

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5-26-07

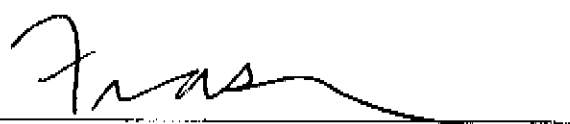
Date


Honorable David Dewhurst
President of the Senate


Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:


We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 3693 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.


Troy Fraser, Chair

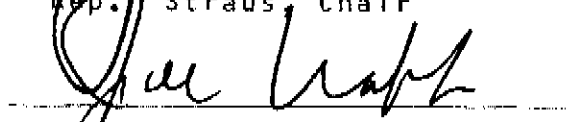

Craig Estes

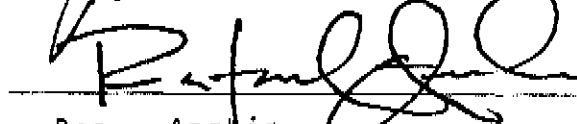

Neil Seliger

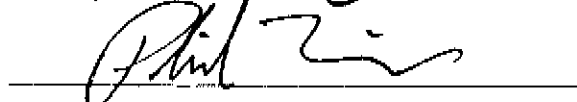

Florence Shapiro



Leticia Van de Putte
On the part of the Senate


Rep. Straus, Chair


Rep. Crabb


Rep. Anchia


Rep. P. King


On the part of the House
REP. Talton

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 3693

AN ACT

relating to energy demand, energy load, energy efficiency incentives, energy programs, and energy performance measures.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter Z, Chapter 44, Education Code, is amended by adding Section 44.902 to read as follows:

Sec. 44.902. GOAL TO REDUCE CONSUMPTION OF ELECTRIC ENERGY.
The board of trustees of a school district shall establish a goal to reduce the school district's annual electric consumption by five percent each state fiscal year for six years beginning September 1, 2007.

SECTION 2. Subchapter Z, Chapter 44, Education Code, is amended by adding Section 44.903 to read as follows:

Sec. 44.903. ENERGY-EFFICIENT LIGHT BULBS IN INSTRUCTIONAL FACILITIES. (a) In this section, "instructional facility" has the meaning assigned by Section 46.001.

(b) A school district shall purchase for use in each type of light fixture in an instructional facility the commercially available model of light bulb that:

(1) uses the fewest watts for the necessary luminous flux or light output;

(2) is compatible with the light fixture; and

(3) is the most cost-effective considering the factors described by subdivisions (1) and (2).

SECTION 3. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.9271 to read as follows:

Sec. 51.9271. ENERGY-EFFICIENT LIGHT BULBS IN EDUCATIONAL AND HOUSING FACILITIES. (a) In this section, "housing facility" has

the meaning assigned by Section 53.02.

(b) An institution of higher education shall purchase for use in each type of light fixture in an educational or housing facility the commercially available model of light bulb that:

(1) is compatible with the light fixture;

(2) uses the fewest watts for the necessary luminous flux or light output; and

(3) is the most cost-effective, considering the factors described by Subdivisions (1) and (2).

SECTION 4. Section 2155.068(d), Government Code, is amended to read as follows:

(d) As part of the standards and specifications program, the commission shall:

(1) review contracts for opportunities to recycle waste produced at state buildings;

(2) develop and update a list of equipment and appliances that meet the energy efficiency standards provided by Section 2158.301; and

(3) assist state agencies in selecting products under Section 2158.301, as appropriate.

SECTION 5. Chapter 2158, Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. ENERGY AND EFFICIENCY STANDARDS FOR
EQUIPMENT AND APPLIANCES

Sec. 2158.301. ENERGY CONSERVATION. If available and cost-effective, a state agency shall purchase equipment and appliances for state use that meet or exceed:

(1) the federal energy conservation standards under Section 325, Energy Policy and Conservation Act (42 U.S.C. Section 6295), or a federal regulation adopted under that Act; or

(2) the federal Energy Star standards designated by the United States Environmental Protection Agency and the United States

Department of Energy.

SECTION 6. Subchapter A, Chapter 2165, Government Code, is amended by adding Section 2165.008 to read as follows:

Sec. 2165.008. ENERGY-EFFICIENT LIGHT BULBS IN STATE BUILDINGS. A state agency or institution of higher education in charge and control of a state building shall purchase for use in each type of light fixture in the building the commercially available model of light bulb that:

(1) uses the fewest watts for the necessary luminous flux or light output; and

(2) is compatible with the light fixture.

SECTION 7. Subchapter B, Chapter 2165, Government Code, is amended by adding Section 2165.058 to read as follows:

Sec. 2165.058. VENDING MACHINES; ENERGY-SAVING DEVICE REQUIRED. (a) This section does not apply to a vending machine that contains a perishable food product, as defined by Section 96.001, Civil Practice and Remedies Code.

(b) The commission shall require an entity that owns or operates a vending machine located in a building owned or leased by the state to activate and maintain any internal energy-saving or energy-management device or option that is already part of the machine or contained in the machine.

(c) The commission shall require the use of an external energy-saving or energy-management device for each vending machine that:

(1) is located in a building owned or leased by the state;

(2) operates with a compressor; and

(3) does not have an activated and operational internal energy-saving or energy-management device or option.

(d) An entity that owns or operates a vending machine subject to this section is responsible for any expenses associated with the

acquisition, installation, or maintenance of an energy-saving device required by this section.

(e) The commission may impose an administrative fine on an entity that operates a vending machine subject to this section in an amount not to exceed \$250 a year for each machine found to be in violation of this section or rules adopted by the commission under this section.

(f) The commission shall adopt rules relating to the specifications for and regulation of energy-saving devices required by this section.

