

SUBJECT: Restoration of a residential tenant's utilities

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — Deshotel, Elkins, Christian, Gattis, Giddings, S. Miller
0 nays
5 absent — England, Keffer, Orr, Quintanilla, S. Turner

WITNESSES: (*On original version:*)
For — Robert Doggett, Texas Low Income Housing Information Service;
Katherine Stark, Austin Tenants Council

Against — David Fritsche; Wendy Wilson, Texas Apartment Association

BACKGROUND: Property Code, sec. 92.008 prohibits a residential landlord or landlord's agent from interrupting a tenant's utility service paid directly to a utility company except for repairs, construction, or in cases of emergency. If a tenant's electrical service is provided as part of the tenancy, is in the landlord or landlord's agent name, and is not individually metered or submetered, and the tenant is at least seven days late in paying the rent, the landlord may interrupt the electrical service after providing written notice at least five days before, and only if the interruption starts during the landlord's normal business hours and the landlord or a designated individual is available on-site to accept rent payment and restore service. Electrical service must be restored within two hours of the tenant rendering payment of the delinquent rent.

If a landlord or landlord's agent violates the above requirements, the tenant may recover possession of the premises or terminate the lease and recover damages from the landlord equal to one month's rent or \$500, whichever is greater, as well as any attorney's fees or court costs incurred. Any lease provisions exempting any involved parties from liability are considered void.

DIGEST: HB 882 would prohibit a landlord or landlord's agent from terminating electrical service under any circumstances other than repairs, construction, or an emergency. In cases where a landlord has unlawfully interrupted

utility service, a tenant could file a sworn complaint with a justice court specifying the facts of the alleged unlawful disconnection, and the tenant would have to state the facts of the complaint orally under oath. If the justice of the peace found that the disconnection was unlawful, the judge could order service restored on an immediate and temporary basis, pending a final hearing on the complaint. The writ of restoration would have to inform the landlord of the right to request a public hearing on the complaint, to be held within seven days after the hearing request. However, if the landlord did not request a hearing before the eighth day, a judgment for court costs could be rendered against the landlord. Either party would be able to appeal the justice court's judgment at the hearing on the sworn complaint.

Failure to comply with or disobedience of any writ of restoration or possession would be considered grounds for contempt of court. If the writ was disobeyed, the tenant or the tenant's attorney would be able to file an affidavit stating the acts or omissions constituting the disobedience. The judge then would have to direct the person named in the affidavit to appear in court and show cause why he or she should not be judged as being in contempt of court. If the person was found to have disobeyed the writ, the person could be sent to jail without bail until the contempt action was purged. If a tenant filed a sworn complaint in bad faith, the landlord could recover \$500 or one month's rent, whichever was greater, plus any reasonable attorney's fees and court costs.

The bill would only apply to violations committed after the bill's effective date.

The bill would take effect January 1, 2010, and apply only to violations committed on or after the effective date.

**SUPPORTERS
SAY:**

HB 882 would provide residential tenants with an avenue to pursue swift, reasonable justice in cases when their utilities have been cut off illegally. By allowing these tenants to go to justice court, HB 882 would allow them to avoid having to hire lawyers and incurring potentially steep court costs when seeking restore utilities. The bill also would clarify when landlords may and may not cut off a tenant's electricity and would provide landlords with protections from frivolous complaints through the appellate process. The legal process established by HB 882 would mirror that used when a tenant has been unlawfully locked out of an apartment.

OPPONENTS
SAY:

This bill would expand the justice court's authority beyond what is appropriate. Justice courts currently do not have injunctive relief jurisdiction. In district and county courts, those seeking injunctive relief are held to a higher legal standard, more so when seeking affirmative relief, such as getting one's lights turned back on. Justice courts do not have procedures in place for processing these cases, and their proceedings are not recorded.

NOTES:

The substitute differs from the bill as filed by adding a new section to the existing statute related to restoration of utilities rather than amending the statute concerned with a tenant's right of reentry after unlawful lockout, and by repealing the current statute's provisions allowing a landlord to terminate electrical service under certain circumstances.