



**House
Legislative
Analysis
Section**

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**GAS AND ELECTRIC SHUTOFF
PROTECTIONS**

**House Bill 4484 as introduced
Sponsor: Rep. Douglas Bovin**

**House Bill 4485 as introduced
Sponsor: Rep. Randy Richardville**

**First Analysis (3-27-01)
Committee: Energy and Technology**

THE APPARENT PROBLEM:

In the late 1970s and early 1980s, in the wake of energy crises that resulted in energy supplies that were increasingly scarce and costly, the state and the federal government enacted a number of measures to ensure that residential and other energy customers would be able to meet their basic energy needs. (See BACKGROUND INFORMATION.)

In the winter of 1979-80, during the second oil embargo by the major oil producing and exporting countries, the Public Service Commission implemented an emergency rule that provided protection for low-income and senior citizen utility customers from having their gas and utility services shut off during the heating season (defined in rule as the period between December 1 and April 1). In 1992, the emergency rule was put into the regular administrative rules for the Public Service Commission enabling act (Public Act 3 of 1992) as the "Winter protection plan" (Rule 460.2174, available through the state Office of Regulatory Reform's website at www.state.mi.us/orr), and has provided eligible utility customers with shutoff protection during "the space heating season" for failing to pay overdue utility bills under certain circumstances.

Last session, Public Act 141 of 2000, which was the main act in the package of electric utility restructuring legislation (see BACKGROUND INFORMATION), put shutoff protections into statute for eligible electric utility customers. As part of a larger package of bills (see BACKGROUND INFORMATION), legislation has been introduced to increase the number of low-income households eligible for electric utility shutoff protections, and to put into statute the same protections for eligible natural gas customers.

THE CONTENT OF THE BILLS:

Both bills would amend the Public Service Commission enabling act (Public Act 3 of 1939) to broaden the eligibility criteria for low-income customers under the act's current electric shutoff protections (House Bill 4484) and to add similar natural gas shutoff protections (House Bill 4485) to the act.

House Bill 4484 would amend the electric shutoff provisions of act (MCL 460.10t) to increase to 175 percent of poverty level (from the current 150 percent) the income threshold that could qualify an electric utility or alternate service supplier customer as being "low-income" and, therefore, eligible for electric utility shutoff protections. The bill also would reduce to five percent (from the current seven percent) the percentage of the estimated annual electric bill that an eligible customer would be required to pay monthly to avoid shutoff of electric services.

House Bill 4485 would add a new section to the act (MCL 460.9) to provide natural gas shutoff provisions similar to those already in place for electricity, though with certain omissions.

More specifically, the bill would amend the act to prohibit natural gas distributors or suppliers from terminating service to "eligible customers" during the heating season for nonpayment of a delinquent account if the customer were an "eligible senior citizen customer" or if the customer paid a monthly amount equal to five percent of the estimated annual bill and demonstrated, within 14 days of requesting shutoff protection, that he or she had applied for state or federal heating assistance. As in Public Act 141 of 2000, the bill would define "eligible customer" to mean either an "eligible low income customer" or an "eligible senior citizen customer." The bill would

House Bills 4484 and 4485 (3-27-01)

define “eligible low income customer” to mean a customer whose household income did not exceed 175 percent (instead of, as currently in the act for electric shutoff protection, 150 percent) of the federal poverty level, or who received assistance from a state emergency relief program, food stamps, or Medicaid. “Eligible senior citizen customer” would mean a natural gas “distributor or supplier customer who [was] 65 years of age or older and who advise[d] the distributor or supplier of his or her eligibility.”

