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BILL ANALYSIS

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Senate Bill 334 (Substitute S-3 as reported)
Sponsor: Senator Bruce Patterson
Committee: Technology and Energy

Date Completed: 5-25-05

RATIONALE

Public Act 141 of 2000 enacted the Customer Choice and Electricity Reliability Act to restructure the State's electric industry. At the same time, Public Act 142 allowed the Public Service Commission (PSC) to authorize the State's incumbent electric utilities, Consumers Energy and Detroit Edison, to issue securitization bonds to refinance outstanding debts at low interest rates. Under the Act, any savings resulting from securitization had to be used to reduce retail electric rates by at least 5%. If the securitization savings exceeded the amount needed to achieve that rate reduction, the excess savings, up to 2% of the utility's commercial and industrial revenue, had to be allocated to a Low Income and Energy Efficiency Fund (LIEEF). (Only Detroit Edison experienced excess savings; thus, only Detroit Edison customers pay into LIEEF.) The PSC disburses grants from LIEEF to nongovernmental organizations that assist low income utility customers with bill payment and energy conservation measures. Under the statute, funding for LIEEF from excess securitization savings was to last for a period of six years.

In November 2004, the PSC issued its final order in a Detroit Edison rate case (U-13808). As a result of the rate case, there no longer were any excess securitization savings to fund LIEEF. In order to continue the assistance program, the PSC approved the inclusion of nearly $40 million annually in Detroit Edison's rates. Some people have voiced concerns about whether the PSC has the statutory authority to order continued funding of LIEEF in a rate case, and whether it is fair to require Detroit Edison customers to contribute to a fund that benefits customers all over the State, regardless of their utility. It has been suggested that a permanent assistance program, and the PSC's authority to approve funding for it, be established in statute. Some people also believe that all natural gas and electric utility customers, not just Detroit Edison's, should be required to contribute to the Fund, and that the money should be tracked to ensure that it is used by customers of the utility serving the customers from whom it was collected.

CONTENT

The bill would amend the Customer Choice and Electricity Reliability Act to do the following:

- **Create the Low Income Energy Assistance and Efficiency Program within the Public PSC.**
- **Require the PSC to implement a low income energy assistance and efficiency factor that would be a nonbypassable surcharge payable by every customer receiving a distribution service from a natural gas or electric utility with rates regulated by the PSC.**
- **Create the "Low Income Energy Assistance and Efficiency Fund" within the State Treasury, and require money collected through the surcharge to be deposited into the Fund.**
- **Allow the PSC, in consultation with the Attorney General, to authorize the State Treasurer to make**

disbursements from the Fund through a grant process to any entity that provided assistance to utility customers.

-- Repeal Section 6c of the Act, which allows the PSC to approve energy conservation programs for residential customers, and fund those programs through general utility rates.

The bill is described below in further detail.

Purpose

The bill states, "The legislature finds and declares that there is a need to provide assistance to low income individuals in paying their energy costs and to develop measures to reduce energy use in this state." The bill states that its purpose is to do all of the following:

-- Protect the health and safety of Michigan citizens by assisting low income customers in maintaining life-sustaining electric and natural gas service.
-- Provide payment assistance to low income customers for electric and natural gas service.
-- Help low income customers conserve energy and reduce residential utility bills.
-- Ensure that low income energy assistance and efficiency programs receiving funds under the bill were operated in a cost-effective and efficient manner.

Low Income Energy Assistance & Efficiency Program

The bill would create the Low Income Energy Assistance and Efficiency Program within the PSC, and require the Program to be funded by the proposed Low Income Energy Assistance and Efficiency Fund. Within 90 days of the bill's effective date, the PSC by order would have to terminate the existing LIEEF and vacate any portion of a Commission order continuing the funding of that program. The PSC could provide low income energy assistance and efficiency only as provided under the bill.

Under the bill, "energy assistance" would mean financial support provided to an electric or natural gas utility customer to prevent imminent shut-off, as demonstrated on a disconnect notice or significant balance due, or the need for restoration of service. The bill specifies that payment of electric or natural gas bills would be limited to energy needed to operate the heating system during the winter heating season, or to provide electricity to a household with a member who was elderly, disabled, or a young child where the loss of electric service would be especially dangerous to health, or to provide electricity to a household where the loss of electric service would make the operation of necessary medical or life-support equipment impossible or impractical.

