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Senate Bill 284 (as enacted)
Sponsor: Senator Mike Nofs
Senate Committee: Energy and Technology
House Committee: Energy and Technology

PUBLIC ACT 95 of 2013

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RATIONALE

Michigan has a history of assisting low-income residents to pay heating bills and other utility costs. Recently, however, for a period of time no funding mechanism existed although the law provided for an assistance program. That situation related to developments that occurred after the Customer Choice and Electricity Reliability Act was enacted in 2000. The Act created the Low-Income and Energy Efficiency Fund (LIEEF) "to provide shut-off and other protection for low-income customers and to promote energy efficiency by all customer classes". The Act required utilities to use "securitization savings" to reduce retail rates for all customers by 5%, and direct any remaining savings to the LIEEF for six years. Utilities continued to contribute to the Fund after the six-year period through an additional charge included on ratepayers' bills. This charge was approved by the Public Service Commission (PSC) through the rate case process prescribed in statute.

Public Act 286 of 2008 made a number of revisions to the Act, including the elimination of all references to the LIEEF, although legislation enacted later referred to the Fund. The 2008 deletion of the LIEEF's enabling language raised questions as to whether electric and natural gas utilities were obligated to continue collecting Fund contributions from their customers and whether the PSC had the statutory authority to administer it. Eventually, the Michigan Court of Appeals ruled that utilities could not continue to collect a LIEEF charge from ratepayers and that the PSC did not have the authority to administer the Fund.

Subsequent legislation provided stopgap assistance to low-income households through the State's annual appropriations process, and created the Michigan Energy Assistance Program in statute to replace the LIEEF, but did not create an actual fund. It was suggested that a utility customer surcharge should be reinstated to provide long-term funding for the Program and help move aid recipients toward self-sufficiency in paying their utility bills.

(The litigation pertaining to the LIEEF and the temporary assistance measures are described below under **BACKGROUND**.)

CONTENT

The bill amended Public Act 3 of 1939, the Public Service Commission law, to do the following:

- **Create the "Low-Income Energy Assistance Fund" and require the Department of Human Services to spend Fund money to provide energy assistance to eligible low-income households.**
- **Authorize the PSC to approve an annual low-income energy assistance funding factor (a surcharge) to be included on an electric customer's bill.**
- **Limit the amount of the surcharge to \$1.**

- **Require an electric utility or municipally owned or cooperative electric utility that collected the factor to remit the money for deposit into the Fund on a monthly basis.**
- **Allow a utility to elect not to collect the factor, and prohibit a utility that made that choice from shutting off service due to nonpayment between November 1 and April 15.**
- **Limit the amount used by the PSC to calculate the factor each fiscal year to \$50.0 million, minus the amount appropriated from the General Fund for home energy assistance and the amount remaining in the Fund from the previous fiscal year.**

The bill took effect on July 1, 2013.

Creation & Use of Fund

The bill created the Low-Income Energy Assistance Fund within the State Treasury. The State Treasurer may receive money or other assets from any source for deposit into the Fund. The State Treasurer must direct the investment of the Fund, and credit to it any interest and earnings. Money in the Fund at the close of the fiscal year will remain in the Fund and will not lapse to the General Fund.

The Department of Licensing and Regulatory Affairs is the administrator of the Fund for auditing purposes.

The Department of Human Services (DHS) may spend Fund money, upon appropriation, as provided in the Michigan Energy Assistance Act. In consultation with the PSC, the DHS must ensure that all money collected for the Fund from a geographic area is returned to that area, to the extent possible.

(Under the Michigan Energy Assistance Act, the DHS may use money from the Low-Income Energy Assistance Fund only for energy assistance. Money from the Fund may be used for the program's crisis season (November 1 through May 31 of each year).

The Act defines "energy assistance" as a program to assist eligible low-income households in meeting their home energy costs for their primary residence through payment or partial payment of bills for electricity and fuel used to provide heat. "Eligible low-income household" means a household with a household income of not more than 150% of the Federal poverty guidelines.