Service shutoffs. Also, as in the new shutoff provisions applying to electric utilities and suppliers, the bill would allow natural gas distributors or suppliers to terminate service under two conditions: (1) If, when an eligible natural gas customer applied for shutoff protection during the heating season, the customer owed money from past gas bills, the distributor or supplier would have to let the customer to pay the arrearage in equal monthly installments between the date of application and the start of the subsequent heating season. However, the natural gas distributor or supplier could shut off service to eligible low-income customers (though not, presumably, eligible senior citizen customers) who did not pay the required monthly installments once the distributor or supplier gave notice in the manner required under the bill. (See below.) The distributor or supplier also would not be required to offer a settlement agreement to an eligible low-income customer who failed to make the required monthly payments. (2) If a customer failed to comply with the bill’s terms and conditions, a distributor or supplier could terminate service after giving the customer notice, by personal service or first-class mail, that contained all of the following information:

- * That the customer had defaulted;
- * The nature of the default;
- * That unless the customer made the past due payments within ten days of the date of mailing, the natural gas distributor or supplier could shut off service;
- * The date after which the natural gas distributor or supplier could terminate service, unless the customer took “appropriate” action;
- * The telephone number and address of the natural gas distributor or supplier (electric utility shutoff provisions add “where the customer may make inquiry, enter into a settlement agreement, or file a complaint”);

- * That the customer should contact a social services agency immediately if the customer believed he or she might be eligible for emergency economic assistance;

- * That the natural gas distributor or supplier would postpone termination of service if a medical emergency existed at the customer's residence;

- * That the natural gas distributor or supplier might require a deposit and “restoration charge” if the distributor or supplier shut off service for nonpayment of a delinquent account.

Note: House Bill 4485 omits the provisions currently in the act regarding electric shutoff protection that give customers the right to file complaints, request hearings, and have representation at the hearing, as well as a provision guaranteeing that the electric utility or supplier will not shut off service pending the resolution of a complaint filed under the act. The bill also would not require the Public Service Commission to establish an education program to ensure that eligible customers were informed of the bill’s requirements and benefits, as current law requires for electric shutoff protections.

BACKGROUND INFORMATION:

Home heating package. The bills are part of a home heating package of bills that also includes House Bills 4411 and 4476 through 4483, which were reported from the House Tax Policy Committee. For an analysis of the tax portion of the package, see the House Legislative Analysis Section analysis of House Bill 4411 et al. dated 3-22-01.

LIHEAP. The Federal Department of Health and Human Services, through its Division of Energy Assistance (under its Administration for Children and Families), administers a Low Income Home Energy Assistance Program (known as LIHEAP) through “grantees” – states, territories, and Indian tribes or tribal organizations – to help eligible low income households with their home heating and cooling needs. The federal law defines “low income households” to mean (1) households with at least one member who receives assistance under certain federal programs, namely, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), food stamps, or certain needs-tested veterans programs; or (2) households with incomes that cannot exceed the greater of either (a) 150 percent of the poverty level or (b) 60 percent of the state median income. The 150 percent poverty level, however, is flexible. States, territories, and Indian tribes or tribal

organizations can set their income eligibility at or below this maximum standard, as long as they do not set income eligibility below 110 percent of poverty level. LIHEAP grantees also need not use a household member's participation in any of the listed federal programs in determining whether the household is eligible for LIHEAP assistance. Finally, states (and other LIHEAP grantees) also may require that low income households meet additional criteria (such as means tests, type of living situation, or receipt of a utility shutoff notice) to be eligible to receive LIHEAP through the state's administering agency, which in Michigan is the state Family Independence Agency.

Public Act 141 of 2000. Last session a package of four Senate bills was enacted to restructure the electric industry. The main act was Public Act 141 of 2000, the Customer Choice and Electricity Reliability Act. Among other things, this act put into statute for electric utility customers virtually the same shutoff protections that were, and currently are, in administrative rule (Rule 460.2174), and that use the federal poverty standards to determine the eligibility of low income households.