SECTION 8. Subtitle F, Title 10, Government Code, is amended by adding Chapter 2264 to read as follows:

CHAPTER 2264. REQUIRED PUBLICATION AND REPORTING

BY GOVERNMENTAL ENTITIES

Sec. 2264.001. RECORDING AND REPORTING OF ELECTRICITY, WATER, AND NATURAL GAS CONSUMPTION. (a) In this section, "governmental entity" means:

(1) a board, commission, or department of the state or a political subdivision of the state, including a municipality, a county, or any kind of district; or

(2) an institution of higher education as defined by Section 61.003, Education Code.

(b) Notwithstanding any other law, a governmental entity responsible for payments for electric, water, or natural gas utility services shall record in an electronic repository the governmental entity's metered amount of electricity, water, or natural gas consumed for which it is responsible to pay and the aggregate costs for those utility services. The governmental entity shall report the recorded information on a publicly accessible Internet website with an interface designed for ease of navigation if available, or at another publicly accessible location.

SECTION 9. Subchapter H, Chapter 2306, Government Code, is amended by adding Section 2306.187 to read as follows:

Sec. 2306.187. ENERGY EFFICIENCY STANDARDS FOR CERTAIN SINGLE AND MULTIFAMILY DWELLINGS. (a) A newly constructed single or multifamily dwelling that is constructed with assistance awarded by the department, including state or federal money, housing tax credits, or multifamily bond financing, must include energy conservation and efficiency measures specified by the department. The department by rule shall establish a minimum level of energy efficiency measures that must be included in a newly constructed single or multifamily dwelling as a condition of eligibility to receive assistance awarded by the department for housing construction. The measures adopted by the department may include:

- (1) the installation of Energy Star-labeled ceiling fans in living areas and bedrooms;
- (2) the installation of Energy Star-labeled appliances;
- (3) the installation of Energy Star-labeled lighting in all interior units;
- (4) the installation of Energy Star-labeled ventilation equipment, including power-vented fans, range hoods, and bathroom fans;
- (5) the use of energy efficient alternative construction material, including structural insulated panel construction;
- (6) the installation of central air conditioning or heat pump equipment with a better Seasonal Energy Efficiency Rating (SEER) than that required by the energy code adopted under Section 388.003, Health and Safety Code; and
- (7) the installation of the air ducting system inside the conditioned space.

(b) A single or multifamily dwelling must include energy conservation and efficiency measures specified by the department if:

(1) the dwelling is rehabilitated with assistance awarded by the department, including state or federal money, housing tax credits, or multifamily bond financing; and

(2) any portion of the rehabilitation includes alterations that will replace items that are identified as required efficiency measures by the department.

(c) The energy conservation and efficiency measures the department requires under Subsection (b) may not be more stringent than the measures the department requires under Subsection (a).

(d) The department shall review the measures required to meet the energy efficiency standards at least annually to determine if additional measures are desirable and to ensure that the most recent energy efficiency technology is considered.

(e) Subsections (a) and (b) do not apply to a single or multifamily dwelling that receives weatherization assistance money from the department or money provided under the first-time homebuyer program.

SECTION 10. Section 301.038, Health and Safety Code, is amended to read as follows:

Sec. 301.038. PROVISION [COST] OF SERVICES; COSTS. (a) A cooperative association may provide services from a system to eligible institutions and may determine the amount to be charged for providing the services.

(b) Notwithstanding Sections 301.032 and 301.037, a cooperative association may provide from a system central heating and cooling services, including steam and heated and chilled water supply, to persons other than eligible institutions and may determine the amount to be charged for providing services.

SECTION 11. Section 388.003, Health and Safety Code, is amended by adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(b-1) If the State Energy Conservation Office determines,

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based on written recommendations from the laboratory, that the energy efficiency provisions of the latest published editions of the International Residential Code or the International Energy Conservation Code for residential or commercial energy efficiency and air quality are equivalent to or more stringent than the provisions of editions adopted under Subsection (a) or (b), the office by rule may adopt and substitute in the energy code the equivalent or more stringent editions for of the initial editions described by Subsection (a) or (b). If the State Energy Conservation Office adopts the latest published editions of the International Residential Code or the International Energy Conservation Code into the energy code, the office shall establish an effective date for the new editions that is not earlier than nine months after the date of adoption. The laboratory shall submit recommendations concerning the latest published editions of the International Residential Code or the International Energy Conservation Code not later than six months after publication of new editions.

(b-2) The State Energy Conservation Office by rule shall establish a procedure for allowing an opportunity for persons who have an interest in the adoption of energy efficiency codes under Subsection (b-1) to comment on a code considered for adoption, including:

- (1) commercial and residential builders;
- (2) architects;
- (3) engineers;
- (4) county and other local government authorities; and
- (5) environmental groups.

(b-3) In developing written recommendations under Subsection (b-1), the laboratory shall consider the comments submitted under Subsection (b-2).

SECTION 12. Section 388.005, Health and Safety Code, is

amended to read as follows:

Sec. 388.005. ENERGY EFFICIENCY PROGRAMS IN CERTAIN GOVERNMENTAL ENTITIES ~~[POLITICAL SUBDIVISIONS]~~. (a) In this section:

(1) "Institution of higher education" includes an institution of higher education as defined by Section 61.003, Education Code, and a private institution of higher education that receives funding from the state.

(2) "Political~~[, "political]~~ subdivision" means:

(A) ~~[(1)]~~ an affected county; or

(B) ~~[(2)]~~ any political subdivision in a nonattainment area or in an affected county other than:

(i) ~~[(A)]~~ a school district; or

(ii) ~~[(B)]~~ a district as defined by Section 36.001 or 49.001, Water Code, that had a total annual electricity expense of less than \$200,000 in the previous fiscal year of the district.

