for rehearing; effect; decision

16 A. After any final order or decision is made by the governing body
17 of the public power entity ~~regarding terms and conditions for customer~~
18 ~~selection, complaint resolution, consumer protection, stranded costs,~~
19 ~~transmission and distribution service rates and charges, system benefit~~
20 ~~charges and other related matters as determined in the reasonable~~
21 ~~discretion of the governing body of the public power entity, or regarding~~
22 ~~compliance with an intergovernmental agreement made under the provisions~~
23 ~~of this chapter~~ IN THE COURSE OF A RATEMAKING OR RATE DESIGN PROCESS, any
24 party to the action or proceeding PERSON or the attorney general on behalf
25 of the THIS state may apply for a rehearing of any matter determined in
26 the action or proceeding ~~and~~ REGARDING THE RATEMAKING OR RATE DESIGN
27 PROCESS specified in the application for rehearing within twenty days ~~of~~
28 AFTER entry of the order or decision. Unless otherwise ordered, ~~the~~
29 filing ~~of~~ the application does not stay the decision of the governing body
30 of the public power entity. If the governing body of the public power
31 entity does not grant the application within twenty days, it is deemed
32 denied. If the governing body of the public power entity grants the
33 application, WITHIN TWENTY DAYS AFTER GRANTING THE APPLICATION, the
34 governing body of the public power entity shall promptly hear the matter
35 and make a determination ~~within twenty days after final submission.~~

36 B. ~~No~~ A claim arising from any order or decision of the governing
37 body of the public power entity ~~regarding terms and conditions for~~
38 ~~customer selection, complaint resolution, consumer protection, stranded~~
39 ~~costs, transmission and distribution service rates and charges, system~~
40 ~~benefit charges and other related matters as determined in the reasonable~~
41 ~~discretion of the governing body of the public power entity or regarding~~
42 ~~compliance with an intergovernmental agreement made under the provision of~~
43 ~~this chapter~~ MADE IN THE COURSE OF A RATEMAKING OR RATE DESIGN PROCESS
44 shall NOT accrue in any court to any party or ~~the~~ THIS state unless the
45 party or ~~the~~ THIS state makes, before the effective date of the order or

1 decision, ~~application~~ APPLIES to the governing body of the public power
2 entity for a rehearing.

3 C. The application shall set forth specifically the grounds on
4 which it is based and a person or ~~the~~ THIS state shall not in any court
5 urge or rely on any ground not set forth in the application.

6 D. An application for rehearing does not excuse any person from
7 complying with and obeying any order or decision or any requirements of
8 any order or decision of the governing body of the public power entity, or
9 operate in any manner to stay or postpone the enforcement of a decision,
10 except in cases and on terms as the governing body of the public power
11 entity by order directs.

12 E. If, after a rehearing and a consideration of all the facts,
13 including those arising since the making of the order or decision, the
14 governing body of the public power entity finds that the original order or
15 decision or any part of the original order or decision is in any respect
16 unjust or unwarranted or should be changed the governing body of the
17 public power entity may abrogate, change or modify the order or decision,
18 and the order or decision has the same force and effect as an original
19 order or decision, but does not affect any right or the enforcement of any
20 right arising from or by virtue of the original order or decision, unless
21 decided by the governing body of the public power entity.

22 Sec. 11. Section 30-811, Arizona Revised Statutes, is renumbered as
23 section 30-808, and as so renumbered, is amended to read:

24 30-808. Action to set aside or modify certain orders or
25 decisions of public power entities; filing;
26 limitation; superior court