The act prohibits an electric utility or alternative electric supplier from shutting off services to "eligible customers" during the heating season for nonpayment of a delinquent account if the customer either (a) is an "eligible senior citizen customer" or (b) is an eligible "low income customer" who pays a monthly amount equal to seven percent of the estimated annual bill and demonstrates, within 14 days of requesting shutoff protection, that he or she has applied for state or federal heating assistance (which could include the Low Income Heating Energy Assistance Program, the State Emergency Relief program, or the state home heating credit program). The act defines "eligible customer" to mean either an "eligible low-income customer" (a customer whose household income does not exceed 150 percent of the federal poverty level, or who receives assistance from a state emergency relief program, food stamps, or Medicaid) or an "eligible senior citizen customer" ("a utility or supplier customer who is 65 years of age or older and who advises the utility of his or her eligibility").

The act also requires the Public Service Commission (PSC) to establish an education program to ensure that eligible customers are informed of the requirements and benefits of act's shutoff protection provisions.

More specifically, an electric utility or alternative electric supplier can shut off a customer's service under two of the act's provisions.

(1) If an arrearage exists at the time an eligible customer applies for shutoff protection, the utility or supplier must let the customer pay the arrearage in equal monthly installments between the date of application and the start of the subsequent heating system. However, an electric utility or alternative electric supplier can shut off service to eligible low-income customers [but presumably not eligible senior citizen customers] who do not pay these monthly amounts, once the utility or supplier gives notice as required by administrative rules. The utility or supplier also is not required to offer a settlement agreement to an eligible low income customer who fails to make the required monthly payments.

(2) The act specifically states that an electric utility is not required to shut off service under the act to an eligible customer for nonpayment to an alternative electric supplier. However, if a customer fails to comply with the terms and conditions of the shutoff provisions of the act, an electric utility can shut off service on its own behalf or on behalf of an alternative electric supplier after giving the customer a notice, by personal service or first-class mail, that contains all of the following information:

- * That the customer has defaulted on the winter protection plan;
- * The nature of the default;
- * That unless the customer makes the payments that are past due within ten days of the date of mailing, the utility or supplier can shut off service;
- * The date on or after which the utility or supplier can shut off service, unless the customer takes "appropriate" action;
- * That the customer has the right to file a complaint disputing the claim of the utility or supplier before the date of the proposed shutoff of service;
- * That the customer has the right to request a hearing before a hearing officer if the complaint cannot be otherwise resolved, but must pay the utility or supplier that part of the bill not in dispute within three days of the date that the customer requests a hearing;
- * That the customer has the right to represent himself or herself, to be represented by an attorney, or to be

assisted by any other person of his or her choice in the complaint process;

* That the utility or supplier will not shut off service pending the resolution of a complaint that is filed with the utility in accordance with the act;

* The telephone number and address of the electric utility or alternative electric supplier where the customer may make inquiry, enter into a settlement agreement, or file a complaint;

* That the customer should contact a social services agency immediately if the customer believes he or she might be eligible for emergency economic assistance;

* That the utility or supplier will postpone shutoff of service if a medical emergency exists at the customer's residence; and

* That the electric utility or alternate supplier may require a deposit and restoration charge if the supplier shuts off service for nonpayment of a delinquent account.

State energy assurance programs. In 1978, the federal government passed the Public Utilities Regulatory Policies Act, which allowed state public service commissions to investigate the advisability of restructuring electric utility rates along the lines of what was known as a "lifeline" rate structure, in which the amount of residential energy usage deemed necessary to meet basic household needs (the "lifeline block" of energy) was set at one rate, while energy consumption beyond this basic need was set at higher rates. This kind of rate structure was intended to provide energy for essential needs at a reasonable rate, while at the same time signaling the need to conserve energy by increasing the cost of energy used in excess of what was considered necessary for basic needs. While the Michigan Public Service Commission (PSC) did not need legislative approval to institute such a "lifeline" rate structure, legislation was enacted, in the form of Public Act 139 of 1980, that mandated a "lifeline" rate structure for electric utilities serving more than 200,000 residential customers in the state (which is to say, for Consumers Power Company and Detroit Edison).

