

Legislative Analysis



LOW-INCOME WATER RESIDENTIAL AFFORDABILITY

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bills 5088 and 5090 as introduced
Sponsor: Rep. Abraham Aiyash

Analysis available at
<http://www.legislature.mi.gov>

House Bills 5089 and 5093 as introduced
Sponsor: Rep. Donavan McKinney

House Bill 5091 as introduced
Sponsor: Rep. Mike McFall

House Bill 5092 as introduced
Sponsor: Rep. Jimmie Wilson, Jr

Committee: Natural Resources, Environment, Tourism and Outdoor Recreation
Revised 10-26-23

BRIEF SUMMARY:

House Bill 5088 would amend the Social Welfare Act to establish the low-income water residential affordability program and provide for its purpose and eligibility requirements.

House Bill 5089 would amend the Social Welfare Act to establish the Low-Income Water Residential Affordability Program Fund in the Department of Treasury. The fund would be used to aid low-income residents for expenses related to water and sewer service.

House Bill 5090 would create a new act, the Water Shutoff Protection Act, which would establish standards and criteria for when a water service provider can shut off water supply to certain categories of nonpaying customer.

House Bill 5091 would amend 1972 PA 348, which regulates rental agreements between landlords and tenants, to allow a tenant in a metered or sub-metered rental property to request that a copy of the water and sewer bill be sent to both landlord and tenant, and to transfer the water and sewer bill for the premises in the name of the tenant who is renting that unit.

House Bill 5092 would amend the Michigan Penal Code to make certain actions related to restoring water service to a lawfully occupied residence after a water service shutoff a state civil infraction rather than a misdemeanor.

House Bill 5093 would amend the Code of Criminal Procedure to update MCL references to reflect amendments proposed by HB 5092.

DETAILED SUMMARY:

House Bill 5088 would add several new sections to the Social Welfare Act. Section 14n includes the following definitions:

Eligible customer would mean a *provider's* customer whose household income does not exceed 200% of the federal poverty guidelines or who meets any of the following requirements:

- Has received assistance from a state emergency relief program within the past year.

- Receives food assistance under the federal supplemental nutrition assistance program administered by Michigan.
- Receives medical assistance administered under the Social Welfare Act.
- Receives assistance under the Michigan energy assistance program.
- Receives assistance under the special supplemental nutrition program for women, infants, and children.
- Receives supplemental security income.
- Receives assistance under the weatherization assistance program.

Nonaffordability application would mean a form that the Department of Health and Human Services (DHHS) would have to develop to trigger an income eligibility review for the program. The application would include the option of authorization for release of the customer’s information to the ***provider*** and the option for indicating consent to receive telephone communications about the program.

Program administrator would mean DHHS, a ***provider***, or a third-party organization that administers a low-income water residential affordability program.

Provider would mean a community water supply that is publicly or privately owned and provides retail water service in Michigan.

Residential customer would mean an individual who is receiving or is eligible to receive water service at that individual’s primary residence.

Retail water customer would mean a residential or nonresidential customer receiving a ***water bill*** for water service.

Water bill would mean a request from a provider to a retail water customer for payment for water service. Water bill would include a request for payment of sewer, storm water, or other related services if the provider charges for those services.

Low-income water residential affordability program

The bill would establish the low-income water residential affordability program in section 14o. The purpose of the program would be to reduce or eliminate money owed for water bills, to ensure that a water bill is based on the customer’s household income, and, subject to funding availability, to keep a customer from spending more than 3% of their household income on their water bill.

With the assistance of third-party organizations, DHHS would administer the program to customers of a water provider that choose to use the program. Each year, DHHS and the Department of Treasury would have to prepare projections to determine the estimated funding required to offer program benefits to all enrolled and eligible customers and for eligible applicants who will enroll in the next fiscal year.

If the fund will not have sufficient money to pay out the benefits according to the projections, DHHS, the Department of Treasury, and the Low-Income Water Residential Affordability Program Task Force (see below) would have to identify alternative funding sources or adjust program benefits so they can be sustained through available funding. In consultation with the

Department of Treasury and the task force, DHHS would have final decision-making authority to ensure that program benefits do not exceed revenue collected. Based on available funding, these three entities would have to prioritize program benefits designed to provide eligible applicants with household income-based water bills over other program benefits. Reducing the program benefits corresponding with the tier with the lowest household income (see below) could only occur if all other alternatives have been exhausted.

