

Senate Bills 553, 554, and 557 (as enacted)
House Bills 4386, 4650, and 4655 (as enacted)
House Bills 4658 and 4673 (as enacted)
Sponsor: Senator John Pappageorge (S.B. 553)
Senator Roger Kahn, M.D. (S.B. 554)
Senator Bruce Patterson (S.B. 557)
Representative Bert Johnson (H.B. 4386)
Representative Dudley Spade (H.B. 4650)
Representative Wayne Schmidt (H.B. 4655)
Representative Andy Neumann (H.B. 4658)
Representative Jeff Mayes (H.B. 4673)
Senate Committee: Energy Policy and Public Utilities
House Committee: Energy and Technology

PUBLIC ACTS 170-172 of 2009
PUBLIC ACTS 152-154 of 2009
PUBLIC ACTS 173 & 174 of 2009

Date Completed: 3-5-10

RATIONALE

In 2008, 93-year-old Bay City resident Marvin Schur froze to death in his home after the municipal electric utility installed a device to limit his usage, in response to his failure to pay the bills. Reportedly, he could afford to pay but was confused as to where to send the payment. Unlike investor-owned utility companies, municipally owned utilities are not subject to Public Act 3 of 1939, the Public Service Commission (PSC) law, or rules promulgated under it. In order to prevent incidents such as the one that occurred in Bay City, it was suggested that municipal utilities should be subject to regulations regarding utility shut-offs similar to those that apply to investor-owned utilities, and should be required to attempt to identify senior citizen customers who might have trouble paying their bills. In addition, it was suggested that municipal utilities that violate shut-off rules should be subject to civil liability, and that a mechanism be created for the payment of low-income customers' utility bills by the Department of Human Services.

CONTENT

Senate Bills 554 and 557 and House Bills 4386, 4658, and 4673 amended Public Act 3 of 1939, the PSC law, to do the following:

- **Require a municipally owned electric or natural gas utility to postpone a shut-off of service if the customer or a member of his or her household is a critical care customer or has a certified medical emergency.**
- **Require a municipally owned electric or natural gas provider to notify the Public Service Commission of any shut-off resulting in serious injury or death.**
- **Require a municipally owned electric or natural gas utility to attempt to identify senior citizen customers.**
- **Prohibit a municipally owned electric utility from shutting off service to certain eligible senior citizen or low-income customers during the heating season for nonpayment, under certain circumstances.**
- **Allow a municipally owned electric or natural gas utility to shut off service temporarily for health or safety reasons or in a State or national emergency.**
- **Prescribe circumstances under which a municipally owned electric or natural gas utility may shut off residential service.**
- **Require a municipally owned electric or natural gas utility's governing**

body to establish a policy allowing a customer to enter into a payment plan.

- Allow a municipally owned electric or natural gas utility to assess a charge for restoring service or relocating a customer's meter.**
- Require a municipally owned electric utility to establish a complaint resolution process for its customers to resolve allegations of violations that do not result in a death or serious injury.**
- Allow the Attorney General or a customer to bring a civil action for injunctive relief or imposition of a civil fine against a municipally owned electric or natural gas utility that fails to comply with the Act.**
- Require a civil fine to be deposited in the Low Income and Energy Efficiency Fund (LIEEF).**

Senate Bill 553 and House Bill 4650 amended the Michigan Low Income Heating Assistance and Shut-Off Protection Act to do the following:

- Revise a requirement that the Department of Human Services (DHS) make information concerning public assistance recipients available to public utilities.**
- Allow disclosure for the purpose of programs intended to prevent or delay utility disconnection.**
- Require the DHS to operate an electronic payment process with participating energy providers for the payment of low-income customer energy bills that are subject to shut-off.**

House Bills 4386, 4650, and 4655 took effect on November 23, 2009. Senate Bills 553 and 557 and House Bill 4658 took effect on December 15, 2009. Senate Bill 554 and House Bill 4673 took effect on January 14, 2010. The bills are described below in further detail.

Senate Bill 554

Under the bill, a provider (a municipally owned electric or natural gas utility) may shut off service temporarily for reasons of health or safety or in a State or national emergency. When a provider shuts off

service for reasons of health or safety, it must leave a notice at the premises.

