



**House  
Legislative  
Analysis  
Section**

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**GAS AND ELECTRIC SHUTOFF  
PROTECTIONS**

**House Bill 4484 as passed by the House  
Sponsor: Rep. Douglas Bovin**

**House Bill 4485 as passed by the House  
Sponsor: Rep. Randy Richardville**

**Second Analysis (8-31-01)  
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](http://www.state.mi.us/orr)), and has provided eligible natural gas and electric 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 shutoff 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 virtually identical to those already in place for electricity. 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 [eligible low income] 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 the electric shutoff provisions 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 define "eligible low income customer" to mean a customer whose

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household income did not exceed 175 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.** As in the recent statutory 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 terminate service to eligible low-income 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 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[n eligible low-income] 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;
- That the customer had the right to file a complaint [with the natural gas distributor or supplier] disputing the natural gas distributor’s (or supplier’s) claim before the date of the “proposed shutoff of service”;
- That the customer had the right to request a hearing before a hearing officer if his or her complaint could not be otherwise resolved and that the customer would be required to pay that portion of his or her

natural gas bill that was not in dispute within three days of the date that the customer requested a hearing;

- That the customer had the right to represent himself or herself, to be represented by an attorney, or to be helped by anyone else of his or her choice in the complaint process;
- That the natural gas distributor or supplier would not “shut off” service pending the resolution of a complaint that was filed with the utility in accordance with the bill;
- 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.

### ***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 most of 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. However, the act did not put into statute the dates of the "heating season," which in rule is called "the space heating season;" effectively these dates are set as the period of time between December 1 and April 1. Nor did the act put into statute the several of the rule's other requirements and customer options and protections, including requiring utilities to reconcile the accounts of eligible customers at the end of the space heating season and to allow these customers to pay what they owe in equal monthly installments between April 1 and December 1; optional pre-enrollment by eligible customers – including "off service low-income customers" – in the winter protection plan between November 15 and November 30; and a prohibition against utilities from requiring eligible low-income customers whose service had been shut off before applying for the winter protection program to pay a fee for restoring service or a security deposit during the "space heating season."

The electric shutoff protection provisions of Public Act 141 of 2000 prohibit 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"). Thus, electric utility shutoff protections apply to all utility customers at least 65 years old who notify the utility of their age, regardless of their income level and regardless of whether or not they pay their utility bills. But shutoff protection is only given to eligible low income utility customers if they make certain required payments.

More specifically, under the act an electric utility or alternative electric supplier can shut off a customer's service for nonpayment of a delinquent account under one of two circumstances:

(1) If an arrearage exists at the time an eligible [low-income] 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 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” (which is in administrative rule, not statute);
- 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.

Finally, the act 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.

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.

Michigan's LIHEAP program. According to Family Independence Agency material describing the "Michigan State Plan 2001 Low Income Home Energy Assistance Program," dated August 14, 2000, the Michigan Family Independence Agency (FIA) is the federally designated lead agency responsible for the administration of the federal Low Income Home Energy Assistance Program (LIHEAP) in Michigan. There are three components to the plan, two of which are administered by the FIA and one of which is administered by the Department of the Treasury. The treasury department administers a Home Heating Credit Program, while the FIA administers a Crisis Intervention Program and a Weatherization Program.

Credit under the Home Heating Credit Program is based on both the number of exemptions (the number of household members plus additional exemptions for each person 65 or older and certain disabilities) claimed by the household and on income. Maximum credit under the Home Heating Credit Program,

under a complicated formula, begins at \$323 for one exemption, and increases by about \$112 for each additional exemption. However, once calculated, each credit is then reduced by ten percent, and issued as an "energy draft" or "vendor payment" if the household pays the utility directly, or as a warrant if heat is included in the rent.

Maximum annual payments for heating under the Crisis Intervention Program are \$160 for households that heat with natural gas or wood, \$300 for households which heat with deliverable fuel other than wood, and \$410 for households "which are all-electric (including heat) customers." In addition, the program provides an annual maximum of \$250 per household in payment for electricity needed to operate the heating system or to provide energy to the dwelling unit to make it livable. Local FIA offices perform intake, eligibility determination, and certain payment functions. Eligibility is based on the household's demonstration of immediate need for help with home heating fuel, electricity, or energy-related home repairs plus income to be received in the 30-day period following application for crisis help, and an assets test is applied to applicants. "Immediate need" can be demonstrated in a number of different ways: by a declared need for a deliverable fuel, by presenting a shut-off notice of natural gas or electricity, or by a verified need for energy-related home repairs of a home that is owned or being bought. (Only homeowners are eligible for energy-related home repairs.) In addition, FIA agreements with utilities also may specify other demonstrations of need. Payment for heating fuel or electricity is made to prevent shut-off of service or to restore shut-off service when restoration is essential to prevent "serious harm." Payments are made in the minimum amount needed to prevent service shut-off or to restore service (and may include connection or hook-up fees not waived by the utility). Payments are made within 30 working days of receipt of the authorization/invoice from the provider, but "resolution" of the emergency occurs more quickly because emergency situations most often are resolved by a commitment to pay. Thus resolution of emergency situations can occur within 48 hours after eligibility determination or within 18 hours in life-threatening situations. Once the annual maximum has been met, no further assistance from the crisis intervention program is available to needy people.

The state also operates a weatherization program for low income households that is funded by federal Department of Energy money. Although the weatherization program does not receive federal LIHEAP funds, as apparently it formerly did,

eligibility criteria (and types of weatherization services available) still are based on LIHEAP eligibility criteria as implemented in the other two state programs described above.

### ***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. (4-2-01)

### ***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:***

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 27<sup>th</sup> out of the 50 states in controlling demand, in terms of efficiency, Michigan ranks 44<sup>th</sup> 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.

Detroit Edison supports the bills only if the rest of the package of bills dealing with taxation and home heating credit is adopted. (4-2-01)

The American Association of Retired Persons support the bills. (4-2-01)

**Against:**

The bills do not go far enough. The current energy and weatherization assistance programs provided by the state through the federal Low Income Home Energy Assistance Program (LIHEAP) are woefully inadequate. The state should simply and directly guarantee that no individuals in need of life-preserving heating or cooling could have their gas or electricity cut off during extremely hot or cold periods of the year, regardless of their ability to pay their energy bills. Older people, as well as very young children, are particularly susceptible to life-threatening periods of extreme heat or cold, and with the increasing trend toward deregulating public utilities, the potential for life-threatening heat or cold becomes an ever more serious threat to poor people who cannot afford to pay soaring energy bills. Although some limited state programs exist to help poor people with the rising costs of energy, the programs are both inadequate to the rising need, as well as too difficult for many people who need help in paying for their energy needs to access. While deregulation of utilities can benefit large commercial and industrial customers, it also can prove disastrous for individuals, especially economically impoverished people. More protection needs to be afforded to individual residential customers against the vagaries of the marketplace with regard to vital energy needs.

**POSITIONS:**

Consumers Energy supports the bills. (4-2-01)

The Southeastern Michigan Gas Company (SEMCO Energy) supports the bills. (4-2-01)

The Michigan Consolidated Gas Company (MichCon) supports the bills. (4-2-01)

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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.