27 A. Any ~~party in interest~~ PERSON, or the attorney general on behalf
28 of ~~the~~ THIS state, who is dissatisfied with an order or decision of the
29 governing body of the public power entity ~~regarding terms and conditions~~
30 ~~for customer selection, complaint resolution, consumer protection,~~
31 ~~stranded costs, transmission service rates and charges, distribution~~
32 ~~service rates and charges, system benefit charges and other related~~
33 ~~matters as determined in the reasonable discretion of the governing body~~
34 ~~of the public power entity or regarding compliance with an~~
35 ~~intergovernmental agreement made under the provisions of this chapter, may~~
36 MADE IN THE COURSE OF A RATEMAKING OR RATE DESIGN PROCESS, within thirty
37 days after a rehearing is denied or ~~granted~~ DEEMED DENIED, MAY commence an
38 action in superior court in the county in which the governing body of the
39 public power entity has its office, against the governing body of the
40 public power entity as defendant, to vacate, set aside, affirm IN WHOLE OR
41 in part, reverse in part or remand with instructions to the governing body
42 of the public power entity the order or decision on the ~~ground~~ GROUNDS
43 that the ~~valuation, rate, joint rate, toll, fare, charge or finding, rule,~~
44 ~~classification or schedule, practice, demand, requirement, act or service~~
45 ~~provided in the~~ order or decision is unlawful or ~~that any rule, practice,~~

1 ~~act or service provided in the order or decision is unlawful, or that any~~
2 ~~rule, practice, act or service provided in the order or decision is~~
3 ~~unreasonable~~ IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE OR THAT THE
4 GOVERNING BODY ABUSED ITS DISCRETION. The answer of the governing body of
5 the public power entity shall be served and filed within twenty days after
6 service of the complaint, AND the action shall be at issue and ready for
7 trial on ten days' notice to either party. The action shall be tried and
8 determined as other civil actions except as provided in this section.

9 B. If the governing body of the public power entity rescinds the
10 order or decision complained of, the action shall be dismissed and if the
11 governing body of the public power entity alters, modifies or amends the
12 order or decision, the altered, modified or amended order replaces the
13 original order complained of and judgment shall be given on the order as
14 though made by the governing body of the public power entity in the first
15 instance.

16 C. Except as otherwise prescribed by this section, the trial shall
17 conform as nearly as possible to other trials in civil actions. Judgment
18 shall be given ~~affirming, modifying or setting aside the original or~~
19 ~~amended order~~ TO VACATE, SET ASIDE, AFFIRM IN WHOLE OR IN PART, REVERSE IN
20 PART OR REMAND WITH INSTRUCTIONS TO THE GOVERNING BODY OF THE PUBLIC POWER
21 ENTITY THE ORDER OR DECISION ON THE GROUNDS THAT THE ORDER OR DECISION IS
22 UNLAWFUL OR IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE OR THAT THE GOVERNING
23 BODY ABUSED ITS DISCRETION.

24 D. Either party to the action, or the attorney general on behalf of
25 ~~the~~ THIS state, within thirty days after the judgment of the superior
26 court is given may appeal to the court of appeals.

27 E. In all trials, actions and proceedings the burden of proof is on
28 the party adverse to the governing body of the public power entity or
29 seeking to vacate or set aside any decision or order of the governing body
30 of the public power entity to show that it is unlawful, that it is not
31 supported by substantial evidence or that the governing body of the public
32 power entity abused its discretion.

33 F. Except as provided by this section no court of this state shall
34 have jurisdiction to enjoin, restrain, suspend, delay or review any order
35 or decision of the governing body of the public power entity or to enjoin,
36 restrain or interfere with the governing body of the public power entity
37 in the performance of its official duties and the rules, orders or decrees
38 fixed by the governing body of the public power entity remain in force
39 pending the decision of the courts. A writ of mandamus may be issued from
40 the supreme court to the governing body of the public power entity in
41 cases authorized by law.

1 Sec. 12. Section 30-812, Arizona Revised Statutes, is renumbered as
2 section 30-809, and as so renumbered, is amended to read:

3 30-809. Action to set aside or modify certain governing body
4 of public power entity orders or decisions;
5 limitation; court of appeals

6 A. The attorney general on behalf of ~~the~~ THIS state or any ~~party to~~
7 ~~a proceeding before the governing body of the public power entity~~ PERSON
8 that is dissatisfied with any order or decision of the governing body of
9 the public power entity ~~involving public power entities and relating to~~
10 ~~rate making or rate design pursuant to section 30-802~~ MADE IN THE COURSE
11 OF A RATEMAKING OR RATE DESIGN PROCESS may file, within thirty days after
12 a rehearing is denied or ~~granted~~ DEEMED DENIED, a notice of appeal in the
13 court of appeals to vacate, set aside, affirm IN WHOLE OR in part, reverse
14 in part or remand with instructions to the governing body of the public
15 power entity the order or decision if the court of appeals determines that
16 it is unlawful, that it is not supported by substantial evidence or that
17 the governing body abused its discretion.

