

- SUBJECT:** Disconnecting residential electric service by a landlord
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 7 ayes — Oliveira, Bohac, Orr, E. Rodriguez, Villalba, Walle, Workman
0 nays
- WITNESSES:** For — Mark Hurley, Texas Apartment Association; David Mintz, Texas Apartment Association; Emily Rickers, Alliance for Texas Families; (*Registered but did not testify:* Andrew Cates, Texas Association of REALTORS; Robert Doggett; Carlos Salinas, Alliance for Texas Families)

Against — None
- BACKGROUND:** Property Code, sec 92.008(b) prohibits the interruption of electric service furnished by a landlord to a tenant unless the interruption results from repairs, construction, or an emergency.
- DIGEST:** HB 1086 would allow landlords who bill tenants for electric service through submetering or prorating electric bills of master metered electricity to disconnect a tenant’s electric service for nonpayment of electric service subject to certain notice, human health and safety protections, and repayment options.
- In order to disconnect electric service for nonpayment, a landlord would have to state the right to do so in a written lease and the tenant’s electric bill must have remained unpaid on or before the 12th day after the date the electric bill was issued.
- The landlord would be required to provide disconnection notice not earlier than the first day after an electric bill was due nor later than five days before the interruption date stated in the notice. The notice would have to be delivered by mail or hand separate from other written communication. HB 1086 would require the notice to:
- prominently display the words “electricity termination notice” or similar language underlined or in bold;

- specify the date that electric service will be interrupted;
- note the location where the tenant could go during the landlord's normal business hours to make arrangement to pay the bill to avoid electric service interruption;
- include the amount that would have to be paid to avoid the interruption of electric service;
- provide a statement that the tenant's electric payment could not be applied to rent or other amount owed under the lease;
- include a statement that the landlord could not evict a tenant for failure to pay an electric bill when the landlord had interrupted service unless the tenant failed to pay for the electric service after two days, exclusive of weekends and state and federal holidays; and
- describe the tenant's right to avoid the interruption of service if the interruption would cause the tenant to become seriously ill or more seriously ill.

The landlord, at the same time that electric service was interrupted, would again provide notice to the tenant by hand delivery or attached to the tenant's door. That notice would be required to contain the statements described above, except that it would specify the date the electricity was interrupted instead of the date on which it would be interrupted.

Unless a tenant requested discontinuation or a dangerous condition existed, the landlord would not be able to interrupt electric service on a day on which the landlord or a representative was not available to receive payment or on the day before the landlord or representative was not available to receive payment.

Landlords would be prohibited from discounting service on a day on which the preceding day's temperature did not rise above freezing and the temperature was predicted by the nearest National Weather Service report to remain at or below freezing for the next 24 hours. Landlords would be prohibited from discontinuing service on days on which the National Weather Service had issued a heat advisory for the county of the premises, or had issued such an advisory in one of the two preceding days.

CSHB 1086 would prohibit landlords from disconnecting electric service for a limited time if they had been notified by the tenant that they were seriously ill or would become seriously ill, the tenant had provided a written statement from certain health care practitioners stating that the

person would become seriously ill or more seriously ill if the electric service was interrupted, and had entered into a deferred payment plan. CSHB 1086 would prohibit landlords from the disconnection of electric service to individuals described above before the 63rd day after those circumstances were established or an earlier date agreed to by the landlord and tenant.

Deferred payment plans would have to be in writing, allow the tenant to pay the outstanding electric bill in installments that extended beyond the due date of the next electric bill, and provide that the delinquency was paid in three equal installments over a period of three electric service billing cycles.

Landlords would be prohibited from interrupting electric service to a tenant after the landlord received some form of notification that an energy assistance provider was forwarding sufficient payment to continue the electric service.

The bill would require landlords to restore electric service within two hours of receiving payment for a delinquency or a tenant entered into a deferred payment plan.