The low-income water residential affordability program would begin 18 months after collection begins for the Low-Income Water Residential Affordability Program Fund (created in HB 5089). When the program starts, it would be open to providers with 500 or more retail water service connections. The program would apply to all water providers in Michigan 18 months after it is initiated.

Program application process

After receiving a signed nonaffordability application, DHHS or the program administrator would have 30 days to perform an income eligibility review to determine whether the applicant is eligible for the program. The application would have to be simple and accessible and include authorizations for release of the customer's information to the provider and for the program administrator to call or text the individual about the program.

DHHS or the program administrator would have to immediately notify the provider once an eligibility review begins. After that notification, the provider could not pursue shutoff of service during the review.

In addition to any other verification of income accepted by the program administrator, a federal income tax return would count as documentation of income. When applicable, the program administrator would have to use publicly available information regarding standard benefit amounts for supplemental security income and temporary assistance to needy families in determining eligibility. An applicant would have no obligation to provide confirmation of the amount of benefits they receive from supplemental security income. Among other documents as determined by the program administrator, the program administrator would have to consider the customer's enrollment in the low-income home energy assistance program, the supplemental nutrition assistance program, the special supplemental nutrition program for women, infants, and children, supplemental security insurance, the weatherization assistance program, or the customer's self-verification of income or lack of income as proof of the customer's eligibility in the form of a written customer statement regarding their income or lack of income.

DHHS could contract or collaborate with a third-party organization that collects or processes household income information in order to do any of the following:

- Complete this eligibility review to determine if an individual meets the requirements for the low-income water residential affordability program
- Notify the applicant and provider
- Perform other functions necessary for implementing the low-income water residential affordability program.

Once review is completed, the applicant would have to be notified of the results. If the program administrator finds that the applicant is an eligible customer, the administrator would have to

provide the applicant with information about the low-income water residential affordability program and the rate to be charged by the provider. If the applicant is not an eligible customer, the program administrator would have to provide the applicant with information on the appeal and complaint process (which DHHS would have to create) through which a customer could challenge the eligibility determination or otherwise submit a complaint about the program.

If an appeal is filed, the administrator would have to notify the appealing applicant's provider to place a hold on the customer's account to cease collection or disconnection of service until the appeal process has been completed. Additionally, DHHS would have to create a process and timeline for redetermination based on recommendations of the Low-Income Water Residential Affordability Program Task Force. There could not be a time limit on a customer's enrollment in an affordability program.

If the applicant is an eligible customer, the program administrator would have to provide their information and household income to their provider. Upon receiving the information, the provider would have to provide a discount, credit, or other method on the eligible customer's water bill to result in a bill that is affordable based on the eligible customer's household income, as determined by the program administrator. The provider could not provide a discount or credit if the eligible customer's pre-discount, pre-credit bill amount would be lower than the bill amount after application of that discount or credit (i.e., the provider would not be required to issue a credit or discount resulting in a negative balance). The discount or credit would have to apply to the entire water bill, including any rider, fee, surcharge, or the funding factor (the \$2 per retail water meter fee created in HB 5089 that provides funding for the affordability program).

Program tiers

In consultation with the Low-Income Water Residential Affordability Program Task Force, eligible customers would be sorted into tiers based on household income compared to federal poverty guidelines, along with the corresponding discounts, credits, or percentage of household income cap on water bills for each tier.

A water provider could count discounts, credits, or other methods to ensure water bills meet the 3% of household income threshold created by the bill. The tiers would have to include the following:

- A tier for households where the household income is not more than 135% of the federal poverty guidelines and the corresponding cap is 2% of household income, or there is a standardized household contribution of 2% of the average household income for households with income not exceeding 135% of the federal poverty guidelines within the provider's water service area
- A tier for households where the household income is greater than 135% but not more than 200% of the federal poverty guidelines and the corresponding cap is 3% of household income or there is a standardized household contribution of 3% of the average household income for households with income between 135% and 200% of the federal poverty guidelines within the provider's water service area.

DHHS would have to adjust the standardized household contribution based on the Department of Treasury's projections of available annual funding that would have to include a projection for not less than a 10% fund balance to remain at the close of the fiscal year.