The Act specifies that energy assistance must include services that will enable participants to become or move toward becoming self-sufficient, including assisting them in paying their energy bills on time, budgeting for and contributing to their ability to provide for energy expenses, and using energy services to optimize on energy efficiency.)

Low-Income Energy Assistance Funding Factor

The bill authorizes the PSC, after notice and hearing, to approve a low-income energy assistance funding factor by July 31 of each year for the subsequent fiscal year. The funding factor must be the same across all customer classes and may not exceed \$1. The amount used by the PSC to calculate the factor during each fiscal year may not exceed \$50.0 million minus the amount appropriated from the General Fund in that fiscal year for home energy assistance and the amount remaining in the Energy Assistance Fund from the previous fiscal year.

(The bill defines "low-income energy assistance funding factor" as a nonbypassable surcharge on each retail billing meter payable monthly by every customer receiving a retail electric distribution service from a utility that does not opt out of collecting the surcharge, regardless of the identity of the customer's electric generation supplier. The funding factor may not be charged on more than one residential meter per residential site.)

An electric utility, municipally owned electric utility, or cooperative electric utility that collects money under the bill must remit it to the State Treasurer for deposit in the Fund within 30 days

after the last day in each calendar month. The utility must list the funding factor as a separate line item on each customer's bill.

An electric utility, municipally owned electric utility, or cooperative electric utility may elect not to collect the funding factor by filing an annual notice with the PSC by July 1. Notwithstanding any other provision of the law, a utility that chooses not to collect the factor may not shut off service to any residential customer from November 1 to April 15 for nonpayment of a delinquent account.

The bill requires each utility or association representing a municipally owned or cooperative utility that does not opt out of collecting the factor annually to give the Commission the number of retail billing meters it serves in Michigan that are subject to the funding factor.

The bill provides that nothing in the PSC law gives the Commission the power to regulate a municipally owned electric utility.

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BACKGROUND

Although Public Act 286 of 2008 eliminated all references to the LIEEF when it amended the Customer Choice and Electricity Reliability Act, the Fund was referred to in subsequent legislation enacted to provide shut-off protection for certain utility customers and prescribe the conditions under which a utility may discontinue service. This legislation included Public Act 172 of 2009, which prescribes civil fines for a municipally owned electric or natural gas utility that does not comply with the shut-off requirements, and requires that revenue to be deposited in the LIEEF. In addition, Public Act 130 of 2009 appropriated money to the LIEEF and low-income energy efficiency assistance, and referred to a State low-income energy efficiency grant program.

Some claimed that the Legislature's deliberate inclusion of references to the LIEEF in later legislation indicated that the 2008 amendments should not be viewed as a desire to end utility contributions to the Fund or stop the PSC from administering it. Others believed that the elimination of statutory language specifically authorizing the Fund trumped any perceived legislative intent, and the PSC could not legally continue to require utilities to fund the low-income energy assistance program.

The Michigan Court of Appeals considered the question upon an appeal by the Association of Businesses Advocating Tariff Equity (ABATE) and the Attorney General regarding the PSC's approval in a rate case of over \$5.0 million in LIEEF funding to be collected from customers of the Michigan Consolidated Gas Company (Mich Con).

On July 21, 2011, the Court of Appeals reversed the PSC's order approving the LIEEF funding (293 Mich App 360). The Court stated, "If this recent legislative activity indicates the Legislature's intention that the LIEEF continue to exist, and that the PSC retain some role in managing it, the deletion of all references to the LIEEF from the Customer Choice and Electricity Reliability Act, whose now-deleted provisions were recognized as the fund's enabling legislation in the first instance...nonetheless indicates a legislative intention to withdraw any obligation, or prerogative, on the part of PSC-regulated utilities to raise money for that fund." The Court pointed out that the specific authority granted to the PSC under the Act included the establishment of procedures for considering and deciding petitions from regulated utilities, and to allow a utility to recover its reasonably and prudently incurred costs; the LIEEF funding mechanism, however, was related not to utility regulation, but to helping the poor and promoting environmentalism and conservation. In conclusion, the Court stated, "For these reasons, we hold that administration of a LIEEF does not fall within the scope of the PSC's general statutory powers, but depends in every instance on specific statutory authorization."

