**South Carolina General Assembly**

125th Session, 2023-2024

**H. 4282**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Tedder, Ballentine, Wooten, Wetmore, Henegan, J.L. Johnson, Pendarvis, Bauer, Carter, Kirby and M.M. Smith

Document Path: LC-0115HA23.docx

Introduced in the House on April 5, 2023

Currently residing in the House

Summary: Energy Efficiency

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 4/5/2023 House Introduced and read first time (House Journal‑page 144)

 4/5/2023 House Referred to Committee on **Labor, Commerce and Industry** (House Journal‑page 144)

 4/19/2023 House Member(s) request name added as sponsor: Bauer,
 Carter, Kirby

 4/20/2023 House Member(s) request name added as sponsor: M.M. Smith

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**VERSIONS OF THIS BILL**

[04/05/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/4282_20230405.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWs BY AMENDING SECTION 58‑37‑10, RELATING TO DEFINiTIONS, SO AS TO PROVIDE FOR “DEMAND‑SIDE MANAGEMENT PROGRAMs”, “COST‑EFFECTIVE”, AND “DEMAND‑SIDE MANAGEMENT PILOT PROGRAMS”; by amending SECTION 58‑37‑20, RELATING TO THE ADOPTION OF PROCEDURES ENCOURAGING ENERGY EFFICIENCY AND CONSERVATION, SO AS TO REQUIRE THE PUBLIC SERVICE COMMISSION TO ADOPT PROCEDURES TO REQUIRE ELECTRICAL UTILITIES AND ENCOURAGE GAS UTILiTIES TO PLAN FOR AND INVEST IN ALL COST‑EFFECTIVE ENERGY EFFICIENCY AND DEMAND‑SIDE RESOURCES AND TO REQUIRE THE COMMISSION TO REVIEW ANNUAL REPORTS FROM THE UTILITIES; by AMENDing SECTION 58‑37‑30, RELATING TO REPORTS ON DEMAND‑SIDE ACTIVITIES OF GAS AND ELECTRIC UTILITIES, SO AS TO MAKE TECHNICAL CHANGES; AND TO REQUIRE THE OFFICE OF REGULATORY STAFF TO STUDY POTENTIAL COSTS AND BENEFITS OF ESTABLISHING A THIRD‑PARTY ADMINISTRATOR FOR ENERGY EFFICIENCY AND OTHER DEMAND-SIDE MANAGEMENT PROGRAMS, AND TO PROVIDE CERTAIN REQUIREMENTS FOR THIS STUDY.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 58-37-10 of the S.C. Code is amended to read:

 Section 58-37-10. As used in this chapter unless the context clearly requires otherwise:

 (1) “Demand-side activity management program” means a program conducted or proposed by a producer, supplier, or distributor of energy for the reduction or more efficient use of energy requirements of the producer's, supplier's, or distributor's customers, through measures including, but not limited to, conservation and energy efficiency, load management, cogeneration, and renewable energy technologies.

 (2) “Integrated resource plan” means a plan which contains the demand and energy forecast for at least a fifteen-year period, contains the supplier's or producer's program for meeting the requirements shown in its forecast in an economic and reliable manner, including both demand-side and supply-side options, with a brief description and summary cost-benefit analysis, if available, of each option which was considered, including those not selected, sets forth the supplier's or producer's assumptions and conclusions with respect to the effect of the plan on the cost and reliability of energy service, and describes the external environmental and economic consequences of the plan to the extent practicable. For electrical utilities subject to the jurisdiction of the South Carolina Public Service Commission, this definition must be interpreted in a manner consistent with the integrated resource planning process requirements pursuant to Section 58‑37‑40 and any process adopted by the commission. For electric cooperatives subject to the regulations of the Rural Electrification Administration, this definition must be interpreted in a manner consistent with any integrated resource planning process prescribed by Rural Electrification Administration regulations.

 (3) “Cost‑effective” means that the net present value of benefits of a program or portfolio exceeds the net present value of the costs of the program or portfolio, as determined by at least two of the following tests:

 (a) the Utility Cost Test, which is also referred to as the Program Administrator Test;

 (b) the Total Resource Cost Test;

 (c) the Participant Cost Test; and

 (d) the Ratepayer Impact Measure Test. In calculating cost‑effectiveness, a utility must use standard utility practice for determining the percentage of customers that would or would not have adopted a measure without any incentive allowed under this article to install and utilize the technology as part of the associated demand‑side management program. The utility must designate the expected useful life of the measure and evaluate the costs and benefits of the measures over their useful lives in the program application based on industry accepted standards.

