**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 12 TO CHAPTER 52, TITLE 48 SO AS TO DEFINE CERTAIN TERMS; TO PROVIDE ELECTRIC PROVIDERS COLLECTIVELY SHALL ACHIEVE SPECIFIC MINIMUM ENERGY SAVINGS USING ENERGY EFFICIENCY RESOURCE PLANS; TO PROVIDE REQUIREMENTS FOR THE STATE ENERGY OFFICE TO MEET WITH RESPECT TO ENERGY EFFICIENCY RESOURCES PLANS; TO PROVIDE AN ENERGY EFFICIENCY FUND MUST BE CREATED WITH CONTRIBUTIONS FROM ELECTRIC AND GAS PROVIDERS TO SUPPORT AN ENERGY EFFICIENCY RESOURCE PLAN; TO PROVIDE THE RATES OF CONTRIBUTIONS FOR FUNDING THE ENERGY EFFICIENCY FUND; TO PROVIDE AN ELECTRIC OR GAS PROVIDER MAY HAVE A SELF‑DIRECTED ENERGY EFFICIENCY RESOURCE PLAN; TO PROVIDE REQUIREMENTS FOR A SELF‑DIRECTED ENERGY EFFICIENCY RESOURCE PLAN; TO PROVIDE A PROVIDER MAY RECOVER THE COSTS OF IMPLEMENTING ITS SELF‑DIRECTED ENERGY EFFICIENCY RESOURCE PLAN IF REGULATED BY THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION; AND TO PROVIDE THE STATE ENERGY OFFICEMAY ESTABLISH AN ENERGY EFFICIENCY RESOURCE CREDIT CERTIFICATION AND TRACKING PROGRAM USING A SYSTEM OF CREDITS AS A MEANS OF DEMONSTRATING COMPLIANCE WITH THIS ACT.

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

SECTION 1. Chapter 52, Title 48 of the 1976 Code is amended by adding:

“Article 12

Energy Efficiency Resource Standards

Section 48‑52‑910. For purposes of this article:

(1) ‘Commission’ means the South Carolina Public Service Commission.

(2) ‘Cost‑effective’ means a benefit‑cost test that measures the net cost of energy efficiency as a resource option based on the costs incurred by the utility, including incentive costs and an increased supply cost, and the benefits to the utility and its customers, including the avoided supply cost of energy, purchased capacity, and construction of a new generation resource.

(3) ‘Demand‑side management’ means an activity, program, or initiative undertaken by an energy supplier or its customer to shift the timing of energy use from a peak to a nonpeak demand period. Demand‑side management includes, but is not limited to, load management, energy system equipment and operating controls, direct load control, and interruptible load, for the purposes of either economic efficiency or ensuring system reliability.

(4) ‘Energy conservation’ means the reduction of customer energy use through the installation of measures or changes in energy usage behavior.

(5) ‘Energy efficiency’ means an equipment, physical, or program intervention that results in less energy used to perform the same function.

(6) ‘Energy efficiency resource’ means:

(a) a program that achieves:

(i) energy efficiency;

(ii) demand‑side management; and

(iii) energy conservation, but only to the extent that a decrease in the consumption of electricity produced by energy conservation is objectively measurable and attributable to an energy optimization plan; or

(b) an energy recycling system that results in the conservation and efficient use of energy and meets the applicable Department of Health and Environmental Control air quality standards.

(7) ‘Energy efficiency resource credit’ or ‘EER credit’ means a credit certified pursuant to Section 48‑52‑950 that represents achieved energy savings.

(8) ‘Energy efficiency resource plan’ or ‘EER plan’ means a plan described in Section 48‑52‑930.

(9) ‘Energy efficiency resource standard’ or ‘EERS’ means the minimum savings required to be achieved under Section 48‑52‑920.

(10) ‘Energy recycling’ means:

(a) the simultaneous production of electricity and heat from a single fuel source at an efficiency that is significantly greater than the production of either electricity or heat alone; or

(b) a system that uses waste heat to produce electricity or useful and measurable thermal or mechanical energy at a retail electric customer’s facility.

(11) ‘Provider’ means:

(a) a person or entity regulated by the commission for the purpose of selling electricity or natural gas to retail customers in this State;

(b) a municipally owned electric utility in this State;

(c) a cooperative electric utility in this State; or

(d) the South Carolina Public Service Authority.

Section 48‑52‑920. (A) Electric providers collectively shall achieve the following minimum energy savings using energy efficiency programs:

(1) annual incremental energy savings in 2010 equal to 0.25% of total annual retail electricity sales in megawatt hours in the preceding year;

(2) annual incremental energy savings in 2015 equal to 1.0% of total annual retail electricity sales in megawatt hours in the preceding year; and

(3) annual incremental energy savings beginning in 2020 equal to 1.5% of total annual retail electricity sales in megawatt hours in the preceding year.