(3) "State agency" means a department, commission, board, office, council, or other agency in the executive branch of state government that is created by the constitution or a statute of this state and has authority not limited to a geographical portion of the state.

(b) Each political subdivision, institution of higher education, or state agency shall implement all energy efficiency measures that meet the standards established for a contract for energy conservation measures under Section 302.004(b), Local Government Code, in order to reduce electricity consumption by the existing facilities of the entity ~~[the political subdivision]~~.

(c) Each political subdivision, institution of higher education, or state agency shall establish a goal to reduce the electric consumption by the entity ~~[political subdivision]~~ by five percent each state fiscal year for six ~~[five]~~ years, beginning

September 1, 2007 [~~January 1, 2002~~].

(d) A political subdivision, institution of higher education, or state agency that does not attain the goals under Subsection (c) must include in the report required by Subsection (e) justification that the entity [~~political subdivision~~] has already implemented all available measures.

(e) A political subdivision, institution of higher education, or state agency annually shall report to the State Energy Conservation Office, on forms provided by that office, regarding the entity's [~~political subdivisions~~] efforts and progress under this section. The State Energy Conservation Office shall provide assistance and information to the entity [~~political subdivisions~~] to help the entity [~~the political subdivisions~~] meet the goals set under this section.

(f) This section does not apply to a state agency or an institution of higher education that the State Energy Conservation Office determines that, before September 1, 2007, adopted a plan for conserving energy under which the agency or institution established a percentage goal for reducing the consumption of electricity. The exemption provided by this section applies only while the agency or institution has an energy conservation plan in effect and only if the agency or institution submits reports on the conservation plan each calendar quarter to the governor, the Legislative Budget Board, and the State Energy Conservation Office.

SECTION 13. Section 388.008, Health and Safety Code, is amended by amending Subsections (a) and (c) and adding Subsection (d) to read as follows:

(a) The laboratory shall develop a standardized report format to be used by providers of home energy ratings. The laboratory may develop different report formats for rating newly constructed residences from those for existing residences. The form must be designed to give potential buyers information on a structure's

energy performance, including:

- (1) insulation;
- (2) types of windows;
- (3) heating and cooling equipment;
- (4) water heating equipment;
- (5) additional energy conserving features, if any;
- (6) results of performance measurements of building tightness and forced air distribution; and

(7) an overall rating of probable energy efficiency relative to the minimum requirements of the International Energy Conservation Code or the energy efficiency chapter of the International Residential Code, as appropriate.

(c) The laboratory may cooperate with an industry organization or trade association to:

- (1) develop guidelines for home energy ratings;
- (2) provide training for individuals performing home energy ratings and providers of home energy ratings; and
- (3) provide a registry of completed ratings for newly constructed residences and residential improvement projects for the purpose of computing the energy savings and emissions reductions, benefits of the [The] home energy ratings program [shall be implemented by September 1, 2002].

(d) The laboratory shall include information on the benefits attained from this program in an annual report to the commission.

SECTION 14. The heading to Section 74.3013, Property Code, is amended to read as follows:

Sec. 74.3013. DELIVERY OF MONEY FOR RURAL SCHOLARSHIP, [AND] ECONOMIC DEVELOPMENT, AND ENERGY EFFICIENCY ASSISTANCE.

SECTION 15. Sections 74.3013(a), (b), (e), (f), and (g), Property Code, are amended to read as follows:

(a) Notwithstanding and in addition to any other provision of this chapter or other law, a nonprofit cooperative corporation may

deliver reported money to a scholarship fund for rural students, ~~[or]~~ to stimulate rural economic development, or to provide energy efficiency assistance to members of electric cooperatives, instead of delivering the money to the comptroller as prescribed in Section 74.301.

(b) A nonprofit cooperative corporation may deliver the money under this section only:

(1) to a scholarship fund established by one or more nonprofit cooperative corporations in this state to enable students from rural areas to attend college, technical school, or other postsecondary educational institution; ~~[and]~~

(2) to an economic development fund for the stimulation and improvement of business and commercial activity for economic development in rural communities; and

(3) to an energy efficiency assistance fund to assist members of an electric cooperative in reducing their energy consumption and electricity bills.

(e) The comptroller shall prescribe forms and procedures governing this section, including forms and procedures relating to:

(1) notice of presumed abandoned property;

(2) delivery of reported money to a scholarship, ~~[or]~~ economic development fund, or energy efficiency assistance fund;

(3) filing of a claim; and

(4) procedures to allow equitable opportunity for participation by each nonprofit cooperative corporation in the state.

(f) During a state fiscal year the total amount of money that may be transferred by all nonprofit cooperative corporations under this section may not exceed \$2 ~~[\$1]~~ million. No more than 20 percent of each nonprofit cooperative's funds eligible for delivery under this section shall be used for economic development. The comptroller shall adopt procedures to record the total amount of

money transferred annually ~~[to allow equitable opportunity for participation with preference given to corporations already providing similar scholarship opportunities in other states]~~.

(g) Nonprofit cooperative corporations may combine ~~[economic development]~~ funds from other sources with any ~~[economic development]~~ funds delivered under this section. In addition, such cooperatives may engage in other business and commercial activities, in their own behalf or through such subsidiaries and affiliates as deemed necessary, in order to provide and promote educational opportunities and to stimulate rural economic development.

SECTION 16. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.333 to read as follows:

Sec. 151.333. ENERGY-EFFICIENT PRODUCTS. (a) In this section, "energy-efficient product" means a product that has been designated as an Energy Star qualified product under the Energy Star program jointly operated by the United States Environmental Protection Agency and the United States Department of Energy.