 (4) “Demand‑side management pilot program” means a demand‑side management program that is of limited scope, cost, and duration and that is intended to determine whether a new or substantially revised program or technology would be cost‑effective.

SECTION 2. Section 58-37-20 of the S.C. Code is amended to read:

 Section 58-37-20. (A) The General Assembly finds and declares that expanding utility investment in and customer access to demand‑side management programs to the maximum extent possible will result in more efficient use of existing resources, promote lower energy bills, protect the public health and safety, and stimulate economic development and employment, and is therefore in the public interest.

 (B) The South Carolina Public Service Commission may must adopt procedures that encourage require electrical utilities and encourage public utilities providing gas services subject to the jurisdiction of the commission to plan for and invest in all available energy efficiency and demand‑side resources that are in cost-effective energy efficient technologies and energy conservation programs. If adopted, These procedures must: provide incentives and cost recovery for energy suppliers and distributors who invest in energy supply and end-use technologies that are cost-effective, environmentally acceptable, and reduce energy consumption or system or local coincident peak demand; allow energy suppliers and distributors to recover costs and obtain a reasonable rate of return on their investment in qualified demand-side management programs sufficient to make these programs at least as financially attractive as construction of new generating facilities; require the Public Service Commission to establish rates and charges that ensure that the net income of an electrical or gas utility regulated by the commission after implementation of specific cost-effective energy conservation measures is at least as high as the net income would have been if the energy conservation measures had not been implemented. For purposes of this section only, the term “demand-side activity” means a program conducted by an electrical utility or public utility providing gas services for the reduction or more efficient use of energy requirements of the utility or its customers including, but not limited to, utility transmission and distribution system efficiency, customer conservation and efficiency, load management, cogeneration, and renewable energy technologies.

 (C) Each investor-owned electrical utility must submit an annual report to the commission describing the demand‑side management programs implemented by the electrical utility in the previous year. The report must document the following:

 (1) achieved savings levels from the utility’s portfolio of programs in the prior year, reported as a percentage of the utility’s total annual sales;

 (2) program expenditures, including incentive payments;

 (3) peak demand and energy savings impacts and the techniques used to estimate those impacts;

 (4) avoided costs and the techniques used to estimate those costs;

 (5) the estimated cost‑effectiveness of the demand‑side management programs;

 (6) the net economic benefits of the demand‑side management programs;

 (7) the number of customers eligible to opt out of the utility’s demand‑side management programs, the percentage of those customers that opted out in the previous year, and the annual sales associated with those opted out customers; and

 (8) any other information required by the commission.

 (D) To ensure prudent investments by an electrical utility in energy efficiency and demand response, as compared to potential investments in generation, transmission, distribution, and other supply related utility equipment and resources, the commission must review each investor‑owned electrical utility’s portfolio of demand‑side management programs on at least a triennial basis to align with the review of each utility’s integrated resource plan pursuant to Section 58‑37‑40. The commission is authorized to order modifications to a utility’s demand‑side management portfolio, including program budgets, if it determines that doing so is in the public interest. In evaluating a utility’s portfolio of demand‑side management programs to assure reasonableness, promotion of the public interest, and consistency with the objectives of Sections 58‑27‑845 and 58‑37‑20(A), the commission must ensure that:

 (1) the utility has demonstrated that it is pursuing all available and cost-effective energy efficiency and demand‑side resources;

 (2) the utility’s portfolio of demand‑side management programs gives all classes of customers an opportunity to participate and gives due regard to the urgent need for demand‑side management programs that serve the needs of low‑income customers; and

 (3) utility demand‑side management programs are cost‑effective, except that:

 (a) demand‑side management programs targeted to low‑income customers need not be cost‑effective if a utility’s portfolio of demand‑side management programs is cost effective as a whole;

 (b) the commission may waive cost‑effectiveness considerations for resilient energy resource programs targeting critical facilities; and

 (c) the commission may approve demand‑side management pilot programs that it determines are in the public interest.

SECTION 3. Section 58-37-30 of the S.C. Code is amended to read:

 Section 58-37-30. (A) The South Carolina Public Service Commission must report annually to the General Assembly on available data regarding the past, on-going, and projected status of demand-side activities management programs and purchase of power from qualifying facilities, as defined in the Public Utilities Regulatory Policies Act of 1978, by electrical utilities and public utilities providing gas services subject to the jurisdiction of the Public Service Commission.