Other program benefits

The bill requires the program administrator to make a good-faith effort to assess whether an eligible customer needs a household plumbing repair to address a leak or other plumbing or water service issue. DHHS or a contracted third-party organization would have to connect the eligible customer with resources to fix the water service issue and pay for the necessary minor repair, up to \$2,500 per household. The program administrator would have to establish a waiver process for those customers demonstrating extreme need to issue payment over \$2,500 for plumbing repairs.

Provider notification of affordability programs

Section 14p of the bill would require each provider to notify its customers of the existence of the affordability program or provider's own affordability program for low-income customers, along with the respective application process. This notice would have to be provided in writing on the customer's water bill and on the provider's website. Beginning January 1, 2025, DHHS would have to provide notice to all individuals receiving benefit program services regarding the availability of the program and the process to apply.

Low-Income Water Residential Affordability Program Task Force

Section 14q of the bill would require DHHS to create the Low-Income Water Residential Affordability Program Task Force within 30 days after the bill takes effect. The director of DHHS would be responsible for appointing task force members, who would have to include at least all of the following:

- A representative of a water service provider that services fewer than 3,000 people.
- A representative of a water provider serving between 3,300 and 10,000 people.
- A representative of a water provider serving over 10,000 people.
- A representative from water and sewerage customer advocacy groups.
- A representative from community action agencies.
- A representative from municipal governments.
- A representative from environmental groups.

The task force would have to do all of the following:

- Discuss, and advise DHHS on best practices for administering the low-income water residential affordability program.
- Within nine months after the bill's effective date, develop further guidance for the program, which DHHS would have to implement within 18 months after the bill's effective date.
- Work with DHHS to develop educational outreach materials about the program.
- Seek additional funding sources for the program.
- Explore ways to expand the program to include more types of water providers.

In collaboration with the Department of Treasury, DHHS would have to distribute funding from the Water Affordability Fund (presumably the Low-Income Water Residential Affordability Fund) to the water providers to make up the difference between the total of customers' actual water, sewerage, and storm water bill and the total discounted water and sewerage bills provided through DHHS's or a provider's low-income water residential affordability program, along with funding for plumbing repairs, which would have their own specific amount set aside. The Department of Treasury would also distribute funds to cover the

administrative costs of third-party organizations that collaborate with DHHS to administer the affordability program.

Forgiveness of outstanding water bill balances

In section 14r, the bill would provide that timely payment, as defined by the water provider, of a water bill satisfies the customer's current water liability so there is no addition to the amount in arrears.

A customer who has a balance of not more than \$1,500 at the time they enroll in the program would have that entire balance forgiven. If the outstanding amount owed is greater than \$1,500, then the customer would have half of their balance forgiven at the time of program enrollment, followed by forgiveness of an additional \$1,500 if they successfully participate in the program for 12 months. Participation in the program for 24 months would result in forgiveness of any remaining balance in arrears if the individual has made timely payments on their water bills for those 24 months and their balance in arrears was greater than \$1,500 at the time of enrollment in the program. The bill would allow the program administrator to make a request to DHHS that an amount greater than \$1,500 be forgiven if an individual has extreme need.

Once enrolled in the affordability program, and as long as the customer remains eligible and enrolled in the program, a provider could not certify to property tax any amount owed that is subject to forgiveness under these provisions.

Water provider affordability programs

Under section 14s of the bill, a water provider could design and implement its own low-income water residential affordability program rather than use the DHHS program created by the bill. A water provider could partner with a community action agency, United Way organization, or other community organization to implement its low-income water residential affordability program. If a provider does not elect to implement its own program, it would have to participate in the DHHS program.

A provider affordability program would have to meet all of the following requirements:

- The program is designed so that an individual enrolled in its program does not pay more than 3% of their household income on either the water bill or the discounted water bill, whichever results in a lower amount to be paid.
- The provider maintains records of the customers enrolled in the program and relevant data and makes them available to DHHS.
- The provider considers the customer to be an eligible customer or a more generous threshold.
- Other criteria as determined by DHHS.

If a provider designs and implements its own affordability program and already has a water affordability or assistance program, the provider would not have to require a customer who is enrolled in the existing program to reapply for a program funded by the water affordability funding factor. DHHS or its contracted third-party organization would have to forward an application received from a customer of a provider with its own affordability program directly to that provider's plan administrator.