(b) This section applies only to the following energy-efficient products:

- (1) an air conditioner the sales price of which does not exceed \$6,000;
- (2) a clothes washer;
- (3) a ceiling fan;
- (4) a dehumidifier;
- (5) a dishwasher;
- (6) an incandescent or fluorescent lightbulb;
- (7) a programmable thermostat; and
- (8) a refrigerator the sales price of which does not exceed \$2,000.

(c) The sale of an energy-efficient product to which this section applies is exempted from the taxes imposed by this chapter

if the sale takes place during a period beginning at 12:01 a.m. on the Saturday preceding the last Monday in May (Memorial Day) and ending at 11:59 p.m. on the last Monday in May.

SECTION 17. Subchapter A, Chapter 313, Tax Code, is amended by adding Section 313.008 to read as follows:

Sec. 313.008. REPORT ON COMPLIANCE WITH ENERGY-RELATED AGREEMENTS. (a) Before the beginning of each regular session of the legislature, the comptroller shall submit to the lieutenant governor, the speaker of the house of representatives, and each member of the legislature a report assessing the progress of each agreement entered into under this chapter utilizing data certified by agreement recipients, on each agreement entered into under this chapter involving energy-related projects, including wind generation, ethanol production, liquefied natural gas terminals, low sulfur diesel production, refinery cogeneration, and nuclear energy production. The report must state for each agreement:

- (1) the number of qualifying jobs each recipient of a limitation on appraised value committed to create;
- (2) the number of qualifying jobs each recipient created;
- (3) the median wage of the new jobs each recipient created;
- (4) the amount of the qualified investment each recipient committed to expend or allocate per project;
- (5) the amount of the qualified investment each recipient expended or allocated per project;
- (6) the market value of the qualified property of each recipient as established by the local appraiser;
- (7) the limitation on appraised value for the qualified property of each recipient;
- (8) the dollar amount of the ad valorem taxes that would have been imposed on the market value of the qualified property;

(9) the dollar amount of the ad valorem taxes imposed on the qualified property;

(10) the number of new jobs created by each recipient in each sector of the North American Industry Classification System (NAICS); and

(11) of the number of new jobs each recipient created, the number of positions created that provide health benefits for employees.

(b) The report may not include information that is made confidential by law.

(c) The comptroller may require a recipient to submit, on a form provided by the comptroller, information required to complete the report.

SECTION 18. Section 31.004, Utilities Code, is amended by adding Subsection (c) to read as follows:

(c) The commission shall provide information to school districts regarding how a school district may finance the installation of solar electric generation panels for school district buildings.

SECTION 19. Section 39.002, Utilities Code, is amended to read as follows:

Sec. 39.002. APPLICABILITY. This chapter, other than Sections 39.155, 39.157(e), 39.203, 39.903, ~~[and]~~ 39.904, 39.9051, 39.9052, and 39.914(e), does not apply to a municipally owned utility or an electric cooperative. Sections 39.157(e), 39.203, and 39.904, however, apply only to a municipally owned utility or an electric cooperative that is offering customer choice. If there is a conflict between the specific provisions of this chapter and any other provisions of this title, except for Chapters 40 and 41, the provisions of this chapter control.

SECTION 20. Section 39.107, Utilities Code, is amended by adding Subsection (i) to read as follows:

(i) Subject to the restrictions in Subsection (h), it is the intent of the legislature that net metering and advanced meter information networks be deployed as rapidly as possible to allow customers to better manage energy use and control costs, and to facilitate demand response initiatives.

SECTION 21. Subchapter Z, Chapter 39, Utilities Code, is amended by adding Section 39.9025 to read as follows:

Sec. 39.9025. HOME ELECTRIC ENERGY REPORTS. The commission may encourage retail electric providers to deliver individualized home electric energy reports to educate consumers about electric energy use and energy efficiency to assist consumers to use energy more efficiently.

SECTION 22. Section 39.905, Utilities Code, is amended by amending Subsections (a), (b), (d), (e), and (f), and adding Subsections (b-1), (b-2), (b-3), (b-4), and (g) to read as follows:

(a) It is the goal of the legislature that:

(1) electric utilities will administer energy efficiency ~~[savings]~~ incentive programs in a market-neutral, nondiscriminatory manner but will not offer underlying competitive services;

(2) all customers, in all customer classes, will have a choice of and access to energy efficiency alternatives and other choices from the market that allow each customer to reduce energy consumption, peak demand, or energy costs; ~~[and]~~

(3) each electric utility will provide, through market-based standard offer programs or limited, targeted, market-transformation programs, incentives sufficient for retail electric providers and competitive energy service providers to acquire additional cost-effective energy efficiency for residential and commercial customers equivalent to at least:

(A) 10 percent of the electric utility's annual growth in demand of residential and commercial customers by December 31, 2007;

(B) 15 percent of the electric utility's annual growth in demand of residential and commercial customers by December 31, 2008, provided that the electric utility's program expenditures for 2008 funding may not be greater than 75 percent above the utility's program budget for 2007 for residential and commercial customers, as included in the April 1, 2006, filing; and

(C) 20 percent of the electric utility's annual growth in demand of residential and commercial customers by December 31, 2009, provided that the electric utility's program expenditures for 2009 funding may not be greater than 150 percent above the utility's program budget for 2007 for residential and commercial customers, as included in the April 1, 2006, filing;

(4) each electric utility in the ERCOT region shall use its best efforts to encourage and facilitate the involvement of the region's retail electric providers in the delivery of efficiency programs and demand response programs under this section;

(5) retail electric providers in the ERCOT region, and electric utilities outside of the ERCOT region, shall provide customers with energy efficiency educational materials; and

(6) notwithstanding Subsection (a)(3), electric utilities shall continue to make available, at 2007 funding and participation levels, any load management standard offer programs developed for industrial customers and implemented prior to May 1, 2007.