"Energy efficiency" would mean energy education or measures, including weatherization, with the goal and effect of reducing energy use.

"Low income" would mean a household that either 1) has a total income that does not exceed the greater of the amount equal to 150% of the Federal poverty guidelines as published by the U.S. Department of Health and Human Services, or an amount equal to 60% of the State median income, or 2) has at least one individual receiving assistance under any of the following:

-- Part A of Title IV of the Social Security Act (which provides for block grants to states for Temporary Assistance to Needy Families).
-- Supplemental security income payments under Title XVI of the Social Security Act (which provides for supplemental security income to individuals who are at least 65, blind, or disabled, and who meet specific income guidelines).
-- Food stamps under the Food Stamp Act.
-- Payment of a pension for a nonservice-connected disability or death under the Veterans' and Survivors' Pension Improvement Act.

Low Income Energy Assistance & Efficiency Fund

The bill would create the Fund within the State Treasury. The Fund would have to be administered by the PSC and the Attorney General as provided in the bill. Money collected through the proposed surcharge would have to be deposited with the State Treasurer and credited to the Fund. An account would have to be created within the Fund for each utility imposing the surcharge, and all money collected from a particular utility's customers under the bill would have to be deposited into that utility's account.

The State Treasurer could receive money or other assets from any source for deposit into the Fund, and would have to direct the Fund's investments and credit the interest and earnings to the Fund. No Fund money could be spent except as authorized specifically under the bill. Money in the Fund at the close of the fiscal year would remain in the Fund and would not lapse to the General Fund.

Surcharge

After notice and hearing, the PSC annually would have to approve a low income energy assistance and efficiency factor that would be a nonbypassable surcharge payable by every customer receiving a distribution service from a natural gas or electric utility with rates regulated by the PSC. The surcharge for a particular utility would have to be set at a level that was sufficient to provide low income assistance to defray the costs of services provided by that utility. The surcharge would be payable regardless of the customer's natural gas or electric generation supplier. The surcharge would be payable by all of a utility's customer classes, but the total amount could not exceed the equivalent of 2% of the utility's commercial and industrial revenue. In setting the annual surcharge, the PSC would have to factor in any excess money in the Fund at the end of the fiscal year.

Beginning on the bill's effective date, the PSC could not approve a special contract between a utility with regulated rates and a customer that did not include the applicable surcharge.

Grants

In consultation with the Attorney General, the PSC could authorize the State Treasurer to make disbursements from the Fund through a grant process to any governmental or nongovernmental entity that provided assistance to utility customers. The PSC would have to issue requests for proposals and allow at least 30 days for responses. After the Commission received responses and made them available to the public, including by posting them on its website, it would have to hold a public hearing to take comment on the various proposals.

As a condition to receiving a grant, the PSC would have to require all of the following:

-- A written grant proposal providing detailed information regarding the grantee and the services or assistance the grantee proposed to offer.
-- Written quarterly progress reports and a final report at the end of the grant funding submitted to the PSC.
-- That the grantee would maintain records of expenditures and submit monthly financial reports to the PSC.
-- That the grantee would be subject to an audit by the Commission staff or as otherwise designated by the Commission.
-- That, if the grantee received at least $100,000 in any 12-month period, it would submit an audited financial report for that period to the PSC.
-- That the funds received under the grant program that were collected by a particular utility would be used only to provide assistance to low income customers to help pay for the service received from that utility.

In awarding a grant, the PSC would have to consider the amount of funds allocated to the proposed purpose and take into account the preexisting sources of funding for that purpose. The bill states that the funds provided under it "should" be supplemental to any existing funding sources, and the PSC "should" give priority to any use of funds as leverage for additional Federal resources that provided low income energy assistance and efficiency. The PSC would have to consider the benefits received relative to the cost of the proposal. Both single-year and multiple-year programs could be funded. Grantees could not use more than 10% of the funds received through the Program for planning and administration. At least 90% of the funds would have to be disbursed for direct energy assistance.

The low income energy assistance grants would have to be used exclusively to provide bill payment assistance to low income electric and natural gas utility customers. The energy efficiency grants would have to target, to the extent practicable, to high-cost, high-volume use structures occupied by customers eligible for the Low Income Energy Assistance Program.

