

Senate Public Health and Welfare Committee

Senate Bill 1124 and The Low Income Home Energy Assistance Program (LIHEAP)

February 3, 2010 Public Hearing

Testimony of Harry S. Geller

Good Morning Chairman Vance and members of the Committee. My name is Harry Geller and I am executive director of the Pennsylvania Utility Law Project (“PULP”). PULP is a specialized Project of Pennsylvania Legal Aid Network. For over 30 years we have provided statewide advocacy, as well as support and assistance in energy and utility matters to the staff and clients of local legal aid programs. I am pleased to participate on advisory boards to the Public Utility Commission (“PUC”), the Department of Community and Economic Development (“DCED”), the Department of Public Welfare (“DPW” or “Department”) and PECO. Thank you for inviting me to present testimony today on behalf of the low income consumers we represent.

LIHEAP is an essential program that helps the poorest of our citizens maintain life essential heat during the cold weather months. Given that LIHEAP is complex, only operates for part of the year, is based on uncertain and constantly changing funding levels, it is a difficult and challenging program to administer. DPW staff work diligently in their effort to direct LIHEAP’s scarce resources for the benefit of the low income. That doesn’t mean the program doesn’t have room for improvement. My colleague, Maripat Pileggi of Community Legal Services (“CLS”), will address some needed administrative changes. In the interest of time we have divided responsibilities and although my testimony will focus on SB 1124, I endorse the recommendations she will make regarding LIHEAP administration.

Unfortunately, S.B. 1124 does not address the needs of the Commonwealth nor those of LIHEAP recipients. A number of the provisions of S.B. 1124 place unnecessary constraints on DPW's ability to allocate scarce resources and manage the LIHEAP program effectively; others will only benefit special utility or energy vendor interests, not the poor for whom the program is intended to serve; and several sections although well-intended, are already embodied in practice or law. In its current form, SB 1124 should be tabled and set aside. I address the provisions of the Bill in sequence.

Section 3. Eligibility. (a) Income verification. This section should be clarified. It is and has been DPW's policy to require income verification from LIHEAP applicants. See LIHEAP Final State Plan at § 601.21. However, in order to reduce administrative time and expense, when DPW already has verification information on file, a second and independent verification is not required. The bill should clearly state that verification for LIHEAP should be required only in cases in which the Department does not already possess this information.

This section also allows utilities to use Department verification as a basis for enrolling customers into customer assistance programs. We have long supported greater coordination by utilities of LIHEAP and customer assistance programs. Requiring the companies to enroll low income customers whose income has been confirmed by DPW for LIHEAP eligibility would be a major advantage. However, since I expect that DPW may, for confidentiality reasons, be unable to share the actual verification documents, I suggest the language be modified to enable utilities to "rely on" DPW's verification rather than "use" the verification documents.

Section (b) Qualifications for LIHEAP.

As written, this section would encroach on DPW's appropriate and reasonable ability to set priorities within the LIHEAP program. The program has two main types of grants, a Cash grant, which helps people supplement their winter home heating expense, and a Crisis grant, which helps people who are facing an imminent or actual emergency. This section would require DPW to issue Crisis grants to customers of regulated utilities who are not facing an actual crisis. It would both divert LIHEAP resources away from those who are actually without fuel or who are shut-off and add an unmanageable burden to DPW's administrative responsibilities. Regulated utility companies ordinarily are not permitted to shut off utility service to low income LIHEAP eligible customers during the winter months, from December through March, a period known as the winter moratorium. Because of this statutory protection, termination notices sent by utilities to LIHEAP eligible customers from November 21 through January 31 are not true or imminent crises. They are incapable of resulting in a shut-off. It would be an unwise use of Crisis funds to require the Department to provide a crisis grant in this situation. At present, DPW does not deem such termination notices to constitute an imminent crisis and, in an appropriate process of priority setting, does not immediately issue a crisis grant for them. I expect that this year, as it has in past years, the Department will monitor expenditures and evaluate the level of available resources, and then issue a statement as to when and under which circumstances utility termination notices, which will take effect after April 1, will be honored. However, Section 3 (b) of S.B. 1124 would compel DPW to give crisis grants to utilities that send out termination notices, even though the "crisis" is not imminent and will not arise. These notices will, in effect, create false crises and will divert funds away from customers that have actual or imminent crises.

Section (c) Energy vendor participation.

This section requires energy vendors to provide budget billing to their customers whereby energy bills are amortized out over a period of twelve months. This requirement, however, already exists in state regulations promulgated by the Pennsylvania Public Utility Commission for all regulated utilities. See 52 Pa Code § 56.12(7). Furthermore, many deliverable fuel vendors already offer budget billing as a matter of course in their businesses. The inclusion of this requirement does nothing to expand or heighten consumer protections; it merely duplicates what already exists elsewhere.

Section (d) Notice of eligibility.

This section appears redundant with section (a), which I have already addressed.

Section (e) Nondiscrimination.

This section appears redundant with section (b), which I have already addressed.

Section 4. Allocation of funds. (a) General rule.

This section contains an explicit provision that will prohibit DPW from pursuing a sound plan to develop a discount program for deliverable fuel purchased with LIHEAP dollars. Section 4(a) will unreasonably constrain DPW and cost the LIHEAP program millions of dollars annually.