18 B. If the governing body of the public power entity rescinds the
19 order complained of, the action shall be dismissed, and if the governing
20 body of the public power entity alters, modifies or amends the order, the
21 altered, modified or amended order shall replace the original order
22 complained of, and judgment shall be given on the order as made by the
23 governing body of the public power entity in the first instance.

24 C. The appellate procedure shall be pursuant to rules adopted by
25 the supreme court. The rules shall conform, as nearly as possible, to the
26 manner in which other appeals are undertaken including indicating the
27 content of the record on review, the briefs to be filed and the time and
28 manner for filing the briefs, record and other documents.

29 D. Any party to the action, or the attorney general on behalf of
30 ~~the~~ THIS state, may appeal to the supreme court as provided by law.

31 E. In all appeals taken pursuant to this section, the party adverse
32 to the governing body of the public power entity or the party seeking to
33 vacate or set aside an order of the governing body of the public power
34 entity must show that the order or decision is unlawful, that it is not
35 supported by substantial evidence or that the governing body abused its
36 discretion.

37 F. Except as provided by this section, a court of this state does
38 not have jurisdiction to enjoin, restrain, suspend, delay or review any
39 order or decision of the governing body of the public power entity
40 involving any public power entity and ~~relating to rate making~~ MADE IN THE
41 COURSE OF A RATEMAKING or rate design PROCESS or to enjoin, restrain or
42 interfere with the governing body of the public power entity in the
43 performance of its official duties and the rules, orders or decrees fixed
44 by the governing body of the public power entity remain in force pending
45 the decision of the courts, but a writ of mandamus shall lie from the

1 supreme court to the governing body of the public power entity in cases
2 authorized by law.

3 Sec. 13. Title 30, chapter 6, article 1, Arizona Revised Statutes,
4 is amended by adding new sections 30-810 and 30-811, to read:

5 30-810. Buy-through program; terms, conditions, limitations;
6 definition

7 A. ON OR BEFORE JANUARY 1, 2024, A PUBLIC POWER ENTITY THAT IS AN
8 AGRICULTURAL IMPROVEMENT DISTRICT ESTABLISHED PURSUANT TO TITLE 48,
9 CHAPTER 17 SHALL OFFER A BUY-THROUGH PROGRAM THAT BOTH:

10 1. INCLUDES TERMS, CONDITIONS AND LIMITATIONS, INCLUDING A MINIMUM
11 QUALIFYING LOAD AND A MAXIMUM AMOUNT OF PROGRAM PARTICIPATION.

12 2. IS STRUCTURED TO MAINTAIN SYSTEM RELIABILITY AND TO AVOID A COST
13 SHIFT TO NONPARTICIPATING CUSTOMERS.

14 B. FOR THE PURPOSES OF THIS SECTION, "BUY-THROUGH" MEANS A PURCHASE
15 OF ELECTRICITY BY A PUBLIC POWER ENTITY AT THE DIRECTION OF A PARTICULAR
16 RETAIL CONSUMER, SUBJECT TO THE TERMS OF THE PROGRAM.

17 30-811. Coordinated scheduling of generation or transmission

18 A PUBLIC POWER ENTITY SHALL PARTICIPATE IN AND SUPPORT AN
19 INDEPENDENT SYSTEM OPERATOR, AN INDEPENDENT SYSTEM ADMINISTRATOR OR OTHER
20 EFFORTS TO COORDINATE SCHEDULING OF GENERATION OR TRANSMISSION WITHIN THIS
21 STATE OR REGION.