Subject to the requirements of the PSC law, a provider may shut off or terminate service to a residential customer for any of the following reasons:

- The customer has not paid a delinquent account that accrued within the last six years.
- The customer has failed to provide a deposit or guarantee required by the provider.
- The customer has engaged in unauthorized use of a provider's service.
- The customer has failed to comply with the terms and conditions of a payment plan entered into with a provider in accordance with the provider's rules.
- The customer has refused to arrange access at reasonable times for the purpose of inspection, meter reading, maintenance, or replacement of equipment that is installed upon the premises or for the removal of a meter.
- The customer misrepresented his or her identity for the purpose of obtaining a provider service or put service in another person's name without that person's permission.
- The customer has violated any of the provider's rules so as to adversely affect the safety of the customer or other people or the integrity of the provider's system.

Additionally, a provider may shut off or terminate residential service if a person living in the customer's residence has a delinquent account for service with the provider within the past three years that remains unpaid, and the customer lived in the person's residence when all or part of the debt was incurred. The provider may transfer a prorated amount of the debt to the customer's account, based upon the length of time that the customer resided at the person's residence. These provisions do not apply if the customer was a minor while living in the person's residence.

A provider may not shut off service unless it sends notice to the customer by first-class mail or personally serves the notice at least 10 days before the proposed shut-off. A provider must maintain a record of the date the notice was sent.

Subject to the requirements of Sections 9s and 9r (added by House Bills 4386 and 4673), a provider's governing body must establish a policy to allow a customer the opportunity to enter into a payment plan for an amount owed to the provider that is not in dispute, if a customer claims an inability to pay in full. A provider does not have to enter into a subsequent payment plan with a customer until he or she complies fully with the terms of an existing or previous payment plan, unless the customer demonstrates a significant change in economic circumstances and requests a modification of the plan. A provider does not have to enter into a subsequent payment plan with a customer who defaulted on the terms and conditions of a payment plan within the last 12 months.

A notice of shut-off must contain all of the following information:

- The customer's name and address, and the address at which service is provided, if different.
- A clear and concise statement of the reason for the proposed shut-off.
- The date on or after which the provider may shut off service, unless the customer takes appropriate action.
- That the customer has the right to enter into a payment plan for an amount owed to the provider that is not in dispute and that he or she presently is not able to pay in full.
- The telephone number and address of the provider where the customer may make inquiry, enter into a payment plan, or file a complaint.
- That the provider will postpone the shut-off if a certified medical emergency exists at the customer's residence and he or she informs the provider and gives documentation of the emergency.
- The energy assistance telephone line number at the DHS or an operating 2-1-1 system telephone number.

A shut-off notice also must state that during the heating season the provider will postpone shut-off if a customer is an eligible low-income customer who enters into a winter protection payment plan with the provider and provides documentation that he or she actively is seeking emergency assistance from an energy assistance program.

Subject to the requirements of the PSC law, a provider may shut off service to a customer on the date specified in the notice or at a reasonable time following that date. If a provider does not shut off service and mails a subsequent notice, the provider may not shut off service before the date specified in that notice. Shut-off may occur only between the hours of 8 a.m. and 4 p.m.

A provider may not shut off service on a day when its services are not available to the general public for the purpose of restoring service, or on a day immediately preceding such a day.

At least one day before an involuntary shut-off of service, the provider must make at least two attempts to contact the customer by at least one of the following methods:

- First-class mail.
- A personal visit to the customer.
- A written notice left at or on the customer's door.
- Any other method approved by the PSC for regulated utilities.

A notice of shut-off sent as required must be considered one attempt to contact the customer. The provider must document all attempts.

Immediately before a shut-off, an employee of the provider who is designated to perform that function may identify himself or herself to the customer or another responsible person at the premises and may announce the purpose of his or her presence.

When a provider employee shuts off service, he or she must leave a notice. The notice must state that service has been shut off and must contain the provider's telephone number and address where the customer may arrange to have service restored.