(b) The commission shall provide oversight and adopt rules and procedures~~[, as necessary,]~~ to ensure that the utilities can achieve the goal of this section, including:

(1) establishing an energy efficiency cost recovery factor for ensuring timely and reasonable cost recovery for utility expenditures made to satisfy the goal of this section;

(2) establishing an incentive under Section 36.204 to reward utilities administering programs under this section that

exceed the minimum goals established by this section;

(3) providing a utility that is unable to establish an energy efficiency cost recovery factor in a timely manner due to a rate freeze with a mechanism to enable the utility to:

(A) defer the costs of complying with this section;
and

(B) recover the deferred costs through an energy efficiency cost recovery factor on the expiration of the rate freeze period;

(4) ensuring that the costs associated with programs provided under this section are borne by the customer classes that receive the services under the programs; and

(5) ensuring the program rules encourage the value of the incentives to be passed on to the end-use customer.

(b-1) The energy efficiency cost recovery factor under Subsection (b)(1) may not result in an over-recovery of costs but may be adjusted each year to change rates to enable utilities to match revenues against energy efficiency costs and any incentives to which they are granted. The factor shall be adjusted to reflect any over-collection or under-collection of energy efficiency cost recovery revenues in previous years.

(b-2) The commission shall conduct a study, to be funded by electric utilities, regarding cost-effective energy efficiency in this state. Not later than January 15, 2009, the commission shall submit to the legislature a report regarding the commission's findings that:

(1) considers the technical, economic, and achievable potential, and natural occurrence of energy efficiency in this state in terms of kilowatts and kilowatt hours for each element;

(2) determines the amount of savings that is achievable through utility programs in compliance with commission rules;

(3) recommends whether:

(A) utility funding of energy efficiency in areas of the state with competitive retail electric service should continue;

(B) energy efficiency in areas with competitive retail electric service is best provided by the competitive market; and

(C) utilities should fund education programs to be conducted by the commission regarding the provision of energy efficiency service from the competitive market;

(4) provides estimates of achievable savings specific to each utility service area and each customer class;

(5) quantifies the costs and rate impacts associated with meeting energy efficiency goals;

(6) determines whether an increase in the goal to 30 percent of the growth in demand for each utility is achievable by December 31, 2010, and whether an increase in the goal to 50 percent of the growth in demand for electricity is achievable by December 31, 2015, by each utility in the service area served through the energy efficiency programs described by this section;

(7) recommends policies designed to promote energy efficiency in the areas of the state that are not served by the utilities which administer programs under this section; and

(8) identifies potential barriers to the increased participation by retail electric providers in the delivery of energy efficiency services to ERCOT customers, and to the increased potential for energy efficiency in ERCOT or in this state generally, including any recommended regulatory or statutory changes to eliminate such barriers or facilitate greater efficiency.

(b-3) Beginning not later than January 1, 2008, the commission, in consultation with the State Energy Conservation Office, annually for a period of five years shall compute and

report to ERCOT the projected energy savings and demand impacts for each entity in the ERCOT region that administers standard offer programs, market transformation programs, combined heating and power technology, demand response programs, solar incentive programs, appliance efficiency standards, energy efficiency programs in public buildings, and any other relevant programs that are reasonably anticipated to reduce electricity energy or peak demand or that serve as substitutes for electric supply.

(b-4) The commission and ERCOT shall develop a method to account for the projected efficiency impacts under Subsection (b-3) in ERCOT's annual forecasts of future capacity, demand, and reserves.

(d) The commission shall establish a procedure for reviewing and evaluating market-transformation program options described by this subsection and other options. In evaluating program options, the commission may consider the ability of a program option to reduce costs to customers through reduced demand, energy savings, and relief of congestion. Utilities ~~adopt the following market-transformation program options that the utilities~~ may choose to implement any program option approved by the commission after its evaluation in order to satisfy the goal in Subsection (a), including ~~(a)-(3)~~:

(1) energy-smart schools;

(2) appliance retirement and recycling;

(3) air conditioning system tune-ups; ~~and~~

(4) the use of trees or other landscaping for energy efficiency;

(5) customer energy management and demand response programs;

(6) high performance residential and commercial buildings that will achieve the levels of energy efficiency sufficient to qualify those buildings for federal tax incentives;

(7) programs for customers who rent or lease their residence or commercial space;

(8) programs providing energy monitoring equipment to customers that enable a customer to better understand the amount, price, and time of the customer's energy use;

(9) energy audit programs for owners and other residents of single-family or multifamily residences and for small commercial customers;

(10) net-zero energy new home programs;

(11) solar thermal or solar electric programs; and

(12) programs for using windows and other glazing systems, glass doors, and skylights in residential and commercial buildings that reduce solar gain by at least 30 percent from the level established for the federal Energy Star windows program.

(e) An electric utility may use money approved by the commission for energy efficiency programs to perform necessary energy efficiency research and development to foster continuous improvement and innovation in the application of energy efficiency technology and energy efficiency program design and implementation.

Money the utility uses under this subsection may not exceed 10 percent of the greater of:

(1) the amount the commission approved for energy efficiency programs in the utility's most recent full rate proceeding; or

(2) the commission-approved expenditures by the utility for energy efficiency in the previous year.