In the face of rapidly escalating energy costs and the economic recession of the early 1980s, the Public Service Commission and state's three largest utility companies (Consumers Power Company, Detroit Edison, and Michigan Consolidated Gas Company) proposed, and the legislature subsequently enacted, an "Energy Assurance Program" (enacted in Public

Acts 26, 34, 35, 36, 37, and 49 of 1984) that modified the state's "lifeline" electric rates (Public Act 49), modified the home heating tax credit (Public Act 36), addressed the problem of "energy theft" (Public Act 37), and restructured the state's energy assistance programs. Public Act 26 created the Public Assistance and Low Income Home Repair, Weatherization and Shutoff Protection Act, while Public Act 34 created the Low Income Heating Assistance and Shutoff Protection Program Act, administered by the then-Department of Social Services (since renamed the Family Independence Agency).

Public Act 34 was intended to provide heating assistance and to prevent utility service shutoffs to public assistance recipients (that is, recipients of state General Assistance or federal Aid to Families with Dependent Children, AFDC, which since has been replaced by Temporary Assistance to Needy Families, TANF) under certain circumstances. In addition to preventing utility service shutoffs, the program also was intended to promote energy conservation and changes in program recipients' energy use habits, help reduce their energy use by improving their housing through a "weatherization" program, and provide them with relocation help when their housing couldn't be made more energy efficient. In order to enroll in the program, public assistance recipients had to agree to certain conditions: They had to (a) participate in the weatherization program and accept weatherization measures designated by the DSS; (b) pay the heating fuel providers, or allow the DSS to pay directly on their behalf, their monthly heating allowance and supplemental payments, if any; and (c) establish terms for making payments (equal to five percent of the recipient's AFDC or General Assistance grant) on any amount owed for utility service before enrolling in the program. (Before a public assistance recipient was enrolled in the program, a determination had to be made of their "pre-enrollment arrearage," that is, how much the household owed a utility for heating bills incurred before enrollment.) If these conditions were met, public assistance recipients enrolled in the program would receive shutoff protection for various time periods, depending on whether their consumption of heating fuel exceeded annual "consumption caps" set in statute.

Public assistance recipients also were eligible for a modified "lifeline" electric rate under Public Act 26 of 1984, the "Public Assistance and Low Income Home Repair, Weatherization and Shutoff Protection Act," but would not receive the home heating tax credit otherwise available under the act.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, since the bills would regulate transactions between electric and natural gas utilities and eligible customers, they would have no fiscal impact on the state or on local units of government. (3-26-01)

ARGUMENTS:**For:**

The bills would expand the current electric utility shutoff protections, as implemented in statute by Public Act 141 of 2000, and extend the same protections to natural gas utility customers. More low income households will be eligible for shutoff protection and their monthly winter utility payments would be reduced by two percent. Currently, electric utility customers with household incomes up to 150 percent of the federal poverty level are eligible for the electric utility shutoff protections. More households would be eligible for the shutoff protections because the bills would provide these protections to households with incomes up to 175 percent of the federal poverty level. According to the House Fiscal Agency, federal poverty guidelines set the poverty level for 2001 at \$17,650 for a family of four. Under the bills, a family of four with an annual household income of up to \$30,888 would be eligible for natural gas and electric shutoff protection. (Under current law, households with annual incomes of up to \$26,475 are eligible for electric utility shutoff protection.)

In addition, households currently using the shutoff protection program (whether under Public Act 141 or under administrative rule) are required to pay a monthly amount equal to seven percent of their estimated annual electric bill in order to avoid having their electric service shut off. The bills would reduce this monthly amount to five percent, thereby easing the monthly payment burden on low income households participating in the program during the highest heating cost months of the year. According to the House Fiscal Agency, the average residential electric bill in Michigan is roughly \$650 to \$660, and the average residential natural gas bill has been roughly \$615. The proposed reduction in the minimum monthly payment from seven percent to five percent of the estimated annual electric bills would reduce the required monthly payment by eligible low income or senior citizen utility customers from around \$46 to about \$33 for electricity; the minimum monthly payment for natural gas would be between \$30 and \$40.