Landlords would be prohibited from disconnecting electric service for:

- a delinquency incurred by a prior tenant;
- failure to pay non-electric bills, rents, or other fees;
- failure to pay electric bills six or more months delinquent; or
- failure of a tenant to pay a bill in which the tenant was disputing the charge, unless the landlord had conducted an investigation and reported the results in writing to the tenant.

CSHB 1086 would prohibit landlords from applying payment made by a tenant to avoid the interruption of electric service or to reestablish electric service to rent or any other amounts owed under the lease.

The bill would prohibit landlords from evicting tenants for failure to pay electric bills unless the tenant had failed to pay for the electric service after the electric service had been interrupted for at least two days, exclusive of weekends and holidays.

Landlords would be allowed to charge a reconnection fee if the dollar

amount of the fee was agreed upon in the lease. The reconnection fee would have to be computed based on the average cost to the landlord associated with reconnection, but could not exceed \$10. A reconnection fee could not be applied to a deferred payment plan.

CSHB 1086 would change the penalties for landlords who violated Property Code sec. 92.008 "Interruption of Utilities." The bill would raise the penalty for violations from one month's rent plus \$500 to one month's rent plus \$1,000, reasonable attorney fees, court costs, less delinquent rents or other sums for which the tenant was liable to the landlord.

CSHB 1086 would take effect September 1, 2013, and would affect only electric bills that became delinquent on or after that date.

**SUPPORTERS
SAY:**

CSHB 1086 is pro-tenant, pro-landlord legislation that has been endorsed by the representatives of apartment owners and tenants' rights organizations. The bill is intended to clean-up legislation (CSHB 882 by E. Rodriguez) enacted by 81st Legislature that prevented landlords from disconnecting utilities, but left them with eviction as the only remedy for tenants who did not pay electric bills.

The bill would apply to about 5 percent of the rental properties in the state in which the electric bill is paid by the landlord, and the landlord then bills the tenant for electricity. These types of apartment complexes have not been constructed since the 1970s. Although the bill technically could apply to single family residences and duplexes, these typically are metered by a utility company, not a landlord.

CSHB 1086 would protect landlord rights. Currently, the only recourse a landlord has when tenants do not pay their electric bills is eviction. If landlords decided not to use the interruption-of-service options described in HB 1086, the bill would not prevent them from pursuing their legal rights to address past due electric bills, including pursuing claims in small claims court, applying a charge for the past due electric bill against the tenant's deposit, or seeking eviction. Eviction costs both the tenant and landlord, as does nonpayment of electric bills. If one tenant fails to pay an electric bill, landlords are forced to make up for the lost revenue through an increase in rents or a decrease in service. CSHB 1086 would allow the landlord to take the intermediate step of disconnecting the tenant's electricity for nonpayment of electricity bills, thus benefitting the landlord, the affected tenant who was not evicted, and the other tenants.

CSHB 1086 would provide ample notice to the tenant, with details about consumer protections and remedies available to them. Consumers would receive protections similar to those provided under the Utilities Code to retail customers of electricity supplied directly by electric companies.

The bill would include prohibitions designed to protect tenants who were ill and also provide other measures to protect tenants similar to the protections used by electric companies, including halting disconnections during severe weather conditions.

CSHB 1086 would protect tenants from landlords by increasing the penalties for landlords who failed to comply with Property Code, sec 92.008. The bill would increase the penalty paid to the tenant if a landlord failed to comply with the chapter to \$1,000 from \$500, in addition to the other available remedies available to the tenant who had been wronged.

**OPPONENTS
SAY:**

CSHB 1086 could have the unintended consequence of encouraging landlords to evict tenants. Landlords could claim that an apartment without power was a health hazard, arguing that a powerless apartment is likely to contain rotting food and tenants creating fire and other hazards by using candles and kerosene heaters.

NOTES:

The committee substitute contains technical corrections and conforms the bill to drafting conventions.