22 Sec. 14. Repeal

23 Sections 30-813 and 40-113, Arizona Revised Statutes, are repealed.

24 Sec. 15. Section 40-201, Arizona Revised Statutes, is amended to
25 read:

26 40-201. Definitions

27 In this chapter, unless the context otherwise requires:

28 ~~1. "Ancillary services" means those services designated as~~
29 ~~ancillary services in federal energy regulatory commission order 888~~
30 ~~adopted in 1996 including the services necessary to support the~~
31 ~~transmission of electricity from resources to loads while maintaining~~
32 ~~reliable operation of the transmission system in accordance with good~~
33 ~~utility practice.~~

34 ~~2.~~ 1. "Appliance application" means central space heating, clothes
35 drying, water heating and indoor cooking.

36 ~~3. "Bundled service" means electric service provided as a package~~
37 ~~to the consumer including all generation, transmission, distribution,~~
38 ~~ancillary and other services necessary to deliver and measure useful~~
39 ~~electricity used by consumers.~~

40 ~~4.~~ 2. "Commission" means the ~~Arizona~~ corporation commission.

41 ~~5.~~ 3. "Common carrier" means a railroad or street railroad.

42 ~~6.~~ 4. "Electric distribution facilities" means all property used
43 in connection with the distribution of electricity from an electric
44 generating plant to retail electric customers except electric transmission
45 facilities.

- 1 ~~7.~~ 5. "Electric distribution service" means the distribution of
2 electricity to retail electric customers through the use of electric
3 distribution facilities.
- 4 ~~8.~~ 6. "Electric distribution utility" means a public service
5 corporation or public power entity that operates, controls or maintains
6 electric distribution facilities.
- 7 ~~9.~~ 7. "Electric generation plant" means all property used in
8 connection with the generation for sale of electricity to retail electric
9 customers but excluding any services provided by electric transmission
10 facilities or electric distribution facilities.
- 11 ~~10.~~ 8. "Electric generation service" means the provision of
12 electricity for sale to retail electric customers but does not include
13 electric distribution or transmission services and generation that are
14 necessary for the reliable operation of the electric distribution or
15 transmission system.
- 16 ~~11.~~ 9. "Electric transmission facilities" means all property so
17 classified by the federal energy regulatory commission or, to the extent
18 permitted by law, so classified by the Arizona corporation commission.
- 19 ~~12.~~ 10. "Electric transmission service" means the transmission of
20 electricity to retail electric customers or to electric distribution
21 facilities that is so classified by the federal energy regulatory
22 commission or, to the extent permitted by law, so classified by the
23 Arizona corporation commission.
- 24 ~~13.~~ 11. "Electricity" OR "ELECTRIC SERVICE" means electric energy,
25 electric capacity or electric capacity and energy.
- 26 ~~14.~~ 12. "Electricity supplier" means a person, whether acting in a
27 principal, agent or other capacity, that is a public service corporation
28 that offers to sell electricity to a retail electric customer in this
29 state.
- 30 ~~15. "Foreign nonprofit, member owned cooperative corporation" means~~
31 ~~a cooperative incorporated in another state if that state has not ordered~~
32 ~~electric competition for cooperative corporations.~~
- 33 ~~16. "Gas plant" includes all property used in connection with the~~
34 ~~production, transmission or delivery of gas for light, heat or power for~~
35 ~~sale.~~
- 36 ~~17. "Other services" means metering, meter reading, billing and~~
37 ~~collecting services.~~
- 38 ~~18.~~ 13. "Pipeline" includes all property used in transmission for
39 compensation of air, steam or fluid substances, except water, through
40 pipelines.
- 41 ~~19.~~ 14. "Railroad" includes every railway, other than a street
42 railroad, operated for public transportation of persons or property.
- 43 ~~20.~~ 15. "Residential structure" means a detached owner-occupied or
44 rental one or two family dwelling unit, an attached duplex or fourplex
45 unit, a manufactured home, a residential factory-built building as defined

1 in section 41-4001 or a mobile home designed to be used with a permanent
2 structure, excluding real property used to accommodate more than four
3 attached dwelling units.

4 ~~21.~~ 16. "Retail electric customer" means a person who purchases
5 electricity for that person's own use, including use in that person's
6 trade or business, and not for resale, redistribution or retransmission.

