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House Bill 4656 (Substitute H-2 as passed by the House)

Sponsor: Representative Jeff Mayes

House Committee: Energy and Technology

Senate Committee: Energy Policy and Public Utilities

Date Completed: 4-2-09

CONTENT

The bill would amend Public Act 3 of 1939, the Public Service Commission (PSC) law, to allow the Attorney General or a customer to bring a civil action against a municipally owned electric or natural gas utility that failed to meet the Act's requirements.

Specifically, the Attorney General, on his or her own motion or upon a referral from the PSC in a case of serious injury or death, or any customer of a municipally owned electric or natural gas utility, could commence a civil action for injunctive relief or imposition of a civil fine against the utility if it failed to meet the applicable requirements. A municipally owned utility would have to establish a complaint resolution process for its customers to resolve any allegations of violations of the Act that did not result in a death or serious injury.

An action would have to be commenced in the circuit court for the circuit in which the principal office of the utility was located. An action could not be filed unless the prospective plaintiff had given the prospective defendant at least 60 days' written notice of his or her intent to sue, the basis for the suit, and the relief sought. Within 30 days after the prospective defendant received the notice, the parties would have to meet and make a good faith attempt to determine if there was a credible basis for the action. If the parties agreed that there was, the prospective defendant would have to take all reasonable and prudent steps necessary to comply with the applicable requirements of the Act within 10 days of the meeting, and could enter into a compliance agreement, which could include the payment of a civil fine.

In issuing a final order in an action brought under the bill, a court could award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party. A court could order a municipally owned utility to pay a civil fine of at least \$1,000 but not more than \$20,000 for a first offense. For a second offense, the court could order a fine of at least \$2,000 but not more than \$40,000. For a third and any subsequent offense, the court could order a fine of at least \$5,000 but not more than \$50,000. A civil fine would have to be deposited in the Low Income and Energy Efficiency Fund.

A municipally owned utility or a customer would be subject to the Act only as expressly provided in it. Nothing in the Act would give the PSC the power to regulate a municipally owned electric or natural gas utility. Nothing in the bill could be construed to prevent a party from pursuing any other legal or equitable remedy that was available to the party.

Proposed MCL 460.9p Legislative Analyst: Julie Cassidy

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FISCAL IMPACT

The bill could have an indeterminate fiscal impact on the Department of Attorney General depending on the increase in caseload that could result from any lawsuits brought under the bill. However, the costs could be neutral if the Attorney General were awarded litigation costs, which could include attorney fees and the costs of expert witnesses as provided in the bill.

The bill would require civil fine revenue to be deposited into the Low Income and Energy Efficiency Fund. This Fund provides assistance to low income customers to help with utility costs and also provides funding for energy efficiency programs. For FY 2008-09, the Department of Energy, Labor, and Economic Growth budget bill, Public Act 251 of 2008, includes a \$93.2 million appropriation to this Fund. Current revenue to the Fund comes from an assessment on DTE and Consumers Energy.

Fiscal Analyst: Joe Carrasco Elizabeth Pratt Maria Tyszkiewicz

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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.