(B) Natural gas providers collectively shall achieve the following minimum energy savings using energy efficiency programs:

(1) biennial incremental energy savings in 2010 equal to 0.25% of total annual retail natural gas sales in decatherms or equivalent thousand cubic feet in the preceding year; and

(2) annual incremental energy savings beginning in 2015 equal to 1.0% of total annual retail natural gas sales in decatherms or equivalent thousand cubic feet in the preceding year.

(C) The State Energy Office shall develop rules necessary to implement this section, and may:

(1) establish procedures to take into consideration factors such as weather normalization or other factors that cannot be easily anticipated in establishing the baseline for calculating the annual goals; and

(2) on its own motion, initiate proceedings to modify the goals, considering:

(a) evidence that the goals cannot be attained at a cost that is similar to or less than the cost of building new generation or supplying additional natural gas resources to customers;

(b) evidence that achieving the goals will reduce the future risk to consumers of higher rates due to fuel price increases;

(c) evidence that achieving the goals will reduce the demand for water resources and the economic consequences of this reduction; and

(d) evidence that achieving the goals will reduce the cost of actual or anticipated regulation to control greenhouse gas emissions.

Section 48‑52‑930. (A) The State Energy Office shall complete an interim or final EER plan by November 1, 2009, and may revise it as considered appropriate.

(B) The State Energy Office, or its appointee as specified in subsection (C) of this section, shall solicit or create, approve, monitor, and update an EER plan. The plan must be subject to public review and:

(1) describe the proposed energy efficiency, energy conservation, demand‑side management, and energy recycling programs and measures, anticipated costs, and projected electricity and natural gas savings;

(2) demonstrate that the proposed programs are sufficient to ensure the achievement of the EERS;

(3) specify the necessary funding levels to implement proposed programs and achieve the EERS;

(4) provide necessary flexibility in the design of the programs or allocation of funding levels desirable to ensure the achievement of the EERS;

(5) ensure a charge collected from a particular customer rate class is spent on a program beneficial to that rate class;

(6) demonstrate that programs and measures, excluding program offerings to low income residential customers, will be collectively cost effective, taking into consideration a valuation of benefits authorized in this act;

(7) include offerings for each customer class, including low income residential;

(8) include a process for obtaining an independent expert evaluation of the actual energy optimization plan programs; and

(9) provide for the timely public review of all demonstrations, findings and evaluations conducted under this act.

(C) The State Energy Office shall provide for the development, implementation, and monitoring of an energy efficiency resource plan sufficient to achieve the EERS by one or more entities appointed by the South Carolina Energy Office for these purposes, subject to:

(1) Appointment of an entity must be by contract or by an order of appointment. An appointment, whether by order of appointment or by contract, only must be issued after notice and opportunity for hearing. An order of appointment may include conditions and requirements considered appropriate to promote the public good. The South Carolina Energy Office may amend or revoke an order of appointment for good cause, but only after providing notice and opportunity for hearing on the revocation.

(2) A compensation mechanism for an entity must be based on verified savings in energy use or another performance target specified by the State Energy Office for good cause and purpose.

(3) An appointed entity must deliver a program approved by the State Energy Office in an effective, efficient, timely, and competent manner.

(D) The South Carolina Energy Office shall:

(1) ensure that all retail consumers, regardless of retail electricity, gas, or heating or process fuel provider, will have an opportunity to participate in and benefit from a comprehensive set of cost‑effective energy efficiency programs and initiatives designed to overcome barriers to participation;

(2) promote program initiatives and market strategies that address the needs of persons or businesses facing the most significant barriers to participation;

(3) promote coordinated program delivery, including coordination with low income weatherization programs, other efficiency programs, and utility programs;

(4) provide a reasonably stable multiyear budget and planning cycle in order to promote program improvement, program stability, enhanced access to capital and personnel, improved integration of program designs with the budgets of regulated companies providing energy services, and maturation of programs and delivery resources;

(5) require verification, within ten months of a completed program year, by an independent auditor of the reported energy and capacity savings and cost effectiveness of programs delivered by an entity appointed by the board to deliver energy efficiency programs under subsection (A) of this section. The verification of program year accomplishments may be updated in subsequent years in keeping with best practices through follow‑up surveys that may be conducted on a schedule approved by the commission; and

(6) by June 1, 2010, and annually afterward, issue a report on the effort to implement the EERS through the EER plan and provider‑directed EER plans.