For an involuntary shut-off using meters with remote shut-off and restoration ability, at least one day before the shut-off, the provider must make at least two attempts to contact the customer by at least one of the methods prescribed by the bill. Any notice must state that the disconnection will be done remotely and that a provider representative will not return to the premises before disconnection. The provider must document all attempts to contact the customer. If the provider contacts the

customer or other responsible person in his or her household by telephone on the day service is to be shut off, the provider must inform the customer or other person that shut-off is imminent and of the steps necessary to avoid it. Unless the customer presents evidence that reasonably demonstrates that the claim is satisfied or is in dispute, or makes payment, the employee may shut off service. If the provider complies with the notice requirements, no further customer contact is required on the day service is to be shut off, and the provider may shut off service.

A provider may not shut off service for either of the following reasons:

- The customer has not paid for concurrent service received at a separate metering point, residence, or location.
- The customer has not paid for service at premises occupied by another person.

A provider may shut off service in any of the following circumstances if proper notice is given:

- The customer supplies a written, notarized statement that the premises are unoccupied.
- The premises are occupied and the occupant agrees, in writing, to the shut-off.
- It is not feasible to provide service to the occupant as a customer without a major revision of existing distribution facilities.
- It is feasible to provide service to the occupant as a customer without a major revision of existing distribution facilities and the occupant refuses to put the account in his or her name.

After a provider shuts off service, it must restore service upon the customer's request when the cause has been cured or credit arrangements satisfactory to the provider have been made.

When a provider is required to restore service at a customer's meter manually, the provider must make reasonable efforts to restore service on the day the customer requests restoration. Except for reasons beyond its control, the provider must restore service by the first working day after the customer's request.

For providers using meter technology with remote shut-off and restoration capability, service must be restored on the first working day after the customer requests restoration, except in the case of documented equipment failure.

A provider may assess the customer a charge for restoring service or relocating his or her meter.

Senate Bill 557

Under the bill, the Attorney General, on his or her own motion or upon a referral from the PSC in a case of serious injury or death, or any customer of a municipally owned electric or natural gas utility, may commence a civil action for injunctive relief or the imposition of a civil fine against the utility if it fails to meet the applicable requirements of Public Act 3. A municipally owned electric utility must establish a complaint resolution process for its customers to resolve any allegations of violations that do not result in a death or serious injury.

An action must be commenced in the circuit court for the circuit in which the principal office of the utility is located. An action may not be filed unless the prospective plaintiff has given the prospective defendant (the utility) at least 60 days' written notice of his or her intent to sue, the basis for the suit, and the relief sought. Within 30 days after the utility receives the notice, the parties must meet and make a good faith attempt to determine if there is a credible basis for the action. If the parties agree that there is, the utility must take all reasonable and prudent steps necessary to comply with the applicable requirements of the Act within 10 days of the meeting and may enter into a compliance agreement, which may include the payment of a civil fine.

In issuing a final order in an action brought under the bill, a court may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party. In addition, a court may order a utility to pay a civil fine of at least \$1,000 but not more than \$20,000 for the first offense, at least \$2,000 but not more than \$40,000 for a second offense, and at least \$5,000 but not more than \$50,000 for a third or subsequent offense. A civil fine must be deposited in the LIEEF.

The bill provides that a municipally owned electric or natural gas utility or a customer is subject to the Act only as expressly provided in it. Nothing in the Act gives the PSC the power to regulate a municipally owned electric or natural gas utility. In addition, nothing in the bill may be construed to prevent a party from pursuing any other legal or equitable remedy available to the party.

Senate Bill 553

The Michigan Low Income Heating Assistance and Shut-Off Protection Act creates a low income heating assistance and shut-off protection program, requires the DHS to administer it, and specifies various responsibilities of the Department.

Previously, subject to restrictions prescribed by Federal regulations governing Temporary Assistance to Needy Families, rules of the DHS, or otherwise, for preventing the disclosure of confidential information to any person not authorized by law to receive it, the DHS was required to make available to a public utility regulated by the PSC information concerning public assistance applicants and recipients, if the disclosure was necessary and the information was used only for the purpose of the utility's administering a program created by statute or PSC order and intended to assist public assistance applicants or recipients with defraying their energy costs.

Under the bill, the DHS must make this information available on a monthly basis to an energy provider, notwithstanding the provisions of the Social Welfare Act, and subject to the same restrictions for preventing the disclosure of confidential information to an unauthorized person. The information must be made available for the purpose of a provider's administering a program intended to assist public assistance applicants or recipients with defraying their energy costs or preventing or delaying utility disconnection.