Pennsylvania purchases approximately \$100 million of deliverable fuels, such as oil, propane, and kerosene, through the LIHEAP program each year. Given the enormous annual purchase of

deliverable fuel the Commonwealth makes with its LIHEAP dollars, it makes perfect sense for DPW to leverage this purchase in the form of a modest discount from the deliverable fuel vendors. LIHEAP programs in other states such as Massachusetts, New York, Maine, and Maryland, already contain deliverable fuel discounts as part of their LIHEAP programs.

In Pennsylvania, DPW, seeking to maximize its purchasing power, worked with consultants, advocates, and oil industry representatives to carefully and thoughtfully design a deliverable fuel discount program for Pennsylvania. This year, the program is being piloted in eight counties. Section 4(a) would explicitly prohibit DPW from continuing this oil discount pilot or in initiating a full statewide program which would expand LIHEAP resources.

Section 4 (b) Allocation.

This section contains many positive items which restate federal law. However the section differs from federal law significantly in one major respect. While federal requirements dictate that the crisis program remain open and available until March 15 of each year, Section 4(b) (2) mandates the reservation of funds for crisis intervention until May 31 of each year. If sufficient funding for LIHEAP was always available from either the federal or state government, this would be a laudable goal; and we would support the concept that grants be mandatorily available through May. But that is not the world we live in. LIHEAP in Pennsylvania has never had sufficient funding to remain open through May 31 and, without additional funding, such a hope is unrealistic. SB 1124 provides no additional funding for LIHEAP. To require DPW, by statute, to remain open through May 31 would mean that DPW would have to cut funding elsewhere in LIHEAP. The Department would need to reduce either the amount of the grants or the eligibility

levels. Section 4 (b) (2) is simply an unrealistic and unworkable mandate. DPW must be allotted discretion to allocate its resources appropriately to meet the needs of low income consumers based on both the need and the available funding each program year.

This section also includes a promptness standard wherein an applicant for a LIHEAP crisis grant must receive assistance within 48 hours of application or within 18 hours of application in the event of a life threatening situation. This requirement, however, is already in the federal statute governing the LIHEAP program, as well as being present in the LIHEAP State Plan. See 42 USCS § 8623(c) and LIHEAP Final State Plan at § 601.4(2).

Finally, this section includes protections for physically infirm customers. It requires agencies that administer LIHEAP funds to provide assistance to physically infirm customers, helping these individuals to submit crisis applications even where the individual is unable to leave his or her home. This requirement is laudable but merely duplicates longstanding requirements that are included in the LIHEAP State Plan and provides no new or heightened benefits. See LIHEAP Final State Plan at § 601.24.

Section 5. Leveraged resources.

This section contains a provision requiring DPW to establish procedures to maximize leveraging resources. DPW for many years has maximized leveraging resources such that Pennsylvania is routinely listed among the leaders of states receiving leverage funding. Those funds are used by the program for customer benefits. Including a statutory requirement regarding a task DPW already performs admirably provides no additional benefit.

Section 6. Public participation and legislative oversight.

I will briefly address Section 6 (2) regarding the LIHEAP advisory committee. As a member of the advisory committee and its present Chairperson, I welcome any additional support of its powers and authority. However, I respectfully submit that any requirements relating to membership, functions, and officers of the committee be implemented solely to ensure that the Department receives advice and guidance intended to enable and support a LIHEAP which assists low income households meet their significant heating burdens and not for the self-interested purpose of enabling one energy industry or vendor to achieve a financial benefit over another. As the committee is presently composed there is a geographic and functional diversity which represents a broad and balanced spectrum of knowledge and interests. The committee is composed of associations representing rural electric cooperatives, oil dealers, and regulated utilities; state and local advocacy groups; the PUC, DCED, and the Office of Consumer Advocate (“OCA”); crisis providers, AARP, Hardship Funds and low income recipients. It is a diverse and balanced group. However, SB 1124 as proposed would eliminate the current benefits provided by including the state agency participants; and the potential reshaping of the committee by requiring inclusion of “participating energy vendors”, as members and as periodic chairperson creates an opportunity for the expansion of the advisory committee to be dominated by energy vendors having a financial interest in the program; the interests of vendors with a financial interest in the outcome of policy is often in conflict with the interests of the public or the low income beneficiaries the program is intended to serve.

Section 7. Monitoring and audit. The direction under section “7(c) Department Action” is simply too broad and results in an unworkable and impractical standard. This section requires the Department, in the event it uncovers any false, misleading, or inaccurate statements by applicants, participating energy vendors, or state employees, to notify the state inspector general or appropriate law authority agency. Monitoring the acts of all participants in this program is of course warranted, even necessary; however, mandating a formal investigation process of all errors exceeds reasonableness or administrative prudence. The requirement that DPW must notify the state inspector general or appropriate law authority *in all cases of error* is excessive and oversteps the bounds of reasonableness and would be administratively unworkable.

In conclusion, I again thank you for the opportunity to provide this testimony concerning LIHEAP and the effect of SB 1124 on its administration. I respectfully recommend that the bill be tabled and set aside. I am pleased to respond to any questions or provide addition information for the benefit of the committee.

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