

MUNICIPAL UTILITIES: ENFORCEMENT ACTIONS

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Senate Bill 557

Sponsor: Sen. Bruce Patterson

House Committee: Energy and Technology

Senate Committee: Energy Policy and Public Utilities

Complete to 10-19-09

A SUMMARY OF SENATE BILL 557 AS PASSED BY THE SENATE 10-08-09

The bill would add a new Section 9p to the Public Service Commission Law to allow the Attorney General or a customer to bring a civil enforcement action against a municipally-owned electric or natural gas utility. The Attorney General could bring an action, on his or her own motion or upon a referral from the Public Service Commission in the case of a violation of the act resulting in a serious injury or death. A customer of the utility could bring a civil action for injunctive relief or imposition of a civil fine if the municipal utility did not comply with applicable requirements of the act.

Complaint resolution procedure. Municipal electric utilities would have to establish a complaint resolution process to resolve allegations brought by customers of allegations of the act that did not result in a serious injury or death.

Venue. A civil action under this section would have to be brought in the circuit court for the circuit where the municipal utility's principal office is located.

Notice of intent to sue; meeting. A suit could not be filed unless the prospective plaintiff had given the prospective defendant at least 60 days' written notice of intent to sue, the basis for the suit, and the relief sought. Within 30 days after receipt of a notice of intent to sue, the prospective defendant and plaintiff would have to meet and make a good faith attempt to determine if there is a credible basis for the action. If the parties agreed that there was a credible basis, the prospective defendant would have to take all reasonable and prudent steps necessary to comply with applicable provisions of the act within 10 days of the meeting. The parties could also enter into a compliance agreement which could include payment of a civil fine.

Final order; attorney fees; fines. In its final order, a court could, but would not be required to, award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing (or substantially prevailing) party.

For a first offense, the court could, but would not be required to, order the municipal utility to pay a civil fine of at least \$1,000 but not more than \$20,000. For a second offense, the possible civil fine would be at least \$2,000 but not more than \$40,000. For a third or subsequent offense, the court could order a civil fine of at least \$5,000 but not more than \$50,000. Fines would be deposited into the Low Income and Energy Efficiency Fund.

Regulation of municipal utilities; remedy not exclusive. A municipally-owned electric or natural gas utility or its customers would be subject to the act only as expressly provided. Nothing in the act would give the Public Service Commission the power to regulate municipal utilities. Nothing in this section is to be construed as preventing a party from pursuing any other legal or equitable remedies available to them.

[Senate Bill 557 appears to be identical to House Bill 4657, sponsored by Rep. Jeff Mayes, as passed by the House on March 31, 2009.]

Proposed MCL 460.9p

FISCAL IMPACT:

Senate Bill 557 would have an indeterminate fiscal impact on the judiciary; any fiscal impact would be related to increased caseload which would depend on the number and complexity of lawsuits that might be brought under this bill. The Attorney General could incur costs if there is an increase in caseloads resulting from lawsuits brought under the bill. Costs are indeterminate and would also depend on whether the Attorney General is awarded fees and other costs. In this case, there might not be any costs to the state.

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