Section 48‑52‑940. (A)(1) Except as provided by Section 48‑52‑960 and Section 48‑52‑970, and by subsection (B) of this section, an energy efficiency fund must be established with contributions from electric and gas providers in the State to support the EER plan. These providers must contribute to the fund at the following rates:

(a) in 2009, an amount equal to 0.33% of retail sales revenue in the preceding year;

(b) in 2010, an amount equal to 0.67% of retail sales revenue in the preceding year;

(c) in 2011, an amount equal to 1.00% of retail sales revenue in the preceding year;

(d) in 2012, an amount equal to 1.33% of retail sales revenue in the preceding year;

(e) in 2013, an amount equal to 1.67% of retail sales revenue in the preceding year;

(f) in 2014, an amount equal to 2.00% of retail sales revenue in the preceding year;

(g) in 2015, an amount equal to 2.33% of retail sales revenue in the preceding year;

(h) in 2016, an amount equal to 2.67% of retail sales revenue in the preceding year; and

(i) in 2017, an amount equal to 3.00% of retail sales revenue in the preceding year.

(2) The contribution must be known as the energy efficiency fund charge.

(3) A balance in the energy efficiency fund:

(a)(i) must be ratepayer funds;

(ii) must be used to support the activities authorized in Section 48‑52‑930;

(iii) annually must be carried forward and remain in the fund at the end of a fiscal year; and

(iv) must not be available to meet the general obligations of the State;

(b) interest earned shall remain in the fund.

(B) An electric or gas provider subject to regulation by the commission may submit and adhere to an alternative schedule of contributions sufficient to achieve the EERS, subject to the commission’s approval.

Section 48‑52‑950. (A) An electric or gas provider may petition to operate a self‑directed EER plan if the plan is filed, reviewed and approved by the State Energy Office, or its appointee, and is subject to public review in a manner consistent with the intent of Section 48‑52‑930.

(2) A provider’s self‑directed EER plan may be either comprehensive or offer selected programs.

(3) If regulated by the commission, a provider’s self‑directed EER plan may request incentives, cost recovery, and a reasonable rate of return on investment, including such rate adjustments or structures as may be necessary to ensure that an electrical or gas utility regulated by the commission continues to have the opportunity to earn a reasonable rate of return on its infrastructure investments, subject to approval by the commission.

(4) The State Energy Office or its appointee may not approve a proposed self‑directed EER plan unless it determines the plan:

(a) is sufficient to achieve the EERS in whole or in part;

(b) meets the requirements specified in section 48‑52‑940(B); and

(c) describes how the plan’s program costs will be recovered pursuant to subsection (C) of this section.

(5) A provider operating a self‑directed EER plan shall provide an annual report on plan implementation and progress towards achieving the EERS.

(6) After notice and opportunity for hearing, the State Energy Office, or its appointee, may amend or revoke a provider’s self‑directed EER plan and its associated cost recovery mechanism, as specified in Section 48‑52‑960, if the provider fails to demonstrate sufficient progress towards achieving the EERS or, in the estimation of the State Energy Office or its appointee, does not meet a requirement set forth in items (1), (2) and (3) of Section 48‑52‑930(D).

(B) Upon the effective date of a provider’s self‑directed EER plan, the provider must be exempt from the energy efficiency charge specified in Section 48‑52‑940.

(1) For a comprehensive self‑directed EER plan, the charges specified in Section 48‑52‑940 may not apply to customers of the provider.

(2) For all other self‑directed EER plans, the State Energy Office, or its appointee, shall determine the extent to which the plan will partially achieve the EERS, and adjust the charge to each customer class based on a determination of the necessary funding levels for the appointed entity to implement programs for each customer class such that the EERS is achieved.

(3) The collection of duplicative funding and the offering of duplicative services is prohibited.

(C) A self‑directed EER plan may include programs that provide customers with appropriate rate reductions in recognition of verified energy efficiency achievements, subject to a determination of cost‑effectiveness and any other conditions as deemed appropriate by the State Energy Office or its appointee.

Section 48‑52‑960. (A) If regulated by the commission, a provider may recover the costs of implementing its approved self‑direct EER plan, subject to the following:

(1) A provider’s request for cost recovery:

(a) must be filed, reviewed, and approved or rejected by the commission;

(b) must demonstrate that its anticipated costs are reasonable and prudent, and that its actual costs will be reported in a manner to demonstrate that they have been incurred in a reasonable and prudent manner;

(c) must demonstrate that its anticipated costs are necessary to implement the proposed programs and achieve the EERS in total or in part;

(d) may provide for any necessary flexibility in the design of the programs or allocation of funding levels desirable to ensure the achievement of the EERS; and

(e) must ensure that charges collected from a particular customer rate class are spent on programs beneficial to that rate class.

(B) In approving a provider’s request, the commission shall specify the conditions under which a provider may not recover costs.

Section 48‑52‑970. The State Energy Office may establish an energy efficiency resource credit certification and tracking program using EER systems to demonstrate compliance with this act. Upon adoption of this program, its effective date may be no earlier than three months after the next session of the General Assembly which begins at least one month after the adoption of the program. The certification and tracking program may be contracted to and performed by a third party through a system of competitive bidding.”

SECTION 2. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