7 ~~22.~~ 17. "Service territory" means the geographic area in which a
8 public power entity **AS DEFINED IN SECTION 30-801** or public service
9 corporation owns, operates, controls or maintains electric distribution
10 facilities or natural gas distribution facilities and that additional area
11 in which the public power entity or public service corporation has agreed
12 to extend electric distribution facilities or natural gas distribution
13 facilities, whether established by a certificate of convenience and
14 necessity, by official action by a public power entity or by contract or
15 agreement.

16 ~~23.~~ 18. "Sewer corporation" includes every person owning,
17 controlling, operating or managing any sewage system for profit.

18 ~~24.~~ 19. "Sewerage system" includes all property used in connection
19 with the collection, treatment, purification and disposal transmission,
20 storage or treatment of sewage.

21 ~~25.~~ 20. "Street railroad" includes every railway operated along
22 any street or public way for public transportation of persons or property,
23 but does not include a commercial or interurban railway.

24 ~~26.~~ 21. "Telecommunications corporation" means a public service
25 corporation other than municipal engaged in transmitting messages or
26 furnishing public telegraph or telephone service or operating as a
27 telecommunications common carrier.

28 ~~27.~~ 22. "Telegraph line" includes all property used in connection
29 with communication by telegraph for compensation with or without the use
30 of transmission wires.

31 ~~28.~~ 23. "Telephone line" includes all property used in connection
32 with communication by telephone, for compensation, with or without the use
33 of transmission wires.

34 ~~29.~~ 24. "Transportation of persons" includes every service in
35 connection with the carriage and delivery of a person and the person's
36 baggage.

37 ~~30.~~ 25. "Transportation of property" includes every service in
38 connection with the transportation and handling of property.

39 ~~31. "Water system" includes all property used in connection with~~
40 ~~the diversion, development, storage, distribution and sale of water for~~
41 ~~beneficial uses for compensation.~~

1 Sec. 16. Section 40-202, Arizona Revised Statutes, is amended to
2 read:

3 40-202. Supervising and regulating public service
4 corporations; telecommunications promotion;
5 consumer protection; duty to comply

6 A. The commission may supervise and regulate every public service
7 corporation in ~~the~~ THIS state and do all things, whether specifically
8 designated in this title or in addition thereto, necessary and convenient
9 in the exercise of that power and jurisdiction. In supervising and
10 regulating long-distance telecommunications corporations, the commission
11 shall encourage competition and growth in the telecommunications industry
12 and promote economic development and investment in new telecommunications
13 technologies, infrastructure and services. In furtherance of this policy,
14 the commission shall establish procedures and standards for identifying
15 and regulating competitive long-distance telecommunications markets. When
16 the commission determines that a long-distance telecommunications market
17 is competitive, it shall establish appropriate supervisory and regulatory
18 treatment for competitive long-distance telecommunications markets as
19 distinguished from noncompetitive telecommunications markets. In imposing
20 any assessments or other charges on mobile telecommunications service
21 providers, the commission shall comply with the requirements of the mobile
22 telecommunications sourcing act (P.L. 106-252; 114 Stat. 626; 4 United
23 States Code sections 116 through 126).

24 ~~B. It is the public policy of this state that a competitive market~~
25 ~~shall exist in the sale of electric generation service. In order to~~
26 ~~transition to competition for electric generation service, the~~
27 ~~commission's authority is confirmed to:~~

28 ~~1. Open the service territories of public service corporations,~~
29 ~~except foreign nonprofit, member owned cooperative corporations, to~~
30 ~~competitive access by other electricity suppliers or providers of other~~
31 ~~services not later than December 31, 1998 for at least twenty per cent of~~
32 ~~their 1995 retail load, at least fifteen per cent of which shall be~~
33 ~~reserved for customers in the residential customer class, and open their~~
34 ~~entire service territory to competition not later than December 31, 2000.~~

35 ~~2. Establish reasonable requirements for certificating and~~
36 ~~regulating electricity suppliers that are public service corporations.~~

