

The SCONC amendment also includes language to require a utility to offer payment plan options to customers pursuant to the rules adopted by the Public Regulation Commission.

If a customer has not paid past due charges by the next winter heating season, the customer does not qualify for protection against utility disconnect.

Fiscal and Administrative Impact: HSD notes that the bill, as amended, creates an additional burden to the department and the 5 tribes/pueblos that run their own LIHEAP programs. HSD will shift resources in order to absorb this additional work without additional funding. HSD estimates the operating budget impact estimated to be approximately \$60,000 to issue an eligibility-protection-notice each month for six months. Depending on whether utility companies screen their customers to determine if the household meets the qualifications for LIHEAP instead of referring all individuals with disconnect notices to HSD for that determination, then the number of individuals turning to HSD for assistance could dramatically increase, resulting in further fiscal impact to the Department.

HSD reports that several other LIHEAP-related bills, such as HB 121, HB 372, HB 267 and SB 323, make general fund appropriations. HSD must be able to utilize up to 10% or \$60,000 to pay for these related administrative costs.

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee (HAFC) amendment strikes the requirement that the state appropriate money to HSD for the LIHEAP program for the moratorium to be in effect. The amendment’s “clean-up” language in Section 1, specifying payment plan options, has a significant change in the how customers qualify for the moratorium on service disconnection.

The amendment changes the qualifying language from “the customer has been qualified to receive assistance pursuant to the low-income home energy assistance program by the administering authority” to “the customer meets the qualifications to receive assistance pursuant to the low-income home energy assistance program from the administering authority”

Fiscal and Administrative Impact: According to HSD, the HAFC amendment doesn’t specify the administering agency (HSD) or the utility as the responsible party for determining eligibility for protection from utility service disconnection. If HSD is required to determine eligibility for protection, there are significant fiscal impacts on the agency. HSD estimates the need for an additional \$1 million for new field staff to determine whether utility customers in disconnect status “meet the qualifications” to receive LIHEAP. If the utility is required to determine eligibility, there is no additional fiscal impact on HSD.

Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee (HCPAC) amendment changes the state appropriation requirement for the moratorium to be effective. Under the amendment, for the utility disconnect moratorium to be in effect, the state must have appropriated at least \$4 million to the Human Services Department for the low-income home energy assistance program. If less than \$4 million is appropriated, only Section 27-6-17 NMAC would be in place to protect the gas and electric utility residential consumers.

The amendment also changes the payment plan required from the customer, as follows: the customer must agree to pay a minimum of 25 percent of current charges for each month during the heating season in addition to any assistance provided by the low income home energy assistance program and past-due charges in monthly installments in addition to the current monthly charges due based on a monthly payment plan entered into with the utility. The option remains for the customer to enter into a budget billing program offered by a utility.

Synopsis of Original Bill

House Bill 538 revises the Gasoline and Home Heating Relief Act, passed in the 2005 special session, which included language regarding a utility disconnect moratorium for low income customers from November 15 – March 15 each year. The bill adds a new section, specifically by adding section 27-6-18.1, to include definitions and limitations to the previously enacted moratorium bill. The moratorium on disconnections for low income customers would be limited to clients who have applied for and been deemed qualified for the Low Income Home Energy Assistance Program (LIHEAP) with the Human Services Department (HSD). HB 538 requires low income customers to adhere to strict re-payment plans in order to avoid utility disconnection. HB 538 requires that the customer pay 25% of current charges and an ongoing monthly or budget payment plan resulting in full payment of any debt prior to the start of the next year’s heating season. If the customer does not meet their obligations under the payment plans, the customer loses their protection from the disconnect moratorium in the next heating season. HB 538 disallows a moratorium unless recurring state funding equals the federal funding for the program.

FISCAL IMPLICATIONS

None identified, but the moratorium on utility disconnect is only effective when state appropriations to HSD for LIHEAP match federal funding. HSD provided the following breakdown of federal funding:

Year	HSD Federal Base Grant	HSD Federal Emergency	HSD Federal Leverage	Total Federal Funds to HSD	HSD State	Total
2006	\$9,392,231	\$ 523,567	\$ 15,881	\$ 9,931,679	\$21,260,000	\$31,191,679
2005	\$8,934,013	\$ 982,691	\$ 9,714	\$ 9,926,418	\$ 0	\$ 9,926,418
2004	\$8,474,722	\$ 191,282	\$ 319	\$ 8,666,323	\$ 0	\$ 8,666,323
2003	\$8,469,606	\$ 583,707	\$ 176	\$ 9,053,489	\$ 0	\$ 9,053,489
2002	\$8,043,979	\$2,245,669	\$ 0	\$10,289,648	\$ 0	\$10,289,648
2001	\$6,600,853	\$2,380,284	\$ 0	\$ 8,981,137	\$ 2,000,000	\$10,981,137

HSD indicates that changes in federal appropriations are extremely difficult to anticipate. If federal appropriations are significantly increased, the state would be expected to appropriate an equal amount. Federal appropriations are tied to funding formulas established at a national level. The current funding formulas have placed western states at a severe disadvantage and are expected to be revised resulting in increased appropriations to many states. With the new funding formula, HSD could receive a considerable increase in funding from the federal source which will place NM in a difficult position to have to fund LIHEAP at an equal level when NM may not have the resources to do so.