Previously, the Act required the DHS to authorize use of weatherization resources among the dwellings of all assisted households in the State, giving first priority to those that exceeded an annual consumption cap. The bill deleted this requirement.

The Act previously required that, by the beginning of the third year of the program, the DHS promulgate rules to create an energy conservation incentive that provided direct financial benefits to assisted households that reduced their use of heating energy, as well as implement a billing system by which any difference between an assisted household's monthly heating bills and its heating allotments and supplemental payments were billed directly to the DHS and paid to the provider utility, up to the annual consumption cap. The bill deleted these requirements.

House Bill 4386

The bill requires a provider (a municipally owned electric or natural gas utility) to postpone a shut-off of service for up to 21 days if the customer or a member of his or her household is a critical care customer or has a certified medical emergency.

("Critical care customer" means a customer who requires, or has a household member who requires, home medical equipment or a life-support system, and who provides appropriate documentation from a physician or medical facility certifying that interruption of service would be immediately life-threatening. "Medical emergency" means an existing medical condition of the customer or a member of his or her household, as defined and certified by a physician or public health official, that will be aggravated by the lack of utility service.)

The customer's certification must identify the medical condition, any medical or life-supporting equipment being used, and the specific time period during which the shut-off of service will aggravate the medical emergency.

The provider must extend the postponement for further periods of up to 21 days, for a maximum total of 63 days, only if the customer provides additional certification that he or she or a member of the household is a critical care customer or has a medical emergency. If shut-off occurs without any postponement, the provider must restore service for periods of up to 21 days, not to exceed 63 days total in any 12-month period per household member. Annually, a provider does not have to grant extensions totaling more than 126 days per household.

House Bill 4655

The bill requires a municipally owned electric or natural gas provider to notify the PSC of any shut-off of service that results in death or serious injury. A provider must give the Commission any relevant information regarding the death or injury, including the procedures followed during the shut-off.

Upon notification or its own motion, the PSC may investigate any shut-off by a provider that results in death or serious injury. After completing its investigation, the Commission may refer the matter to the Attorney General for commencement of a civil action under Section 9p (which was added by Senate Bill 557).

House Bill 4658

The bill requires a provider (a municipally owned electric or natural gas utility), in the ordinary course of business, to make efforts to identify senior citizen customers by at least one of the following methods:

- Conducting customer interviews.
- Obtaining information from a consumer reporting agency or consumer reporting service.
- A personal or automated telephone call where direct contact is made with a member of the customer's household or a message is recorded on an answering machine or voice mail.
- First-class mail.
- A personal visit to the customer.
- A written notice left at or on the customer's door.
- A bill insert.
- Any other method approved by the PSC for regulated utilities.

("Senior citizen" means a customer who is at least 65 years old.)

A provider must comply with the bill's requirements by January 14, 2010. For good cause, its governing body may grant an extension for compliance.

("Consumer reporting agency" means that term as defined in the Fair Credit Reporting Act. That Act defines the term as any person who, for monetary fees, dues, or on a cooperative nonprofit basis, engages regularly in whole or in part in the practice of assembling or evaluating consumer credit

information or other information on consumers for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.)

House Bill 4673

The bill prohibits a municipally owned electric utility from shutting off service to an eligible customer during the heating season (November 1 through March 31) for nonpayment of a delinquent account if the customer is an eligible senior citizen, or if he or she enters into a winter protection payment plan to pay the utility a monthly amount equal to 7% of his or her estimated annual bill or he or she and the utility mutually agree upon a winter protection payment plan with different terms and the customer demonstrates, within 14 days after applying for shut-off protection, that he or she has applied for State or Federal heating assistance.

("Eligible customer" means either an eligible low-income customer or an eligible senior citizen customer who demonstrates his or her eligibility to the utility. "Eligible senior citizen" means a customer who is at least 65 years old and who advises the utility of his or her eligibility. "Eligible low-income customer" means a customer whose household income does not exceed 150% of the Federal poverty level, or who receives assistance from a State emergency relief program, food stamps, or Medicaid.)

If an arrearage exists when an eligible customer applies for shut-off protection during the heating season, the utility must allow him or her to pay it in equal monthly installments between the application date and the start of the subsequent heating season.