(f) Unless funding is provided under Section 39.903, ~~[beginning January 1, 2006,]~~ each unbundled transmission and distribution utility shall include in its energy efficiency plan a targeted low-income energy efficiency program as described by Section 39.903(f)(2), and the savings achieved by the program shall count toward the transmission and distribution utility's energy

efficiency goal. The commission shall determine the appropriate level of funding to be allocated to both targeted and standard offer low-income energy efficiency programs in each unbundled transmission and distribution utility service area. The total expenditures for both targeted and standard offer low-income energy efficiency programs will be based on the amount spent by the transmission and distribution utility on the commission's hard-to-reach program in calendar year 2003. This level of funding for low-income energy efficiency programs shall be provided from money approved by the commission for the transmission and distribution utility's energy efficiency programs. The state agency that administers the federal weatherization assistance program shall provide reports as required by the commission to provide the most current information available on energy and peak demand savings achieved in each transmission and distribution utility service area.

(g) The commission may provide for a good cause exemption to a utility's liability for an administrative penalty or other sanction if the utility fails to meet a goal for energy efficiency under this section and the utility's failure to meet the goal is caused by one or more factors outside of the utility's control, including:

- (1) insufficient demand by retail electric providers and competitive energy service providers for program incentive funds made available by the utility through its programs;
- (2) changes in building energy codes; and
- (3) changes in government-imposed appliance or equipment efficiency standards.

SECTION 23. Subchapter Z, Chapter 39, Utilities Code, is amended by adding Sections 39.9051, 39.9052, 39.911, 39.912, and 39.913 to read as follows:

Sec. 39.9051. ENERGY EFFICIENCY FOR MUNICIPALLY OWNED

UTILITIES. (a) In this section, "municipally owned utility" has the meaning assigned by Section 11.003.

(b) This section applies only to a municipally owned utility that had retail sales of more than 500,000 megawatt hours in 2005.

(c) It is the goal of the legislature that:

(1) municipally owned utilities will administer energy savings incentive programs;

(2) customers of a municipally owned utility will have a choice of and access to energy efficiency alternatives that allow customers to reduce energy consumption, peak demand, or energy costs; and

(3) each municipally owned utility will provide incentives sufficient for municipally owned utilities to acquire additional cost-effective energy efficiency.

(d) The governing body of a municipally owned utility shall provide oversight and adopt rules and procedures, as necessary, to ensure that the utility can achieve the goal of this section.

(e) If a municipally owned utility adopts customer choice by decision of the governing body under Chapter 40, the commission shall provide oversight and adopt rules and procedures, as necessary, to ensure that the municipally owned utility can achieve the goal in this section in a market-neutral, nondiscriminatory manner. The commission shall, to the extent possible, include existing energy efficiency programs already adopted by the municipally owned utility.

(f) Not later than September 1, 2009, a municipally owned utility must report to the State Energy Conservation Office, in a form and manner determined by the utility in consultation with the office, information regarding the combined effects of the energy efficiency activities of the utility.

Sec. 39.9052. ENERGY EFFICIENCY FOR ELECTRIC COOPERATIVES.

(a) An electric cooperative shall consider adopting and

implementing energy efficiency programs that reduce the cooperative's annual growth in demand in a manner consistent with standards established in the state for other utilities.

(b) Not later than September 1, 2009, an electric cooperative that had retail sales of more than 500,000 megawatt hours in 2005 must report to the State Energy Conservation Office, in a form and manner determined by the electric cooperative in consultation with the office, information regarding the combined effects of the energy efficiency activities of the electric cooperative.

Sec. 39.911. ALTERNATIVE FUNDING FOR ENERGY EFFICIENCY AND RENEWABLE ENERGY SYSTEMS. The State Energy Conservation Office, in coordination with the governor, the Department of Agriculture, the Texas Commission on Environmental Quality, the Texas Education Agency, the commission, and other appropriate state agencies, shall solicit gifts, grants, and other financial resources available to fund energy efficiency improvements and renewable energy systems for public and private facilities in this state.

Sec. 39.912. REPORT ON COMBINED HEATING AND POWER TECHNOLOGY. The commission shall study the installation and use of combined heating and power technology in this state, and shall submit a report regarding the commission's findings to the 81st Legislature.

The report shall include:

(1) an explanation describing combined heating and power technology and its use; and

(2) an explanation of how combined heating and power technology can be implemented in this state to meet energy efficiency goals.

Sec. 39.913. COMBINING CERTAIN REPORTS. The commission may combine the reports required under Sections 39.905(b-2) and 39.912.

SECTION 24. Subchapter Z, Chapter 39, Utilities Code, is amended by adding Section 39.914 to read as follows:

Sec. 39.914. CREDIT FOR SURPLUS SOLAR GENERATION BY PUBLIC

SCHOOLS. (a) An electric utility or retail electric provider shall provide for net metering and contract with an independent school district so that:

(1) surplus electricity produced by a school building's solar electric generation panels is made available for sale to the electric transmission grid and distribution system; and

(2) the net value of that surplus electricity is credited to the district.

(b) For areas of this state in which customer choice has not been introduced, the commission by rule shall require that credits for electricity produced by a school building's solar electric generation panels reflect the value of the electricity that is made available for sale to the electric utility in accordance with federal regulations.

(c) For independent school districts in areas in which customer choice has been introduced, the district must sell the school buildings' surplus electricity produced to the retail electric provider that serves the school district's load at a value agreed to between the district and the provider that serves the district's load. The agreed value may be based on the clearing price of energy at the time of day that the electricity is made available to the grid. The independent organization identified in Section 39.151 shall develop procedures so that the amount of electricity purchased from a district under this section is accounted for in settling the total load served by the provider that serves the district's load. A district requesting net metering services for purposes of this section must have metering devices capable of providing measurements consistent with the independent organization's settlement requirements.

