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FISCAL IMPACT REPORT

SPONSOR Jeff ORIGINAL DATE 02/27/09
LAST UPDATED _____ HB 774
SHORT TITLE No Propane Cut Offs During Winter Months SB _____
ANALYST Earnest

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	None		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Human Services Department (HSD)

Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

House Bill 774 adds a new section to the Low Income Utility Assistance Act to prohibit the discontinuance of propane deliveries for non-payment during winter months if the residential customer:

- A. rents or leases a propane tank from the propane dealer;
- B. has entered a contract for services with the propane dealer; or
- C. has paid a deposit to the propane dealer for service as a condition of receiving an initial propane supply.

FISCAL IMPLICATIONS

None identified.

SIGNIFICANT ISSUES

The Low Income Utility Assistance Act currently states that "utility" companies are subject to the disconnect moratorium. The Human Services Department (HSD) adopted the New Mexico Public Regulation Commission (PRC) definition of "utility," which does not include municipally owned utilities and other fuel providers such as propane, wood, coal, and pellet providers.

According to HSD:

Propane vendors may not be able to front the funds to pay for fuel for low-income customers who cannot afford a fuel delivery. The average propane tank in New Mexico is 250 gallons and the average 2008/2009 LIHEAP benefit of \$300 is often not enough for a fuel delivery. Fronting the cost by the propane vendor may put the business at risk. HB 774 may also significantly change the way propane vendors do business with low-income customers which may result in discriminatory practices such as non-rent/lease to low income customers or large deposit requests based on the propane vendor's liability.

Creating a new section in the Act rather than amending the existing Act could create problems for how the protection against disconnection works for utilities verses propane companies (requirements, exceptions etc.)

It is unclear in HB 774 as to the regulatory responsibilities for enforcement or regulation under the Act, specifically the disconnection moratorium. Propane companies are not currently regulated unless other bills currently under consideration by the state legislature were to pass. Further, other fuel providers, such as wood, coal, and pellet providers, continue to be exempt from the disconnection moratorium,

PRC states that, as written, the bill applies to all residential customers and is not limited to low income customers. The basis of HB 744 is similar to the prohibition on discontinuance of utility service during the winter heating season if the customer meets the qualifications to receive assistance pursuant to the low-income home energy assistance program. The propane industry is not a regulated industry under the jurisdiction of the PRC. "Liquefied petroleum gases", "LPG" and "LP gas" are subject to the rules and regulations of the construction industries commission. Those rules promote the general welfare of the people of New Mexico by providing for the protection of life and property through standards that, when complied with, will result in safer installations, equipment, facilities, appliances, structures, and service. Customer rights and propane price are not covered under 19.15.40 NMAC. Aside from any contractual arrangements between the consumer and the propane dealer, there is no obligation by the propane dealer to provide or continue service.

PERFORMANCE IMPLICATIONS

HSD determines who may be qualified for protection against disconnection during the moratorium period. HSD currently pre-qualifies all households receiving an HSD program at or below the LIHEAP federal poverty guidelines of 150% (using LIHEAP income standards), regardless of their heating source. HSD customers receive a protection notice from HSD each month during the moratorium period. No change in the client notification process will result from HB 774.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 774 relates to Senate Bill 71, expanding the definition of "utility" under the LIUA; SB 561, prohibiting a municipally owned or operated utility and a rural electric cooperative from disconnecting utilities during the winter months for a low income customer; and SB 468, providing for the regulation of propane dealers.

TECHNICAL ISSUES

PRC states:

The PRC has oversight of public utilities while municipally owned utilities are subject to local government. This jurisdiction would assure that those utilities comply with LIUA. The inclusion in the LIUA statement of purpose of “other fuels for heating” could make providers of propane subject to all the provisions of LIUA. It is uncertain how the provisions of LIUA are enforced on propane providers, who are not like other “utilities”.

A propane customer who rents or leases a propane tank for the propane dealer will often enter into a contract for services where the provider schedules periodic filings of the propane tank. Under this arrangement, the customer will can make monthly fixed payments which are trued up yearly for actual usage. Should HB774 be enacted, it is not clear how a moratorium on the discontinuing of propane deliveries by propane dealers to a residential customer for nonpayment during the winter months would be enforced or what agency would be responsible for its enforcement.

ALTERNATIVES

HSD offered the following alternative:

Rather than creating a new section of the Act, amend Sections 27-6-17 and 27-6-18.1 to add propane vendors. Change all references from “disconnect” to disconnect/discontinuance. Also add:

Propane Customers eligible for protection include customers who:

- rent or lease a propane tank from the propane dealer
- have entered a contract for services with the propane dealer
- have paid a deposit to the propane dealer for service as a condition of receiving an initial propane supply

BE/svb