A provider-designed and implemented program would have to be submitted to DHHS for review and approval, with DHHS giving the provider recommended or required changes. Substantive changes to the provider's program would have to be reported to DHHS once the program receives initial approval. A provider program could have more than two tiers.

If a provider's program does not have sufficient resources to continue operation, the provider would have to notify DHHS within 90 days after that shortfall is identified and detail what steps are being taken to address the situation. DHHS would then collaborate with the water provider to identify potential strategies.

The bill would take effect 180 days after it is enacted. The bill cannot take effect unless House Bills 5089 and 5090 are also enacted.

Proposed MCL 400.14n et seq.

House Bill 5089 would add section 14t to the Social Welfare Act. This section establishes the Low-Income Water Residential Affordability Fund in the Department of Treasury. Three percent of the fund could be spent on administrative costs incurred by DHHS for operating the low-income water residential affordability program. The remaining balance of the fund would have to go to providers for the following:

- The actual administrative costs associated with the implementation of the low-income water residential affordability program, not to exceed 15%.
- Payment or advancement to providers for income-based bill discounts, income-based bill caps, or income-based rates. At least 80% of funding received by a provider should be spent on this activity.
- Payments for accounts in arrears.
- Water loss mitigation programs administered by third-party organizations, such as home plumbing audits and minor plumbing repairs.

Subject to the limitations imposed in the bill, the *low-income water residential affordability funding factor*, a mandatory fee on each retail water meter payable by every customer receiving water or sewerage service from a provider, would be \$2 per month per retail water meter or the equivalent based on the provider's billing cycle. After three years, the Department of Treasury could adjust the funding factor annually based on recommendations from the Low-Income Water Residential Affordability Program Task Force. The funding factor could not exceed \$3 or result in total collections that are 10% greater than the total amount collected in the previous year, whichever is less. Any adjustment to the funding factor would have to be determined by October 1 before taking effect on January 1 of the next year.

The affordability funding factor would be considered to be part of the total water bill for purposes of considering water affordability based on household income caps in low-income water residential affordability programs, and providers would have to include the funding factor on all retail water bills. Providers could list the funding factor as a separate line item on residential customer bills or incorporate the funding factor into their retail water rates.

Payment for services collected by providers would have to be applied first to satisfy this requirement and would be remitted to the state treasurer for deposit in the fund on a regular cycle that matches the remitting providers' billing cycle, but not later than 30 days after the

last day of the billing cycle. By April 1 following the first full year of collection, the provider would be required to provide the Low-Income Water Residential Affordability Program Task Force with the following information regarding the funding factor:

- The number of retail water meters for which a bill was sent subject to the funding factor on June 30 and December 31 of the previous calendar year.
- The total amount of money collected by the provider from the funding factor.
- The total amount of money not collected by the provider from the funding factor.
- The total amount of money remitted by the provider to the state treasurer from the funding factor.
- The total amount of administrative costs associated with administering or implementing the low-income water residential affordability program.

By July 1 annually, the Low-Income Water Residential Affordability Program Task Force would have to provide a report to the legislature, and post it on the DHHS website, that includes all of the following:

- The information collected under the Department of Treasury's adjustment of the funding factor.
- The total amount of money remitted to each provider.
- Any recommended adjustments to the low-income water residential affordability program or fund.
- The total amount of administrative costs associated with administering or implementing the low-income water residential affordability program.

The bill would state that section 14t does not give the Michigan Public Service Commission the power to regulate a public water utility.

The attorney general could enforce section 14t against a provider that fails to include the low-income water residential affordability funding factor on all retail water bills or fails to remit the money collected from the funding factor by filing a civil action in the circuit court in the county where the provider does business. Subject to this requirement, a provider would not be subject to liability for the funding factor fees included on retail water bills but not collected through the provider's normal business practices.

Finally, the bill would require the Department of Treasury to create a mechanism through which a retail water customer or philanthropic entity can donate funds into the Low-Income Water Residential Affordability Program Fund. Any entity that contributes more than \$5,000 would receive a "water affordability champion" designation.

The cannot take effect unless House Bills 5088 and 5090 are also enacted into law.

Proposed MCL 400.14t

House Bill 5090 would create the Water Shutoff Protection Act, which would establish guidelines for when a provider can terminate water service at a residence and when termination of service is prohibited, as well as creating a process for restoring service if terminated.