Annual Report

In consultation with the Attorney General, the PSC would have to issue an annual report to the Legislature and the Governor by May 1 regarding the Fund's use and effectiveness. To the extent that the PSC and the Attorney General were in agreement about the report's content and substance, a joint report could be issued. To the extent that the parties could not agree, each party would have to issue its own report. The Attorney General would have to have full access to all of the PSC's documents pertaining to the administration of the Fund.

Record-Keeping & Audits

The PSC would have to maintain detailed records of its activities under the bill. At least every two years, the Auditor General or a certified public accountant appointed by the Auditor General would have to conduct and remit to the Legislature an audit of the Fund.

The PSC would have to conduct audits and investigations to ensure that money was disbursed from the Fund as required under the bill and by law. If the PSC conducted an audit or investigation, a report would have to be filed with the Commission with a copy sent to the grantee and the Attorney General.

Criminal Proceedings & Civil Action

If an audit report by the PSC disclosed activity for which a criminal penalty was provided by law, the Attorney General or, upon his or her direction, the prosecuting attorney would have to institute criminal proceedings against the grantee. The Attorney General or prosecuting attorney also would have to institute civil action in any court of competent jurisdiction for the recovery of any funds that were illegally spent or unaccounted for.

Cooperative Exemption

The bill would not apply to a cooperative electric utility, unless it proposed a surcharge in a general rate case or in an application filed with the Commission. A proposed surcharge for a cooperative electric utility would have include a plan for the allocation and distribution of the funds collected based on the utility's service area. The PSC would have the authority only to approve or deny a proposed plan.

Section 6c Repeal

The bill would repeal Section 6c of the Act, which allows the PSC to approve energy conservation programs, including energy conservation loan programs, for residential customers of electric and gas utilities. Under Section 6c, the costs of money, bad debt expense, administrative costs, and the cost of residential energy audits associated with an authorized program, other than a loan program, must be included only in general utility rates. The costs of a loan program must be included only in residential utility rates.

The conservation programs must provide conservation devices, services, and materials and may include ceiling and wall insulation, flue dampers, caulking, and weather stripping in compliance with State laws and rules. A residential energy audit or preinspection must be completed by the utility before the installation of any device or material or approval of a loan. A participating residential customer must be provided with cost benefit information regarding those conservation devices, services, and materials. The PSC must promulgate rules to established standards for energy conservation loan programs.

Proposed MCL 460.10dd

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

As the State's economy remains sluggish and the unemployment rate remains one of the highest in the nation, it is becoming increasingly difficult for many Michigan families to pay their heating and electric bills. Reportedly, some people feel that they must choose between utilities and other necessities, such as food, rent, and medical care. Although various governmental agencies and nonprofit organizations operate programs to provide assistance with energy bills, the need for assistance outweighs available funds. According to The Heat and Warmth Fund (THAW), in 2004, there was a $598.0 million gap statewide between the cost of home energy and what homeowners actually could afford to pay. Without assistance, people who cannot afford to pay their heat and electric bills often resort to candles, space heaters, fireplaces, stoves, and barbecue grills, which increases the risk of injury and death from fires and fumes.

Since the implementation of the existing LIEEF, all of the money collected from customers has been distributed to various organizations to assist residents around the State, demonstrating that the Fund helps to fill a critical need. By requiring that at least 90% of the funds be used to provide protection against an imminent shut-off, the bill would incorporate an important strategy to keep people from becoming homeless. The bill would establish a permanent funding source for the Program, which would help reduce energy consumption and make it easier for low income people to pay their energy bills, and ensure that fewer people were subjected to unhealthy household temperatures or unsafe methods to keep warm.

Response: The bill would advise the PSC to give priority to the use of funds that could be leveraged for additional Federal resources. Although that approach would be prudent, the bill should include additional local resources, as well.

The bill would limit bill payment assistance to energy needed to operate the heating system during the winter heating season, subject to certain exceptions. Extremely high temperatures, however, also can be dangerous. Several hundred people died in Chicago during a week-long heat wave in 1995, and another 110 died when the city again suffered unusually high temperatures in 1999. Severe temperatures killed an estimated 35,000 Europeans during an August 2003 hot spell. Recipients of assistance under the bill should be allowed to apply that assistance to their energy needs for air conditioning or other cooling measures, in addition to heating needs.