 (B) Electric cooperatives providing resale or retail services, municipally-owned municipally owned electric utilities, and the South Carolina Public Service Authority shall report annually to the State Energy Office on available data regarding the past, on-going, and projected status of demand-side activities management programs and purchase of power from qualifying facilities. For electric cooperatives, submission to the State Energy Office of a report on demand-side activities management programs in a format complying with then current Rural Electrification Administration regulations constitutes compliance with this subsection. An electric cooperative providing resale services may submit a report in conjunction with and on behalf of any electric cooperative which purchases electric power and energy from it. The State Energy Office must compile and submit this information annually to the General Assembly.

 (C) The State Energy Office may provide forms for the reports required by this section to the Public Service Commission and to electric cooperatives, municipally-owned municipally owned electric utilities, and the South Carolina Public Service Authority. The office shall strive to minimize differing formats for reports, taking into account the reporting requirements of other state and federal agencies. For electrical utilities and public utilities providing gas services subject to the jurisdiction of the commission, the reporting form must be in a format acceptable to the commission.

SECTION 4. (A) The Office of Regulatory Staff must conduct a study to evaluate the potential costs and benefits of establishing a nonprofit entity to serve as a third‑party administrator for energy efficiency programs and other demand‑side management programs funded, or potentially funded, by one or more utility companies in South Carolina. This study must be conducted with public input, and is subject to available funding.

 (B) The study must:

  (1) consider the experience of third‑party energy efficiency and demand‑side management administrators in other states;

 (2) evaluate whether third‑party administration offers opportunities to increase cost and energy savings, improve the quality of services rendered, reduce ratepayer costs, or effectively serve low‑income customers, within a program portfolio that is cost‑effective overall as compared to similar program administration by individual utilities, or to increase the cost‑effectiveness of energy efficiency program portfolios, taking into account, but not limited to:

  (a) whether third‑party administration could reduce administrative costs, as compared to separate administration of energy efficiency programs by one or more investor‑owned electric and gas utilities, electric cooperatives, municipally‑owned electric utilities, and the South Carolina Public Service Authority;

 (b) whether a system benefit charge or other funding or financing mechanism would more efficiently, effectively, and fairly fund energy efficiency and other demand‑side management programs through a third‑party administrator;

  (c) whether third‑party administration is an appropriate mechanism to increase ratepayer energy savings in the case of the utilities that have experienced lower historical performance in terms of annual and cumulative energy savings as a percentage of retail sales;

 (d) whether third‑party administration offers opportunities to more efficiently administer programs that save electricity, gas, and water, and to obtain more comprehensive energy savings for a broader range of customers, and to facilitate improved and more independent evaluation, measurement, and verification of program performance, as compared to programs separately administered by individual utilities;

  (e) whether a third‑party administrator could promote more uniform program rules and offerings across utility programs and territories in a manner that facilitates enhanced participation by vendors and contractors who deliver energy efficiency services, and whether such administration could facilitate workforce development to support energy efficiency and demand‑side management in South Carolina;

 (f) whether a third‑party administrator could enhance delivery of nonenergy benefits, such as resilience, reliability, health, economic development, energy security, and pollution reduction; and

  (g) whether a third‑party administrator could more effectively pursue nonratepayer funding, including, but not limited to, federal, state, or local government support, as a means of either reducing reliance on ratepayer funds or increasing the scope, reach, or effectiveness of energy efficiency and demand‑side management programs.

 (C) The Office of Regulatory Staff must conduct this study with assistance from the South Carolina Energy Office. This study also must be conducted with public input from stakeholders by written comments and at least one public forum.

 (D) The Office of Regulatory Staff is authorized to retain the services of an expert or consultant with expertise and experience in the successful implementation of independently administered ratepayer funded energy efficiency programs. The Office of Regulatory Staff is exempt from the procurement code for the purposes of retaining these services for this study provided that the costs do not exceed one hundred-fifty thousand dollars.

 (E) Within one year from the date of this act, the Office of Regulatory Staff must initiate the study, and must complete its report within eighteen months from the date of this act. Upon completion of this study, the Office of Regulatory Staff must provide its report to the General Assembly and the Public Service Commission. This report may include a recommendation as to whether or not a statewide third‑party energy efficiency administrator should be established, draft legislation, and requirements that should be established.

SECTION 5. This act takes effect upon approval by the Governor.

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