Prohibited termination of service

Under the bill, a provider could not shut off service to a residential customer for nonpayment of a delinquent account if the residential customer is a **critical care customer** and provides documentation to the provider demonstrating that fact.

Critical care customer would mean a residential customer who requires, or has a household member who requires, water or sanitation for home medical equipment, a life-support system, or treatment or therapy to reduce a public health risk, or has a communicable disease, and provides appropriate documentation to a provider from a physician or medical facility that identifies the medical equipment, life-support system, treatment, or therapy and certifies that an interruption of service would be immediately life-threatening or cause harmful health consequences.

A provider also could not shut off service:

- Because a residential customer has not paid for concurrent service received at a separate metering point, residence, or location.
- Because the property owner, who is the residential customer on record, has not paid for service at a premises lawfully occupied by another person. If a property owner is not occupying the premises where service is delivered, a provider could shut off service if the following are met:
 - Proper notice has been given.
 - The property owner supplies a written, certified statement, on a form and in a manner prescribed by the provider, that the premises are not lawfully occupied.
 - The premises are in fact not lawfully occupied.¹
- If the amount the residential customer has not paid for service is the subject of an unresolved dispute under the provider's dispute resolution process.
- If the service is for a multi-unit dwelling where at least one unit is not sub-metered and is lawfully occupied.
- If the residential customer has entered into and remains in compliance with a payment plan or low-income water residential affordability program, unless payment is delinquent for at least 120 days.

If the Department of Treasury projects that the funding required to implement a low-income water residential affordability program does not exist in the Low-Income Water Residential Affordability Program Fund created by HB 5089 and determines that adjustments must be made (as detailed in HB 5088), then the provider could not shut off service to an eligible customer that has entered into and remains in compliance with the program.

In addition, a provider could not threaten to shut off service when the provider has no intent to terminate service or when termination of service is otherwise prohibited by law.

Triage

If an **eligible customer** fails to comply with the terms and conditions of a low-income water residential affordability program, the eligible customer would have to be referred to a program administrator for triage before a provider could shut off service to that customer.

¹ In addition, the bill's provisions prohibiting shutoffs for critical care customers, prohibiting shutoffs for residential customers who have entered into an affordability plan and have not been delinquent for 120 days or more, prohibiting empty shutoff threats, and addressing triage would not apply if a property owner provides a provider with a notarized statement that the premises applicable are not lawfully occupied and the premises are in fact not lawfully occupied.

Eligible customer would mean a residential customer whose household income does not exceed 200% of the federal poverty guidelines or who meets any of the following requirements:

- Has received assistance from a state emergency relief program in the past year.
- Receives food assistance under the federal supplemental nutrition assistance program administered by the state.
- Receives medical assistance administered under the Social Welfare Act.
- Receives any other form of federal or state public assistance.

An eligible customer referred for triage would have to participate in triage to restore compliance with, and prevent being disenrolled from, the low-income water residential affordability program. Within 10 business days after a residential customer is referred, the program administrator would have to send a letter by first-class mail to the premises that receives service from the provider and to any separate mailing address the residential customer has. The letter would have to include all the following information:

- The start date of noncompliance.
- The reason for noncompliance and a statement of goals to engage the residential customer to ensure future compliance.
- The date for a triage meeting with the program administrator, scheduled not more than 10 business days after the letter was postmarked. The triage meeting could take place by telephone, virtually, or in person.
- A statement that an extension for a triage meeting may be granted for good cause, as determined by the program administrator, and if no good cause is shown, failure to attend the triage meeting could result in disenrollment.
- A summary of the requirements to maintain eligibility in the low-income water residential affordability program.
- A statement that the residential customer has 10 business days after the triage meeting to comply with triage requirements.

The program administrator could create a renewal agreement with DHHS or provider to use during the triage process. The agreement would have to include all of the following information:

- A statement of goals to engage the residential customer to ensure future compliance, including a payment plan and schedule, participation expectations, and additional household support that will be provided to the customer following triage.
- A list of triage requirements to maintain compliance in the low-income water residential affordability program, which could include any of the following:
 - A minimum payment.
 - A restart of the residential customer's program calendar.
 - The forgiveness of any amount owed on the delinquent account.
 - Removal of any fees or charges on the delinquent account.
 - A copayment credit on the delinquent account.
 - Any other options for successful outcomes available through the low-income water residential affordability program.