SIGNIFICANT ISSUES

LIHEAP is a grant from US Department of Health and Human Services (HHS) that helps NM low-income families meet the costs of home heating and cooling one time per year and increase energy self-sufficiency and reduce vulnerability resulting from energy needs. HSD is a recipient of federal LIHEAP funds for NM, along with several Tribes/Pueblos. In federal fiscal year (FFY) 2006, 71,794 clients received benefits through the program.

According to HSD, HB 538 does away with the winter heating disconnect moratorium safety net for low-income NM households that meet the qualifications for the LIHEAP program. HB 538 requires millions of dollars in 50/50 state matching funds in order to continue the moratorium. If the State meets the match, HB 538 takes away the guarantee for protection against utility disconnect when -

1. the customer meets the qualifications for LIHEAP but has not yet been certified to receive LIHEAP; and
2. the customer qualifies for protection under the winter heating disconnect moratorium in the first year but does not meet the terms in the re-payment plans as detailed in HB 538 and loses the disconnect moratorium protection in the second year.

The re-payment plans detailed in HB 538 will be difficult for any low-income household to make. According to 2006 Fisher, Sheehan & Colton publications, the Home Energy Affordability Gap for low income households is \$600.00. This means that low-income households require a subsidy of \$600 annually to pay for home energy needs. In order to pay the 25% current bill and the re-payment plan, households will be making decisions between paying for food, health care and other obligations rather than their utility bill therefore losing their protection under the winter heating disconnect moratorium. Depending on the temperatures especially for the very young or old, or medically fragile, it could be a matter of life and death.

According to Community Action New Mexico, a non-profit advocacy association, HB 538 would cut the number of households protected under current law by 75%, and would deny protection to the households that need it most. Under current law, all households that “meet the qualifications for the low income home energy assistance program” – about 196,000 households – are protected from discontinuation of utility service. Under HB 538, the number eligible for protection would range from 40,000 to 70,000, the numbers of households that received LIHEAP in Fiscal Years 2005 and 2006, respectively.

HSD notes that HB 538 does not give oversight authority to any agency to monitor compliance. The low income population is especially vulnerable to economic hardships caused by unexpected changes in fuel prices. Any oversight which protects the interest of the low income population should be considered.

PERFORMANCE IMPLICATIONS

HSD finds that Section G of the proposed bill would burden the department and tribes and pueblos. The section requires the utility to report any customer’s need for payment assistance to HSD, and the department would have to act promptly to evaluate the customer’s eligibility for LIHEAP. Utility companies that do not screen each request for assistance for LIHEAP eligibility will overwhelm administering agencies. Letter H in HB 538 requires utilities under this section to provide to the public LIHEAP applications and information referrals to the

appropriate HSD office. Based on letter H, letter G should be deleted.

ADMINISTRATIVE IMPLICATIONS

PRC indicates that, by rule (17 NMAC 5.410 F), the commission addresses discontinuation of service to a residential customer for nonpayment during the period from November 15 to March 15. If HB538 is enacted, the commission may need to review and revise this rule to assure it is consistent with the existing §27-6-18 NMAC language.

Although PRC finds their rules can be revised, Community Action New Mexico finds that HB 538 is at odds with current commission rules on payment plans and unfairly disadvantages low-income customers. “Pursuant to 17.5.410.41 NMAC, reasonable payment agreements should consider the multiple factors that determine a customer's ability to pay. By prescribing the terms (duration and amount), HB 538 requires that a customer enter into a payment agreement in advance of knowing the terms to which he is committing.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The Legislative Finance Committee recommendation for the general appropriation act included a \$4 million appropriation to HSD (\$2 million in the base budget and \$2 million as a special appropriation) for LIHEAP and the Executive recommended \$1 million in HSD’s budget.

House Bill 372 and Senate bill 323 appropriate \$9 million to HSD for LIHEAP to the gasoline and home heating relief fund, a fund already established for distribution of heating assistance. Senate Joint Memorial 3 calls on the Federal government to maintain and increase funding for LIHEAP.

House Bill 539 and Senate Bill 325 establish continuing appropriations for the LIHEAP program, estimated at \$22 million in FY08.

TECHNICAL ISSUES

For clarity, PRC suggests that the bill should reference “gas or electric utility” rather than simply “utility”, as used in the preceding section of statute.

BE/mt