The PSC appealed to the Michigan Supreme Court and held the LIEEF money in escrow pending the Court's decision, until Public Acts 274 and 276 of 2011 required the money to be refunded to customers. (The application for leave to appeal to the Supreme Court was dismissed in March

2012.) In April 2012, the Commission ordered Detroit Edison, Mich Con, and Consumers Energy to refund \$56.3 million to ratepayers. Public Act 276 also created the Vulnerable Household Warmth Fund, which could accumulate up to \$48.0 million to be appropriated for the payment of bills for electricity and heating fuel during the 2011-2012 heating season.

Public Act 615 of 2012 created the Michigan Energy Assistance Act to require the DHS, by October 1, 2013, to establish and administer the Michigan Energy Assistance Program for eligible low-income households through September 30, 2016. The Act allows the DHS to contract with public or private entities or local units of government to provide energy assistance. A maximum of 30% of the amount of Program funds may be spent outside of the crisis season (November 1 through May 31).

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

The bill provides a long-term solution to replace the LIEEF and the temporary Vulnerable Household Warmth Fund. In addition to money from the surcharge on electric customers' bills, the Low-Income Energy Assistance Fund may receive appropriations from the State, giving the Legislature the ability to adjust the mix of funding options in a given fiscal year.

As well as assisting low-income households with paying outstanding balances and keeping current on their energy bills, the legislation will facilitate customers' movement to self-sufficiency in paying for utilities. Several utility providers and other stakeholders have implemented programs to identify low-income customers with the potential to make the transition to payment independence, intervene before a crisis occurs, and reward people who adhere to payment plans. Reportedly, these programs have been successful in reducing service shut-offs, arrearages, and uncollectibles, which helps to keep rates down for all utility users. Further investment in such efforts through the Fund might magnify the positive results across the State.

The bill also will bring a measure of fairness to the assistance program. At the time the Court of Appeals determined that the LIEEF was unlawful, customers of only a few utility companies were paying into it, even though all Michigan residents who met the eligibility requirements could obtain assistance from the Fund. In addition, those who use natural gas for heating fuel were paying the surcharge on a monthly basis, while it was paid only every few months by propane customers, who are not billed for monthly metered use but instead receive a delivery several times per year. The surcharge established by the bill applies to all electric customers, regardless of provider, and will be the same across all customer classes.

Opposing Argument

The legislation will result in higher costs for utility customers and might create confusion by adding another line item to their monthly energy bills. Furthermore, enacting the bill was unnecessary because State law prohibits utility shut-offs for vulnerable customers under certain circumstances, and assistance to low-income households is provided through a number of government and private programs; consumers who so desire may make charitable contributions to those efforts.

Response: Many utility customers paid the monthly surcharge under the former assistance program and should be familiar with it. The bill limits the surcharge to \$1 per electric meter per month, which is the estimated amount that will enable the Fund to accumulate the full \$50.0 million. Also, the surcharge previously was assessed on bills for both electricity and heating fuel. Under this legislation, ratepayers will contribute to the program through their electric bills only. Additionally, the surcharge will be a flat rate established by the PSC; under the LIEEF program, the surcharge varied based on the customer's energy use. The funding mechanism under the bill will be more practical and efficient.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill created a restricted fund, the Low-Income Energy Assistance Fund, which will allow the State to appropriate up to \$50.0 million to the Michigan Energy Assistance Program as defined in the Michigan Energy Assistance Act (Public Act 615 of 2012). The amount appropriated to the Fund each year will be subject to variation, however. While the State is permitted to appropriate other funding – including GF/GP and Federal sources – to the Low-Income Energy Assistance Fund, the primary revenue source will be the consumer fees described above. The Department of Human Services has not yet identified any potential administrative costs that will result from the creation of the Michigan Energy Assistance Program.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.