If a residential customer fails to comply with the triage process or a renewal agreement, the administrator would have to notify the provider and the provider could proceed with the shutoff process described below.

A provider could develop policies and procedures to delay shutoff for residential customers who face temporary financial hardship due to recent loss of a job, medical bills, or other extenuating circumstances. If the provider maintains a website, the provider would have to post its policies and procedures there.

Water shutoff required procedures

A provider could shut off service temporarily to residential customers, including critical care customers, for reasons of health or safety, in a state or national emergency, or if a residential customer has not paid a delinquent account after participating or failing to participate in specified interventions, such as triage. A provider that shuts off service for reasons of health or safety would have to leave a notice at the premises.

A provider could not shut off service because a residential customer has not paid a delinquent account unless the individual fails to successfully complete the triage process described above or the provider contacts the residential customer at least four times using two or more of the following methods, as practicable:

- Posts a delinquency notice on the door of the premises to be shut off and, if the account customer has a separate mailing address, mails a delinquency notice to that address not less than 60 days and not more than 90 days before the date of a proposed shutoff, notifying the occupant of a delinquency in payments and informing them of any applicable payment plans or low-income water residential affordability programs.
- Makes a personal visit to the premises to be shut off and makes direct contact with the head of household, notifying them of a delinquency in payments and of any applicable payment plans or affordability programs. A personal visit could be conducted by a contracted third-party organization or other agent of the provider.
- Makes a personal or automated phone call to the phone number on the customer account where direct contact is made, or a message is recorded, notifying the individual of a delinquency in the payments and of any applicable payment plans or affordability programs.
- Sends a direct text message to the phone number identified on the customer account, notifying the individual of a delinquency in payments and of any applicable payment plans or water affordability programs.
- Sends a written notice by first-class mail to the premises to be shut off, notifying the account customer of a delinquency in payments and of any applicable payment plans or affordability programs.

A provider would have to maintain a record of the date on which each contact or contact attempt was made. At least one of these contacts made by the provider would have to be a delinquency notice, and all written and oral notices of shutoff would have to contain, at a minimum, all of the following information:

- The address at which service is provided.
- A clear and concise statement of the reason for the proposed shutoff.
- The date on or after which the provider may shut off service, unless the residential customer takes appropriate action, and a description of the available courses of action to prevent a shutoff or to restore service following a shutoff.
- A statement that the provider will not shut off service if a residential customer has entered and remains in compliance with a payment plan or low-income water residential affordability program.

- The phone number and address of the program administrator where the residential customer may make an inquiry, enter into a payment plan or low-income water residential affordability program, or petition the provider in accordance with the provider's rules to dispute a delinquent account.
- A statement that if the residential customer receiving the notice is a tenant whose landlord is responsible for the water bill, the tenant should contact the landlord and provider immediately. This would not preclude a provider from offering additional options for the tenant to maintain service.

Unless otherwise allowed, a provider would have to delay shutoff of service to a residential customer that pays at least \$10 per month, or another amount approved by the provider, on a delinquent account and applies for enrollment in a low-income water residential affordability program with the provider, DHHS, or a third-party organization that administers a low-income water residential affordability program. A provider would not be required to delay shutoff of service if any of the following apply:

- The residential customer applied to a low-income water residential affordability program and 10 business days have passed since the program administrator determined that the residential customer is not eligible.
- The residential customer applied to a low-income water residential affordability program and was determined to be eligible but did not enroll in the program within 10 business days.
- The residential customer paid at least \$10 per month but did not apply to a low-income water residential affordability program by submitting an application within 10 business days after the date the final notice of shutoff was issued.

If in compliance with the other requirements of the bill, a provider could shut off service to a residential customer on the date specified in the notice of shutoff or at a reasonable time following that date. If a provider does not shut off service and mails a subsequent notice, then the provider could not shut off service before the date specified in the subsequent notice. Shutoffs could occur only between the hours of 8 a.m. and 3 p.m., and a provider could not shut off service on a day, or a day immediately preceding a day, when the services of the provider are not available to the general public for the purpose of restoring service.

The day before or the day of the planned shutoff of service, an employee or agent of the provider or a third-party organization contracted with the provider would have to call or send a text message to the phone number identified on the customer account, and send an email to the email address, if provided, notifying the residential customer of the planned shutoff. If the provider does not have a valid phone number or email address on the customer account, the provider would have to make a notation and could proceed with the planned shutoff.

