

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 686 (Senators Ramirez and Rosapepe)  
Judicial Proceedings

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**Real Property - Condominiums - Delinquency in Payments for Utilities**

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This bill authorizes a specified council of unit owners to petition a court to enter the unit and turn off utility service or bar the unit owner from entering the unit if the unit owner is at least 60 days delinquent in payments of utility bills to the council. The bill only applies to a council of unit owners that is responsible for paying utility bills on behalf of all the condominium's units. The bill defines "utility" as water, electricity, gas, or oil service.

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**Fiscal Summary**

**State Effect:** The bill does not directly affect governmental operations or finances.

**Local Effect:** The bill does not directly affect local governmental operations or finances.

**Small Business Effect:** Minimal.

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**Analysis**

**Current Law/Background:**

*Determination of Energy Use in a Condominium:* "Energy allocation system" means a method of determining the *approximate* energy use consumed within a dwelling unit with the use of a measuring device.

"Submetering" means the installation of equipment for the purpose of determining the *actual* use of electricity or gas per residential unit or commercial rental unit.

The Public Service Commission (PSC) authorizes, by regulation, an owner, operator, or manager of an apartment house (including a condominium), office building, or shopping center with a master meter to install submeters for determining the actual use of electricity or gas per unit.

A unit may not be submetered unless all units in that building are submetered. An owner, operator, or manager of an apartment house, office building, or shopping center who installs submetering equipment may not impose any utility costs other than those that PSC authorizes and the gas or electric company actually imposes.

Approval from PSC is required before an energy allocation system may be used by the owner, operator, or manager of an apartment house to determine the amount of gas or electricity used by an individual dwelling unit, if the amount of gas or electricity is determined by means other than by actual measurement of fuel or electric power consumed by the unit. PSC may approve an energy allocation system upon a demonstration by the owner that the system results in a reasonable determination of the cost of the energy use within a dwelling unit. The owner, operator, or manager may not use the energy allocation system to bill energy costs to tenants of an individual dwelling unit without PSC approval.

*Termination of Service by Utility Service Providers:* PSC regulations require electric or gas companies to notify a customer at least 14 days prior to terminating service for nonpayment, except under specified conditions. Additional restrictions on terminations apply to elderly or handicapped individuals, individuals with a serious illness and life support equipment, low-income individuals, and during periods of excessively hot or cold weather. An electric or gas company may commence termination procedures only if it has made reasonable attempts to collect the past-due bills using normal collection procedures. Further, the electric or gas company must use its discretion in unusual circumstances, including a situation involving a master-metered building, and may not terminate service if it has or is presented with reasonable grounds to believe that termination will endanger human health, life, or safety.

PSC regulations authorize a water company to deny service for the nonpayment of a bill, provided that the company has made a reasonable attempt to collect the amount owed, and has provided the customer with written notice that the customer has at least five days, excluding Sundays and holidays, in which to settle the account or have service denied. A water company may only discontinue service without notice under specified circumstances, including hazardous conditions, equipment tampering, and unauthorized use of service.

PSC must report each year to the General Assembly on the terminations of service by electric and gas companies during the previous heating season. The report must include

information in sufficient detail to indicate the effect of terminations of service on various categories of customers.

*Delinquent Assessments in Condominiums:* The Maryland Condominium Act (MCA) authorizes the governing body of a condominium to charge up to 18% interest on any delinquent assessment or installment not paid when due. A condominium may charge a late fee of the greater of \$15 or 10% of the total amount of any delinquent assessment or installment if the delinquency has continued for at least 15 calendar days. The late charge may not be imposed more than once for the same delinquent payment.

If authorized by the bylaws, a council of unit owners may impose a lien on a unit in accordance with MCA and the Maryland Contract Lien Act to recover unpaid assessments, interest on unpaid assessments, late charges, collection costs, and reasonable attorney's fees. A deficiency lawsuit following a foreclosure along with a lawsuit to recover a money judgment for unpaid assessments may be maintained in the same proceeding without waiving the right to impose such a lien.

Chapter 387 of 2011 enabled a portion of a condominium's lien to have priority over a holder of a first mortgage or deed of trust in the event of a foreclosure of a mortgage or deed of trust on a unit. The portion of the contract lien that takes precedence over the claim of the holder of a first mortgage deed of trust is limited to an amount of up to four months, or the equivalent of four months, of unpaid regular assessments for common expenses up to \$1,200. The governing body of the condominium must provide specified information to the holder of first mortgage or deed of trust upon request in order to have priority.

### **Background:**

*PSC Action on Customer Arrearages and Terminations:* In March 2009, pursuant to Case No. 9175, PSC directed all utilities subject to the commission's jurisdiction to refrain from terminating any residential electric or gas service for delinquent payment or outstanding balances until PSC directed otherwise. The order created a work group to convene and develop procedures and criteria for payment plans that each utility must offer all customers before the utility can commence termination procedures.

In April 2009, as a result of the workgroup's activities, PSC issued an order lifting the temporary restriction on terminations and directing specified utilities to make alternative payment plans available to all residential customers with arrearages. The utilities were required to offer flexible payment plans, free of interest or late fees, to each requesting customer that had not yet been terminated, for up to 12 months in duration. The order included other provisions, including additional notification requirements and procedures for reconnection of previously terminated customers. However, the order was meant only

to apply to customer arrearages that had occurred as of the date of the order. The terms of the order do not apply to current arrearages, although PSC urges utilities to continue to offer a reasonable payment plan to residential customers in arrears prior to termination.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** Although designated as a cross file, HB 960 (Delegate Niemann - Environmental Matters) is not identical.

**Information Source(s):** Office of the Attorney General (Consumer Protection Division), Judiciary (Administrative Office of the Courts), Public Service Commission, Secretary of State, Department of Legislative Services

**Fiscal Note History:** First Reader - March 12, 2012  
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