

Legislative Analysis



MUNICIPAL UTILITIES: SHUTOFFS RESULTING IN DEATH OR SERIOUS INJURY; CIVIL ENFORCEMENT

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House Bill 4655 (Substitute H-1)

Sponsor: Rep. Wayne Schmidt

House Bill 4656 (Substitute H-2)

Sponsor: Rep. Jeff Mayes

Committee: Energy and Technology

Complete to 3-31-09

A SUMMARY OF HOUSE BILLS 4655 & 4656 AS REPORTED FROM COMMITTEE

House Bill 4655 would require municipal utilities to notify the Public Service Commission of any service shutoff that results in injury or death.

House Bill 4656 would allow the Attorney General and municipal utility customers to bring civil enforcement actions against municipal utilities.

DETAILED SUMMARY:

House Bill 4655 would add Section 9m to the Public Service Commission Law to require municipal utilities to notify the Public Service Commission of any shutoff of service that results in death or serious injury. The utility would have to supply any relevant information regarding the death or serious injury, including describing the shutoff procedures it followed. The commission could investigate a shutoff resulting in a death or serious injury and refer cases to the Attorney General for commencement of a civil action under Section 9p (to be created by House Bill 4656) (MCL 460.9m)

House Bill 4656 would add Section 9p to the act to allow the Attorney General or any customer of a municipal utility to begin a civil action for injunctive relief or imposition of a civil fine against a municipal utility that failed to meet applicable requirements of the act. A suit brought by the Attorney General could arise from its own motion or a referral from the PSC in a case of serious injury or death.

Complaint resolution procedure. Municipal utilities would have to establish a complaint resolution process for its customers to resolve alleged violations of the act that did not result in a death or serious injury.

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 agree that there is 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 person" (presumably, a 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 possible civil fine would be 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 municipal 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. (MCL 460.9p)

FISCAL IMPACT:

House Bill 4656 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.

POSITIONS:

The Public Service Commission testified in support of the entire shutoff protection package of bills. (3-24-09)

The Attorney General indicated support of the entire package. (3-26-09)

The Department of Human Services indicated support of the entire package. (3-26-09)

ACORN (Michigan) indicated support of the entire package. (3-24-09)

The Center for Civil Justice indicated support of the entire package. (3-24-09)

Clean Water Action testified in support of the entire package, and submitted a letter of support dated 3-24-09, but would also like to see shutoff protections during hot summer weather and a ban on foreclosures due to non-payment of utility bills. (3-24-09)

Consumers Energy indicated support of the entire package. (3-24-09)

DTE Energy indicated support of the entire package. (3-26-09)

Elder Law of Michigan indicated support of the entire package. (3-24-09)

Indiana Michigan Power indicated support of the entire package. (3-26-09)

Michigan Advocacy Project indicated support of the entire package. (3-24-09)

The Michigan Catholic Conference indicated support of the entire package. (3-24-09)

The Michigan Electric Cooperative Association indicated support of the entire package. (3-24-09)

The Michigan Electric and Gas Association indicated support of the entire package. (3-26-09)

Michigan Citizen Action indicated support of the entire package. (3-24-09)

The Michigan Municipal Electric Association testified in support of the entire package. (3-26-09)

SEMCO Energy indicated support of the entire package. (3-26-09)

The AARP opposes House Bill 4390 and House Bill 4392, but is supportive of the rest of the package, including this bill. (3-24-09)

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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.