37 ~~3. Maintain the current service territories of public service~~
38 ~~corporations and prohibit a public service corporation from providing~~
39 ~~electric distribution service in the service territories of other electric~~
40 ~~distribution utilities in this state.~~

41 ~~4. Require an electric distribution utility that is a public~~
42 ~~service corporation and that has been granted a service territory through~~
43 ~~a certificate of convenience and necessity or a contract and agreement~~
44 ~~among utilities to provide other services for the service territory that~~
45 ~~the electric distribution utility serves as follows:~~

1 ~~(a) Beginning on December 31, 1998 through December 31, 2000,~~
2 ~~billing and collections services shall be provided on a competitive basis~~
3 ~~for those retail electric customers with loads of one megawatt and above~~
4 ~~that have competitive electric generation service. After December 31,~~
5 ~~2000 billing and collections services shall be provided on a competitive~~
6 ~~basis for all retail electric customers that have competitive electric~~
7 ~~generation service.~~

8 ~~(b) Beginning on December 31, 1998 through December 31, 2000,~~
9 ~~metering shall be provided on a competitive basis for those retail~~
10 ~~electric customers with loads of one megawatt and above that have~~
11 ~~competitive electric generation service. After December 31, 2000 metering~~
12 ~~shall be provided on a competitive basis for all retail electric customers~~
13 ~~that have competitive electric generation service. All meters shall meet~~
14 ~~or exceed existing standards for safety, reliability and accuracy.~~

15 ~~(c) By December 31, 1998 through December 31, 2000, meter reading~~
16 ~~shall be provided on a competitive basis for those retail electric~~
17 ~~customers with loads of one megawatt and above that have competitive~~
18 ~~electric generation service. After December 31, 2000 meter reading shall~~
19 ~~be provided on a competitive basis for all retail electric customers that~~
20 ~~have competitive electric generation service.~~

21 ~~5. Require the electric distribution utility that is a public~~
22 ~~service corporation to act as the supplier of last resort for electric~~
23 ~~generation service for every retail electric customer within its electric~~
24 ~~distribution service territory whose annual usage is one hundred thousand~~
25 ~~kilowatt hours or less if other electricity suppliers are unwilling or are~~
26 ~~unable to supply electric generation service and whose electric generation~~
27 ~~service has been discontinued through no fault of the retail electric~~
28 ~~customer.~~

29 ~~6. Provide for the recovery of just and reasonable costs incurred~~
30 ~~by the electric distribution utilities that are public service~~
31 ~~corporations for supplying electric generation service under paragraph 5~~
32 ~~of this subsection through a distribution charge on retail customers whose~~
33 ~~annual usage is one hundred thousand kilowatt hours or less.~~

34 ~~7. Investigate complaints regarding the subsidization of~~
35 ~~competitive services by any regulated rate or charge for any~~
36 ~~noncompetitive electric service and impose appropriate sanctions for any~~
37 ~~such subsidization.~~

38 ~~8. Except as provided for the recovery of stranded costs, including~~
39 ~~costs associated with employee severance incurred as a direct result of~~
40 ~~competition among electric suppliers, as ordered by the commission, not~~
41 ~~consider the profits or losses associated with electric generation service~~
42 ~~when regulating electric distribution service.~~

43 ~~6. B.~~ In supervising and regulating public service corporations,
44 the commission's authority is confirmed to adopt rules to:

1 1. Protect the public against deceptive, unfair and abusive
2 business practices, practices related to deposit requirements and
3 reconnection fees, intrusive and abusive marketing, deceptive or untrue
4 advertising practices and practices prohibited under subsection ~~H~~ E of
5 this section.