When service is shut off, the employee or representative doing so would have to leave a notice. The notice would have to state that service has been shut off and contain the address and phone number of the provider where the residential customer may arrange to have service restored. When a shutoff is completed using meters with remote shutoff and restoration capacity, the provider would have to advise the residential customer on how to arrange for service to be restored.

Restoring service after a shutoff

After a provider has shut off service, the provider would have to restore service on the residential customer's request when the cause of the shutoff has been cured or payment arrangements have been made, including, at the residential customer's option, a payment plan or enrollment in a low-income water residential affordability program.

When a provider is required to restore service at the residential customer's meter manually, the provider would have to make reasonable efforts to restore service on the day the residential customer requests restoration. Except for reasons beyond its control, the provider would have to restore service not later than the first working day after the residential customer's request. For providers using meter technology with remote shut-off and restoration capability, service would have to be restored no later than the first working day after the residential customer requests restoration, except in the case of documented equipment failure.

A provider could assess the residential customer a reasonable charge for restoring service. The charge could not exceed \$150 or the actual cost, whichever is less. A provider could not charge a residential customer a fee for a shutoff of service. A provider would have to apply payments received to the costs incurred for services for the oldest debt.

Enforcement of this act

The attorney general or any residential customer or other lawful occupant of a premises subject to the bill could enforce the bill's provisions by filing a civil action in the circuit court in the county where the residential customer lives or the provider does business. In any civil action commenced under this section, the plaintiff could obtain damages, declaratory relief, or temporary or permanent injunctive relief for any violation of the bill. A residential customer or other lawful occupant that prevails in a civil action filed under these provisions would be entitled to reasonable attorney fees and costs.

Language accommodations

Finally, HB 5090 would require a provider to take reasonable steps to provide *equal language access* to water service and vital information for residential customers with limited English proficiency. As used here, *equal language access* would mean the ability to receive information and to participate in and benefit from water service at a level equal to English-proficient individuals.

The bill would take effect one year after it is enacted. It cannot take effect unless House Bills 5088 and 5089 are also enacted.

House Bill 5091 would amend 1972 PA 348, the landlord-tenant act, to allow a tenant in a metered or sub-metered rental premises to request that the landlord do either of the following:

- Have a copy of the water and sewer bill sent to both the landlord and the tenant.
- Transfer the water and sewer bill for the tenant's rental unit into the tenant's name and make the tenant responsible for that bill.

A landlord who receives such a request would have to do all of the following:

- Approve the tenant's request.
- If requested to transfer the water and sewer bill into the tenant's name, do so not more than 60 days after receiving the request.

- Ensure that the costs of the water and sewer bill are not included in the tenant's rental payment.

The bill would also prohibit a landlord from discriminating or retaliating against a tenant that makes a request described above. (Discrimination or retaliation would include such things as shutting off the tenant's access to water in their rental unit or increasing their rental payment in violation of the lease agreement because of the request.)

A rental agreement entered into, renewed, or renegotiated after the effective date of the bill would have to contain the above requirements.

The bill would apply only to leases entered into, renewed, or renegotiated after the effective date of the bill.² If it were found to conflict with a federal law regulating subsidized housing, then the federal law would prevail.

Proposed MCL 554.601d

House Bill 5092 would amend the Michigan Penal Code to make certain actions regarding restoration of water service a state civil infraction rather than a misdemeanor or felony.

Under the code, a person who does any of the following is guilty of a misdemeanor (for violations involving \$500 or less of damages or resources) or a felony (for violations involving more than \$500):

- Willfully or fraudulently injures, or fraudulently allows to be injured, a meter, wire, line, pipe, or appliance belonging to a water, steam, electric, or gas company, or propane gas dealer or distributor.
- Willfully or fraudulently prevents a water, steam, electric, gas, or propane gas meter belonging to a water, steam, electric, or gas company, or propane gas dealer or distributor from duly registering the quantity of water, steam, electric current, gas, or propane gas measured through the meter, or in any way hinders or interferes with the meter's proper action or just registration.
- Attaches a line, wire, or pipe to a line, wire, pipe, or main belonging to a water, steam, electric, or gas company or propane gas dealer or distributor (except for the use of a ground wire to ground an electrical system).
- Willfully or fraudulently interferes with a pressure regulator device on a propane gas tank or incorporated into a propane gas system.
- Uses or burns or causes to be used or burned any water, steam, electric current, gas, or propane gas supplied by a water, steam, electric, or gas company, or propane gas dealer or distributor, without the written consent of the company or dealer or distributor or the authorized agent or officer of the company, dealer or distributor, unless the water, steam, electric current, gas, or propane gas passes through a meter or is measured by a meter set by the company or the propane gas dealer or distributor; fraudulently uses the water, steam, electric current, gas, or propane gas; or fraudulently wastes the water, steam, electric current, gas, or propane gas supplied by a water, steam, electric, or gas company, or propane gas dealer or distributor.