Furthermore, the bill would mandate that at least 90% of the funds be spent on energy assistance, which, as defined in the bill, would mean shut-off protection. This would leave very little available for energy efficiency projects, which would include weatherization and homeowner education. Although bill payment assistance would provide short-term protection against a shut-off, it would do little to ensure that a homeowner could pay his or her bills without outside assistance in the future. Grantees should be allowed to dedicate a greater portion of the money to making energy-conserving repairs or upgrades and informing residents about practices that could reduce their energy usage.

Supporting Argument

Currently, only Detroit Edison customers pay into the LIEEF. The money, however, is distributed to customers all over the State, regardless of their electric or natural gas supplier. The bill more equitably would require all customers of regulated utilities to pay into the Fund, and require the money to be segregated and tracked to ensure that one utility's customers were not subsidizing another utility's customers.

Response: The tracking requirements could result in an excessive administrative burden for the nonprofit agencies distributing the grant money to those in need in local communities. The Salvation Army, for example, has 50 different service areas covering all 83 of the State's counties. It would be difficult to meet the additional requirement of ensuring that the money was disbursed only to a specific utility's customers, especially since the bill would cap administrative expenses at 10%.

Supporting Argument

Under the Act, funding for low income and energy efficiency assistance was to continue for six years or until the excess savings from securitization were exhausted. As a result of Detroit Edison's rate case, the latter occurred. The PSC, however, ordered that LIEEF be continued, and incorporated a surcharge in the utility's rates. Some have questioned whether the PSC had the authority to impose this surcharge and maintain LIEEF in light of the sunset enacted by the Legislature. The bill unambiguously would authorize the PSC to approve the surcharge and administer the Program.

Opposing Argument

The bill would be unfair and overly burdensome for businesses. According to the Association of Businesses Advocating Tariff Equity (ABATE), commercial and industrial customers would have to pay $65.0 million to $70.0 million per year into a fund from which they could not benefit, because the bill specifies that only residential customers could receive assistance. Many businesses, however, are experiencing significant economic hardship. The State's manufacturing sector is said by some to be hemorrhaging, and General Motors and Ford bonds recently were downgraded to junk status. Energy already costs more in Michigan than in many other places in the Midwest, and constitutes one of the largest expenses for many employers; an additional charge could drive businesses to locate in other states. A charge for each meter, rather than a usage charge, could help alleviate the financial strain the surcharge would impose on already struggling businesses.

Opposing Argument

Under the bill, the proposed surcharge could not exceed 2% of a utility's commercial and industrial revenue. In some regions of the State, however, particularly in the Upper Peninsula, that amount could exceed the need for energy assistance. Furthermore, money in the Fund would be carried forward to the next year. Perhaps utilities with fewer than 200,000 customers should be exempt, or a cap should be placed on the total amount that could be collected in certain areas, to ensure that required customer payments into the Fund did not exceed the need.

Response: According to Senate Technology and Energy Committee testimony, it is not likely that a Fund surplus would occur. Furthermore, 2% of commercial and industrial revenue would be the maximum; the PSC would not necessarily set the surcharge that high. Additionally, in determining the surcharge, the bill would require the Commission to take into account any undistributed money in the Fund at the end of the fiscal year. If there were a surplus, the Commission could impose a lower surcharge for the next year.

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bill would increase revenue to the Low Income and Energy Efficiency Fund from approximately $40 million annually to $94 million, but would restrict the distribution of the revenue collected to the particular service area and by particular service; i.e., electric surcharge would go back to the electric company, gas surcharge back to the gas company. This restriction would increase the administrative responsibilities of the Commission, which would have to hold a public hearing before awarding any grants. The Department of Labor and Economic Growth estimates that it would require 2.0 additional FTEs as well as increased auditing personnel.

The proposed surcharge would increase the cost of purchasing electricity and natural gas for all consumers, which would have an impact on the amount of sales tax generated from electricity and natural gas purchases. Assuming that at least some of this increased cost for electricity and natural gas would be offset by reduced purchases in other areas, it is estimated that the proposed surcharge would generate a net increase of $2 million to $3 million in sales tax revenue on a full-year basis. Most of this increased sales tax revenue would go to the School Aid Fund and the General Fund.

The bill also would result in additional administrative costs for the Department of Attorney General and the Auditor General. Enforcement costs (for the Attorney General and local prosecutors) would depend on the number of violations.

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