6 ~~2. Prohibit a public service corporation that forms an affiliate
7 for the purposes of providing services that require a licensed contractor
8 or has employees perform these services, including but not limited to
9 electrical, heating, ventilation, air conditioning or plumbing or
10 construction services, from advertising these services in their billing
11 statement or in other mailings done by the electric distribution utility.~~

12 ~~3. Provide that a separate authorization pursuant to paragraph 4 of
13 this subsection to change electricity supplier and plain language in
14 advertising and billing using uniform words and phrases that have the same
15 meanings so that customers can make accurate comparisons.~~

16 ~~4. Provide that a separate written and dated authorization is
17 required for a change in a retail electricity supplier subject to the
18 following:~~

19 ~~(a) The authorization shall not contain any inducements.~~

20 ~~(b) The authorization shall be in legible print with clear and
21 plain language confirming the rates, terms, conditions and nature of the
22 service to be provided.~~

23 ~~(c) The authorization shall not state or suggest that the customer
24 take action to retain the customer's current electricity supplier.~~

25 ~~(d) An electricity supplier that submits or executes a change in a
26 retail electricity customer's electricity supplier in violation of this
27 paragraph shall refund to the retail electricity customer the entire
28 amount of the customer's electricity charges attributable to electric
29 generation service from the electricity supplier for three months, or the
30 period of the unauthorized service, whichever is less.~~

31 ~~(e) The authorization shall be in the same language as any
32 promotional or inducement materials provided to the retail electric
33 customer.~~

34 ~~(f) No box or container may be used to collect entries for
35 sweepstakes or a contest that, at the same time, is used to collect
36 authorization by a retail electric customer to change the customer's
37 electricity supplier or to subscribe to other services.~~

38 ~~5.~~ 2. Provide that, notwithstanding any other law, customer
39 information, account information and related proprietary information are
40 confidential unless specifically waived by the customer in writing.

41 ~~6.~~ 3. Ensure that public service corporations that employ the
42 services of a contractor for interior household energy service, either
43 directly or through any affiliate, require the contractors and
44 subcontractors to be licensed by the registrar of contractors and shall
45 comply with all municipal permit and inspection standards and applicable

1 life safety codes. For the purposes of this paragraph, "contractor" has
2 the same meaning prescribed in section 32-1101.

3 ~~7. Permit the aggregation of loads by multiple customers.~~

4 ~~D. In supervising and regulating public service corporations, it is~~
5 ~~the public policy of this state that the most effective manner of~~
6 ~~establishing just and reasonable rates for electricity is to permit~~
7 ~~electric generation service prices to be established in a competitive~~
8 ~~market.~~

9 ~~E. The commission shall order on a nondiscriminatory basis that~~
10 ~~public service corporations open their distribution territories to~~
11 ~~competition by public power entities to the same extent and under the same~~
12 ~~terms and conditions as authorized electricity suppliers are granted~~
13 ~~access through commission rules or orders.~~

14 ~~F.~~ C. Except as provided in subsection ~~G~~ D of this section,
15 during the initial construction of a residential structure, electric and
16 natural gas facilities at a minimum shall be installed in and to the
17 structure in a manner that provides the retail energy consumer ultimately
18 residing in the structure with the capability to choose between
19 electricity and natural gas as an energy source for each appliance
20 application.

21 ~~G.~~ D. A residential structure may be constructed without the
22 installation of any particular facilities if:

23 1. The structure is not located within the service territory of a
24 public service corporation certificated to furnish the associated energy
25 service.

26 2. Unless mandated otherwise by law or governmental regulation, the
27 public service corporation certificated to furnish the associated energy
28 notifies the contractor or owner that the extension of the facilities to
29 the structure is not economically feasible.

30 3. The public service corporation certificated to furnish a
31 particular energy service and the owner or contractor agree that the
32 extension of the facilities to the subdivision, to the structure or to any
33 appliance application would not be economically feasible or would
34 otherwise be inappropriate. In this case, the parties may agree to
35 install no facilities in the subdivision, to install service to any or all
36 residential structures without providing service to any appliance
37 application or to install facilities to some but not all appliance
38 applications.

39 ~~H.~~ E. Unless mandated by law or a generally accepted industry
40 code, a person or entity, including municipal corporations and political
41 subdivisions, shall not engage in any practice that interferes with the
42 opportunity to have electric and natural gas facilities at a minimum
43 installed in and to an existing residential structure in a manner that
44 provides the retail energy consumer ultimately residing in the structure
45 and all subsequent retail energy consumers residing in the structure with

1 the capability to choose between electricity and natural gas as an energy
2 source for each appliance application. This subsection does not apply to
3 reasonable sales and marketing activities.