In the face of soaring natural gas and electric rates the bills would provide utility shutoff protections to those least able to meet the increase in energy costs.

Response:

While the proposed reduction in the monthly required payments during the home heating season (that is, during the winter months) may seem desirable, won't this just make it more difficult for low income households to catch up on their utility bill arrearages during the summer months?

Against:

Although House Bill 4485 reportedly is intended to put into statute for natural gas the same shutoff protections that last year's Public Act 141 did for electricity, in fact House Bill 4485 omits several requirements in last year's electric shutoff protections. For example, section 10t of Public Act 141 of 2000 requires the Public Service Commission to establish an educational program to ensure that eligible electric utility customers are informed of the requirements and benefits of the shutoff protections in the act, but House Bill 4485 does not include this provision. Similarly, Public Act 141 gives eligible electric utility customers the right to file a complaint disputing the claim of an electric utility or alternative supplier before the date of the proposed shutoff of service, as well as the right to request a hearing before a hearing officer if the complaint cannot be otherwise resolved and the right to representation at the hearing. Moreover, the electric utility or alternative supplier cannot shut off service pending the resolution of a complaint filed with the utility. But House Bill 4485 includes none of these rights or the shutoff protection. For clarity, these provisions should be included in the bill.

Response:

Although these rights and this protection are not included in the bill, they still are present in the Public Service Commission's administrative rule regarding "winter protection," and that applies to both electric and natural gas utilities that are subject to the jurisdiction of the Public Service Commission. So even though these provisions are not included under the bill, eligible natural gas utility customers still would be covered under administrative rule.

Against:

While the bills are part of a good first step in addressing the problems that low income people face with rapidly rising natural gas and electric bills, they do not go far enough. In the past, legislation that the state has enacted to help low income people avoid

having their utility services shut off due to inability to pay have been tied to energy conservation measures. Reportedly, Michigan has virtually stopped funding energy efficiency programs, leaving the funding of such programs instead up to the federal government. Utility companies no longer are required to operate “demand side” management program, and tax breaks for renewable energy and for energy efficiency projects also have ended. Reportedly, between 1970 and 1997 Michigan per capita use of energy increased by 8.4 percent. While this figure puts Michigan 27th out of the 50 states in controlling demand, in terms of efficiency, Michigan ranks 44th in terms of improving energy use as it relates to the production of goods and services. Moreover, the progressive deregulation of utilities provides them with no financial incentives to encourage reductions in demand, as can be seen by their budget cuts in energy efficiency funding and research into and development of sources of renewable power. Yet studies reportedly show that energy efficiency programs not only save residents money, they also create new jobs. And although the utility restructuring legislation enacted last year includes possible energy efficiency funding, this is contingent on the utilities financing their debt related to stranded costs, and since this provision of the law currently is being challenged in court, it may be years until energy efficiency funding is actually available.

Response:

It seems somewhat counterintuitive to expect utility companies, who make their profits from expansions in energy usage, to participate in reducing energy usage. Surely if the benefits from energy efficiency and conservation are as great as they are claimed to be then it should be up to state and federal governments to fund the pursuit of such goals. Indeed, one of the companion bills in this package, House Bill 4479, would provide an income tax credit to low income taxpayers for purchasing energy efficient appliances and for weatherization of a taxpayer’s home.

POSITIONS:

A representative from Consumers Energy testified in support of the bills. (3-21-01)

The Michigan Environmental Council indicated support of the bills. (3-21-01)

The Southeastern Michigan Gas Company (SEMCO Energy) indicated support of the bills. (3-21-01)

AEP indicated support of the bills. (3-21-01)

The American Association of Retired Persons indicated support of the bills. (3-21-01)

The Michigan Consolidated Gas Company indicated support of the bills. (3-21-01)

Detroit Edison indicated support of the concept of the bills. (3-21-01)

Analyst: S. Ekstrom

■ 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.