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FISCAL IMPACT REPORT

ORIGINAL DATE 2/17/07
LAST UPDATED 3/12/07 **HB** _____

SPONSOR Ryan

SHORT TITLE Moratorium on Winter Utility Service Disconnections **SB** 1026/aSJC

ANALYST Hanika Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to SJM3, HB372, SB323, HB121, and HB593

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment prevents a utility from disconnecting service during the heating season for nonpayment if the customer meets qualifications to receive assistance. The amendment removes specific payment plan options; and, adds language to require the utility to provide payment plan options approved by the Public Regulation Commission. The amendment further removes language relating to prohibitions on disconnections not applying if the state does not appropriate funds for the assistance program in an amount at least equal to federal funds received.

Synopsis of Original Bill

Senate Bill 1026 revises the Gasoline and Home Heating Relief Act (§6-4-25 NMSA), 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 definitions and limitations to the previously enacted moratorium bill. The moratorium on disconnections for low income customers will be limited to customers who have qualified for the Low Income Home Energy Assistance Program (LIHEAP) with the Human Services Department (HSD). The bill requires that the customer pay 25% of current charges for each month during the heating season in addition to any assistance provided by the LIHEAP that has been applied to their utility bill; and, pay 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; or, pay according to a budget payment plan in which the customer agrees to pay an equal amount each month throughout the year. A customer that defaults on a payment plan and whose utility service has been disconnected during a nonheating season can be reconnected and maintain the protection afforded by paying reconnection charges and any amount due pursuant to the payment plan. If the customer does not pay the past due charges from the prior heating season before the beginning of the next heating season, the customer shall not be eligible for protection from disconnected utility service during that next heating season until the past due charges are paid in full. The bill disallows a moratorium unless 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, the bill does away with the winter heating disconnect moratorium safety net for low-income NM households that meet the qualifications for the LIHEAP program. The bill requires millions of dollars in 50/50 state matching funds in order to continue the moratorium. If the State meets the match, the bill 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 the bill and loses the disconnect moratorium protection in the second year.

The re-payment plans detailed in the bill may 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, the bill will cut the number of households protected under current law by 75%, and will 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 the bill, 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 the bill 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 F of the proposed bill will 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 will 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 G in the bill requires utilities under this section to provide to the public LIHEAP applications and information referrals to the appropriate HSD office. Based on letter G, F 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 the bill 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 the bill 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), the bill 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.

AHO/nt