4 ~~F.~~ F. If a trench is provided by a contractor or a property owner
5 for the purpose of having utility facilities installed to a residential
6 structure, electric and natural gas facilities at a minimum shall be
7 permitted to occupy the trench if the installation of the facilities is
8 completed in compliance with generally accepted industry safety codes
9 applicable to the installation. Except in the case of underground
10 conversion service areas provided for in sections 40-341 through 40-355
11 and improvement districts for underground utility facilities provided for
12 in section 48-620, if the contractor or property owner conditions
13 occupancy in a trench on a reimbursement of costs associated with
14 providing the trench, the contractor or property owner may require an
15 occupant to pay a pro rata share of the costs associated with providing
16 the trench. A public service corporation may use as a credit against the
17 payment money paid through the public service corporation's conduit or
18 other reimbursement programs.

19 ~~G.~~ G. Before initiating a complaint with a public service
20 corporation or the commission, the parties to a dispute arising under
21 subsections ~~F through I~~ C, D, E AND F of this section shall meet and in
22 good faith attempt to resolve the dispute through an informal dispute
23 resolution process. Compliance with subsections ~~F through I~~ C, D, E AND F
24 of this section does not require inspection or enforcement by a city, town
25 or county.

26 ~~H.~~ H. After facilities have been installed initially in accordance
27 with subsection ~~F~~ C of this section, the public service corporation, the
28 homeowner, the home builder or the contractor is not responsible or liable
29 for any subsequent modification to the number of initially installed
30 facilities.

31 ~~I.~~ I. A public service corporation shall comply with every order,
32 decision, rule or regulation made by the commission in any matter relating
33 to or affecting its business as a public service corporation and shall do
34 everything necessary to secure compliance with and observance of every
35 such order, decision, rule or regulation.

36 ~~M. The commission by rule or order may exempt or partially exempt~~
37 ~~any competitive service of any public service corporation from the~~
38 ~~application of section 40-203, section 40-204, subsections A and B and~~
39 ~~sections 40-248, 40-250, 40-251, 40-285, 40-301, 40-302, 40-303, 40-321,~~
40 ~~40-322, 40-331, 40-332, 40-334, 40-365, 40-366, 40-367, 40-374 and 40-401.~~

41 ~~N. The provisions of subsection B, paragraphs 3 and 5 of this~~
42 ~~section are subject to legislative review by the auditor general in 2008.~~

43 ~~O. The provisions of subsection B, paragraph 4 of this section are~~
44 ~~subject to sunset review by the auditor general in 2003.~~

1 ~~P. Failure to comply with the rules or procedures adopted pursuant~~
2 ~~to subsections B and C of this section is an unlawful practice pursuant to~~
3 ~~section 44-1522. The attorney general may investigate and take~~
4 ~~appropriate action as prescribed by title 44, chapter 10, article 7.~~

5 Sec. 17. Repeal

6 Sections 40-207 and 40-208, Arizona Revised Statutes, are repealed.

7 Sec. 18. Section 40-286, Arizona Revised Statutes, is amended to
8 read:

9 40-286. Exemption from antitrust statutes

10 ~~The provisions of~~ Title 44, chapter 10, article 1, ~~shall~~ DOES not
11 apply to any conduct or activity of a public service corporation holding a
12 certificate of public convenience and necessity granted pursuant to this
13 article, which conduct or activity is approved by a statute of this state
14 or of the United States or by the corporation commission or an
15 administrative agency of this state or of the United States having
16 jurisdiction of the subject matter. This section does not apply to the
17 provision of ~~competitive electric generation service or other services or~~
18 ~~to the provision of~~ any competitive telecommunications services. This
19 section does not alter, modify or affect applicable federal or state law
20 regarding the rights of an owner of private property relative to provision
21 of or access to telecommunication services on or for that private
22 property.

23 Sec. 19. Repeal

24 Laws 1998, chapter 209, section 35 is repealed.