² In accordance with the constitutional prohibition against impairments of contract as provided by section 10 of Article I of the state constitution: <http://legislature.mi.gov/doc.aspx?mcl-Article-I-10>

The bill would retain the misdemeanor and felony provisions, but it would add that a person who does any of the above by restoring water service to the person's lawfully occupied residence after a water service shutoff to the residence due to an inability to pay for water and sewer service is responsible for a state civil infraction (as long as no metering device or backflow prevention device is damaged, bypassed, or rendered inoperable by the restoration). The civil infraction sanctions would be as follows:

- For a first offense, the person could be ordered to perform up to 50 hours of community service.
- For a second offense, the person could be fined up to \$250 or ordered to perform up to 50 hours of community service, or both.
- For a third or subsequent offense, the person could be fined up to \$500 or ordered to perform up to 100 hours of community service, or both.

An individual who receives a citation for this new civil infraction would have to be referred to a water assistance or affordability program, if available.

In addition, under the code, a person who willfully does harm to or steals any specified utility machinery, tools, or infrastructure (such as towers or pipelines) is guilty of a felony punishable by imprisonment for up to five years, a fine of \$5,000, or both.

The bill would retain the felony provisions, but it would add that a person who does the above by restoring water service to the person's lawfully occupied residence after a water service shutoff to the residence due to an inability to pay for water and sewer service is responsible for a state civil infraction (as long as no metering device or backflow prevention device is damaged, bypassed, or rendered inoperable by the restoration), with sanctions the same as those described above.

The bill would take effect 90 days after it is enacted.

MCL 750.282 and 750.383a

House Bill 5093 would amend the sentencing guidelines in the Code of Criminal Procedure to revise references to paragraphs in the Michigan Penal Code that House Bill 5092 would renumber.

The bill would take effect 90 days after it is enacted, but it cannot take effect unless House Bill 5092 is also enacted.

MCL 777.16o and 777.16s

FISCAL IMPACT:

House Bills 5088 and 5089 would likely have a negligible fiscal impact on the Department of Health and Human Services resulting from the design and implementation of a water affordability program along with requisite information technology modifications. The program itself would be subject to appropriation by the legislature from the \$2 per meter surcharges available in the newly created Low-Income Water Residential Affordability Fund.

House Bill 5090 would increase cases for the Department of the Attorney General (AG) to the extent it chooses to take civil action to enforce the bill’s provisions. Civil action by the AG is permissive in the bill, and the AG would likely be able to absorb the costs of any increased caseload with ongoing staff and funding. If the AG determines that additional employees are needed, the annual state costs for an additional attorney position are approximately \$200,000, and the annual cost for a support staff position is approximately \$100,000.

House Bill 5091 would have no fiscal impact on the state of Michigan or on local units of government.

House Bill 5092 would have an indeterminate fiscal impact on the state and on local units of government. The fiscal impact would depend on the number of persons that violate by restoring water service after a water service shutoff and are subsequently ordered to pay a civil fine. Revenue collected from payment of civil fines is used to support public and county law libraries. Also, under section 8827(4) of the Revised Judicature Act, \$10 of the civil fine would be required to be deposited into the state’s Justice System Fund, which supports various justice-related endeavors in the judicial branch and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. Because there is no practical way to determine the number of violations that will occur under provisions of the bill, an estimate of the amount of additional revenue the state would collect, revenue for libraries, or costs to local courts cannot be made.

House Bill 5093 is a companion bill and amends sentencing guidelines to take into account citations that would be changed by House Bill 5092. The bill would not have a direct fiscal impact on the state or on local units of government.

Legislative Analyst: Josh Roesner
Fiscal Analysts: Kent Dell
Michael Clossen
Viola Bay Wild
Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.