If a customer fails to comply with the terms and conditions of a winter protection payment plan, the utility may shut off service after notifying the customer, by personal service or first-class mail, of the following information:

- That the customer has defaulted on the winter protection payment plan.
- The nature of the default.
- That unless the customer makes the past due payments within 10 days of the

date of mailing, the utility may shut off service.

- The date on or after which the utility may shut off service, unless the customer takes appropriate action.
- That the customer may petition the utility in accordance with its rules disputing the claim before the proposed shut-off date or bring an action under Section 9p (which Senate Bill 557 added).
- That the utility will not shut off service pending the resolution of a dispute filed with the utility in accordance with the bill.
- The utility's telephone number and address where the customer may make inquiry, enter into a payment plan, or file a complaint.
- The energy assistance telephone line number at the DHS or an operating 2-1-1 system telephone number.
- That the utility will postpone shut-off if a medical emergency exists at the customer's residence.
- That the utility may require a deposit and restoration charge if service is shut off for nonpayment of a delinquent account.

House Bill 4650

The bill requires the DHS to operate an electronic payment process with participating energy providers to provide for the payment of low income customer energy bills that are subject to shut-off. The DHS must operate this process by April 1, 2010, or at a time it considers possible.

Also, as the DHS considers appropriate, it must enter into agreements with energy providers in which they agree to permit the Department to make direct payments to the providers on behalf of an eligible recipient. An agreement must authorize the energy provider to give customer information to the DHS.

The DHS must determine the eligible recipients, program requirements, benefit levels, and funding levels.

MCL 400.1207 (S.B. 553)
460.9q (S.B. 554)
460.9p (S.B. 557)
460.9s (H.B. 4386)
400.1207a (H.B. 4650)
460.9m (H.B. 4655)

460.9o (H.B. 4658)
460.9r (H.B. 4673)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The package of bills will help prevent future tragedies by limiting the conditions under which municipal utilities may shut off residential service, requiring utilities to identify customers who may be unable to pay their energy bills, facilitating information-sharing between the DHS and utilities, and providing an enforcement mechanism. People fail to pay their utility bills for numerous reasons, such as a lack of funds, physical or cognitive limitation, or a desire to avoid asking for help. In addition to risking the medical consequences of a utility shut-off, some people resort to illegal, dangerous methods to reconnect their gas and electricity when they cannot pay arrearages. While municipal utilities all have established shut-off protection policies, they are not uniform and do not necessarily correspond with the PSC shut-off rules that apply to investor-owned utilities. Enacting statutory policies will ensure that all customers, regardless of energy provider, have the same protection against utility termination during the coldest part of the year.

Response: The 65-year age threshold for shut-off protection appears to be arbitrary. People can experience physical and mental conditions that interfere with their ability to pay utility bills at any age. In another matter, some sort of protection against utility shut-offs during the hottest months also should be enacted. The consequences of hyperthermia are just as serious as those of extreme cold.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bills 553 and 554

The bills will have no fiscal impact on State or local government.

Senate Bill 557

The bill may have an indeterminate fiscal impact on the Department of Attorney General depending on the increase in caseload that results from any lawsuits brought under the bill. However, the costs may be neutral if the Attorney General is awarded litigation costs, which may include attorney fees and the costs of expert witnesses.

House Bill 4386

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

House Bill 4650

The State of Michigan assumes a base Federal grant through the Low Income Home Energy Assistance Program (LIHEAP) of about \$116.5 million. This grant is used for the Michigan home heating credit, weatherization assistance, and emergency shut-off prevention for low income residents. The bill permits the Department of Human Services to create an electronic payment process with energy providers for emergency shut-off prevention payments through LIHEAP. Since LIHEAP is a capped program funded through Federal grants, there will not be a GF/GP impact associated with the operation of this program. The Department may incur some increased cost associated with information technology changes to facilitate automatic payments to energy providers.

House Bill 4655

The bill allows the PSC to investigate a death or serious injury resulting from a utility shut-off. Any costs related to this activity will be covered with existing revenue to the PSC. Revenue to the PSC is generated from assessments levied on providers.

House Bills 4658 and 4673

The bills will have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco
David Fosdick
Elizabeth Pratt
Maria Tyszkiewicz

A0910\553ea

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.