(d) A transmission and distribution utility shall make available to an independent school district for purposes of this section metering required for services provided under this section,

including separate meters that measure the load and generator output or a single meter capable of measuring separately in-flow and out-flow at the point of common coupling meter point. The district must pay the differential cost of the metering unless the meters are provided at no additional cost. Except as provided by this section, Section 39.107 applies to metering under this section.

(e) A municipally owned utility or electric cooperative shall consider and complete the determinations regarding net metering service as provided by the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Section 2601 et seq., as amended by the federal Energy Policy Act of 2005 (Pub. L. No. 109-58)) after proceedings conducted in accordance with that law. A municipally owned utility or electric cooperative shall report the determinations made under this subsection to the State Energy Conservation Office and include in that report information regarding metering electricity generated by solar panels on public school building rooftops.

SECTION 25. Subchapter 2, Chapter 39, Utilities Code, is amended by adding Section 39.915 to read as follows:

Sec. 39.915. CONSIDERATION AND APPROVAL OF CERTAIN TRANSACTIONS. (a) To protect retail customers in this state, and to ensure the continuation of cost-effective energy efficiency measures and delivery systems, notwithstanding any other provision of this title, an electric utility or transmission and distribution utility must report to and obtain approval of the commission before closing any transaction in which:

(1) the electric utility or transmission and distribution utility will be merged or consolidated with another electric utility or transmission and distribution utility;

(2) at least 50 percent of the stock of the electric utility or transmission and distribution utility will be

transferred or sold; or

(3) a controlling interest or operational control of the electric utility or transmission and distribution utility will be transferred.

(b) The commission shall approve a transaction under Subsection (a) if the commission finds that the transaction is in the public interest. In making its determination, the commission shall consider whether the transaction will adversely affect the reliability of service, availability of service, or cost of service of the electric utility or transmission and distribution utility. The commission shall make the determination concerning a transaction under this subsection not later than the 180th day after the date the commission receives the relevant report. If the commission has not made a determination before the 181st day after that date, the transaction is considered approved.

(c) Subsections (a) and (b) do not apply to a transaction described by Subsection (a) for which a definitive agreement was executed before April 1, 2007, if an electric utility or transmission and distribution utility or a person seeking to acquire or merge with an electric utility or transmission and distribution utility made a filing for review of the transaction under Section 14.101 before May 1, 2007, and the resulting proceeding was not withdrawn.

(d) If an electric utility or transmission and distribution utility or a person seeking to acquire or merge with an electric utility or transmission and distribution utility files with the commission a stipulation, representation, or commitment in advance of or as part of a filing under this section or under Section 14.101, the commission may enforce the stipulation, representation, or commitment to the extent that the stipulation, representation, or commitment is consistent with the standards provided by this section and Section 14.101. The commission may reasonably interpret

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and enforce conditions adopted under this section.

Section 26. Subchapter Z, Chapter 39, Utilities Code, is amended by adding Section 39.916 to read as follows:

Sec. 39.916. INTERCONNECTION OF DISTRIBUTED RENEWABLE GENERATION. (a) In this section:

(1) "Distributed renewable generation" means electric generation with a capacity of not more than 2,000 kilowatts¹ provided by a renewable energy technology, as defined by Section 39.904, that is installed on a retail electric customer's side of the meter.

(2) "Distributed renewable generation owner" means the owner of distributed renewable generation.

(3) "Interconnection" means the right of a distributed renewable generation owner to physically connect distributed renewable generation to an electricity distribution system, and the technical requirements, rules, or processes for the connection.

(b) A transmission and distribution utility or electric utility shall allow interconnection if:

(1) the distributed renewable generation to be interconnected has a five-year warranty against breakdown or undue degradation; and

(2) the rated capacity of the distributed renewable generation does not exceed the transmission and distribution utility or electric utility service capacity.

(c) A customer may request interconnection by filing an application for interconnection with the transmission and distribution utility or electric utility. Procedures of a transmission and distribution utility or electric utility for the submission and processing of a customer's application for interconnection shall be consistent with rules adopted by the commission regarding interconnection.

(d) The commission by rule shall establish safety, technical,

and performance standards for distributed renewable generation that may be interconnected. In adopting the rules, the commission shall consider standards published by the Underwriters Laboratories, the National Electric Code, the National Electric Safety Code, and the Institute of Electrical and Electronics Engineers.

(e) A transmission and distribution utility, electric utility, or retail electric provider may not require a distributed renewable generation owner whose distributed renewable generation meets the standards established by rule under Subsection (d) to purchase an amount, type, or classification of liability insurance the distributed renewable generation owner would not have in the absence of the distributed renewable generation.

(f) A transmission and distribution utility or electric utility shall make available to a distributed renewable generation owner for purposes of this section metering required for services provided under this section, including separate meters that measure the load and generator output or a single meter capable of measuring in-flow and out-flow at the point of common coupling meter point. The distributed renewable generation owner must pay the differential cost of the metering unless the meters are provided at no additional cost. Except as provided by this section, Section 39.107 applies to metering under this section.

(g) A renewable energy credit that is earned by a distributed renewable generation owner through the interconnection of a renewable electric system is the sole property of the distributed renewable generation owner unless the distributed renewable generation owner engages in a transaction to sell or trade the credit under Section 39.904. For electric utilities, the commission shall address the ownership of renewable energy credits associated with power sold to the utility.

(h) An electric utility or retail electric provider may contract with a distributed renewable generation owner so that:

- (1) surplus electricity produced by distributed renewable generation is made available for sale to the transmission grid and distribution system; and
- (2) the net value of that surplus electricity is credited to the distributed renewable generation owner.

(j) For distributed renewable generation owners in areas in which customer choice has been introduced, the distributed renewable generation owner must sell the owner's surplus electricity produced to the retail electric provider that serves the distributed renewable generation owner's load at a value agreed to between the distributed renewable generation owner and the provider that serves the owner's load which may include, but is not limited to, an agreed value based on the clearing price of energy at the time of day that the electricity is made available to the grid or it may be a credit applied to an account during a billing period that may be carried over to subsequent billing periods until the credit has been redeemed. The independent organization identified in Section 39.151 shall develop procedures so that the amount of electricity purchased from a distributed renewable generation owner under this section is accounted for in settling the total load served by the provider that serves that owner's load by January 1, 2009. A distributed renewable generation owner requesting net metering services for purposes of this section must have metering devices capable of providing measurements consistent with the independent organization's settlement requirements.

SECTION 27. Section 40.055(a), Utilities Code, is amended to read as follows:

(a) The municipal governing body or a body vested with the power to manage and operate a municipally owned utility has exclusive jurisdiction to:

- (1) set all terms of access, conditions, and rates

applicable to services provided by the municipally owned utility, subject to Sections 40.054 and 40.056, including nondiscriminatory and comparable rates for distribution but excluding wholesale transmission rates, terms of access, and conditions for wholesale transmission service set by the commission under this subtitle, provided that the rates for distribution access established by the municipal governing body shall be comparable to the distribution access rates that apply to the municipally owned utility and the municipally owned utility's affiliates;

(2) determine whether to unbundle any energy-related activities and, if the municipally owned utility chooses to unbundle, whether to do so structurally or functionally;

(3) reasonably determine the amount of the municipally owned utility's stranded investment;

(4) establish nondiscriminatory transition charges reasonably designed to recover the stranded investment over an appropriate period of time, provided that recovery of retail stranded costs shall be from all existing or future retail customers, including the facilities, premises, and loads of those retail customers, within the utility's geographical certificated service area as it existed on May 1, 1999;

(5) determine the extent to which the municipally owned utility will provide various customer services at the distribution level, including other services that the municipally owned utility is legally authorized to provide, or will accept the services from other providers;

(6) manage and operate the municipality's electric utility systems, including exercise of control over resource acquisition and any related expansion programs;

(7) establish and enforce service quality and reliability standards and consumer safeguards designed to protect retail electric customers, including safeguards that will

accomplish the objectives of Sections 39.101(a) and (b), consistent with this chapter;

(8) determine whether a base rate reduction is appropriate for the municipally owned utility;

(9) determine any other utility matters that the municipal governing body or body vested with power to manage and operate the municipally owned utility believes should be included; ~~and~~

(10) make any other decisions affecting the municipally owned utility's participation in customer choice that are not inconsistent with this chapter; and

(11) determine the extent to which the municipally owned utility offers energy efficiency programs and how the programs are administered by the utility, except as provided by Section 39.9051(e).

SECTION 28. Section 41.055, Utilities Code, is amended to read as follows:

Sec. 41.055. JURISDICTION OF BOARD OF DIRECTORS. A board of directors has exclusive jurisdiction to:

(1) set all terms of access, conditions, and rates applicable to services provided by the electric cooperative, except as provided by Sections 41.054 and 41.056, including nondiscriminatory and comparable rates for distribution but excluding wholesale transmission rates, terms of access, and conditions for wholesale transmission service set by the commission under Subchapter A, Chapter 35, provided that the rates for distribution established by the electric cooperative shall be comparable to the distribution rates that apply to the electric cooperative and its subsidiaries;

(2) determine whether to unbundle any energy-related activities and, if the board of directors chooses to unbundle, whether to do so structurally or functionally;

(3) reasonably determine the amount of the electric cooperative's stranded investment;

(4) establish nondiscriminatory transition charges reasonably designed to recover the stranded investment over an appropriate period of time;

(5) determine the extent to which the electric cooperative will provide various customer services, including nonelectric services, or accept the services from other providers;

(6) manage and operate the electric cooperative's utility systems, including exercise of control over resource acquisition and any related expansion programs;

(7) establish and enforce service quality standards, reliability standards, and consumer safeguards designed to protect retail electric customers;

(8) determine whether a base rate reduction is appropriate for the electric cooperative;

(9) determine any other utility matters that the board of directors believes should be included;

(10) sell electric energy and capacity at wholesale, regardless of whether the electric cooperative participates in customer choice;

(11) determine the extent to which the electric cooperative offers energy efficiency programs and how the programs are administered by the electric cooperative; and

(12) [~~11~~] make any other decisions affecting the electric cooperative's method of conducting business that are not inconsistent with the provisions of this chapter.

SECTION 29. The State Energy Conservation Office shall adopt rules implementing a procedure for stakeholder participation as required under Section 388.003(b-2), Health and Safety Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 30. (a) The energy conservation standards for equipment and appliances under Section 2158.301, Government Code, as added by this Act, apply to a purchase by a state agency on or after the effective date of this Act.

(b) The Texas Building and Procurement Commission shall develop a list of equipment and appliances under Section 2155.068, Government Code, as amended by this Act, as soon as practicable after the effective date of this Act.

SECTION 31. Section 2165.058(c), Government Code, as added by this Act, applies only to an entity that contracts with the Texas Building and Procurement Commission or another state agency to install or operate a vending machine on or after the effective date of this Act.

SECTION 32. The change in law made by this Act does not affect taxes imposed before the effective date of this Act, and the law in effect before the effective date of this Act is continued in effect for purposes of the liability for and collection of those taxes.

SECTION 33. This Act takes effect September 1, 2007.

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