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Indicates New Matter

COMMITTEE REPORT

March 4, 2010

**S. 1096**

Introduced by Senators McConnell, Alexander, Rankin, Hutto, Matthews, Leatherman, Land, Hayes, Anderson, Scott, Coleman, O’Dell, Nicholson, Setzler, Cleary, Courson, Verdin, L. Martin, Knotts, Lourie, Sheheen, Mulvaney, Campbell, S. Martin, Massey, Grooms, Davis, Shoopman, Thomas, Ford, Elliott and Rose

S. Printed 3/4/10--H.

Read the first time March 2, 2010.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 1096) to amend the Code of Laws of South Carolina, 1976, by adding Section 58‑37‑50, so as to authorize electricity providers and natural gas providers to implement, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the title and inserting:

/ Whereas, there are various factors putting upward pressure on the price of electricity and natural gas, and those factors are likely to increase in the foreseeable future; and

Whereas, improvement of residential energy efficiency and conservation can protect South Carolina electricity and natural gas consumers from these price increases; and

Whereas, the implementation of energy efficiency and conservation measures in South Carolina residences will benefit not only the residents of the homes in which the measures are installed, but also all residents of South Carolina by reducing the need for new and expensive sources of generation; and

Whereas, the costs of energy efficiency and conservation measures and the availability of financing for these costs are now, and have been, major impediments to the widespread adoption of energy efficiency and conservation measures; and

Whereas, South Carolina electricity providers and natural gas providers are in a position to assist their customers with the installation and financing of energy efficiency and conservation measures, provided that appropriate procedures are followed for the installation of the measures and the recovery of the costs of the measures; and

Whereas, in order to make energy efficiency and conservation measures available to rental properties, it is appropriate to require the landlords who will benefit from the measures and who voluntarily agree to participate to give notice to tenants who will be living in the rental units in which the energy efficiency and conservation measures are installed. Now, therefore,

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

SECTION 1. Chapter 37, Title 58 of the 1976 Code is amended by adding:

“Section 58‑37‑50. (A) As used in this section:

(1) ‘Electricity provider’ means an electric cooperative, an investor‑owned electric utility, the South Carolina Public Service Authority, or a municipality or municipal board or commission of public works that owns and operates an electric utility system.

(2) ‘Natural gas provider’ means an investor‑owned natural gas utility or publicly owned natural gas provider.

(3) ‘Meter conservation charge’ means the charge placed on a customer’s account by which electricity providers and natural gas providers recover the costs, including financing costs, of energy efficiency and conservation measures.

(4) ‘Notice of meter conservation charge’ means the written notice by which subsequent purchasers or tenants will be given notice that they will be required to pay a meter conservation charge.

(5) ‘Customer’ means a homeowner or tenant receiving electricity or natural gas as a retail customer.

(6) ‘Community action agency’ means a nonprofit eleemosynary corporation created pursuant to Chapter 45, Title 43 providing, among other things, weatherization services to a homeowner or tenant.

(B) Electricity providers and natural gas providers may enter into written agreements with customers and landlords of customers for the financing of the purchase price and installation costs of energy efficiency and conservation measures. These agreements may provide that the costs must be recovered by a meter conservation charge on the customer’s electricity or natural gas account, provided that the electricity providers and natural gas providers comply with the provisions of this section. A failure to pay the meter conservation charge may be treated by the electricity provider or natural gas provider as a failure to pay the electricity or natural gas account, and the electricity provider or natural gas provider may disconnect electricity or natural gas service for nonpayment of the meter conservation charge, provided the electricity provider or natural gas provider complies with the provisions of Article 25, Chapter 31, Title 5; Article 17, Chapter 11, Title 6; Article 17, Chapter 49, Title 33; Article 11, Chapter 5, Title 58; Article 21, Chapter 27, Title 58; Article 5, Chapter 31, Title 58; and any applicable rules, regulations, or ordinances relating to disconnections.

(C) Any agreement permitted by subsection (B) must state plainly the interest rate to be charged to finance the costs of the energy efficiency and conservation measures. The interest rate must be a fixed rate over the term of the agreement and must not exceed four percent above the stated yield for one‑year treasury bills as published by the Federal Reserve at the time the agreement is entered. Any indebtedness created under the provisions of this section may be paid in full at any time before it is due without penalty.

(D) An electricity provider or natural gas provider may recover the costs, including financing costs, of these measures from its members or customers directly benefiting from the installation of the energy efficiency and conservation measures. Recovery may be through a meter conservation charge to the account of the member or customer and any such charge must be shown by a separate line item on the account.

(E) An electricity provider or natural gas provider shall assume no liability for the installation, operation, or maintenance of energy efficiency and conservation measures when the measures are performed by a third party, and shall not provide any warranty as to the merchantability of the measures or the fitness for a particular purpose of the measures, and no action may be maintained against the electricity provider or natural gas provider relating to the failure of the measures. An electricity provider or natural gas provider shall assume no liability for energy audits performed by third parties and shall provide no warranty relating to any energy audit done by any third party. Nothing in this section may be construed to limit any rights or remedies of utility customers and landlords of utility customers against other parties to a transaction involving the purchase and installation of energy efficiency and conservation measures.

(F) Before entering into an agreement contemplated by this section, the electricity provider or natural gas provider shall cause to be performed an energy audit on the residence considered for the energy efficiency measures. The energy audit must be conducted by an energy auditor certified by the Building Performance Institute or similar organization. The audit must provide an estimate of the costs of the proposed energy efficiency and conservation measures and the expected savings associated with the measures, and it must recommend measures appropriately sized for the specific use contemplated. An agreement entered following completion of an energy audit shall specify the measures to be completed and the contractor responsible for completion of the measures. The choice of a contractor to perform the work must be made by the owner of the residence. Upon request, the electricity provider or natural gas provider must provide the owner of the residence with a list of contractors qualified to do the work. Upon completion of the work, it must be inspected by an energy auditor certified by the Building Performance Institute or similar organization. Any work that is determined to have been done improperly or to be inappropriately sized for the intended use must be remedied by the responsible contractor. Until the work has been remedied, funds due to the contractor must be held in escrow by the electricity provider or natural gas provider.

(G) An electricity provider or natural gas provider that enters into an agreement as provided in this section may recover the costs, including financing costs, of energy efficiency and conservation measures from subsequent purchasers of the residence in which the measures are installed, provided the electricity provider or natural gas provider gives record notice that the residence is subject to the agreement. Notice must be given, at the expense of the filer, by filing a notice of meter conservation charge with the appropriate office for the county in which the residence is located, pursuant to Section 30‑5‑10. The notice of meter conservation charge does not constitute a lien on the property but is intended to give a purchaser of the residence notice that the residence is subject to a meter conservation charge. Notice is deemed to have been given if a search of the property records of the county discloses the existence of the charge and informs a prospective purchaser: (1) how to ascertain the amount of the charge and the length of time it is expected to remain in effect, and (2) of his obligation to notify a tenant if the purchaser leases the property as provided in subsection (H)(3).

(H) An electricity provider or natural gas provider may enter into agreements for the installation of energy efficiency and conservation measures and the recovery of the costs, including financing costs, of the measures with respect to rental properties by filing a notice of meter conservation charge as provided in subsection (G) and by complying with the provisions of this subsection:

(1) The energy audit required by subsection (F) above must be conducted and the results provided to both the landlord and the tenant living in the rental property at the time the agreement is entered.

(2) If both the landlord and tenant agree, the electricity provider or natural gas provider may recover the costs of the energy efficiency and conservation measures, including financing costs, through a meter conservation charge on the account associated with the rental property occupied by the tenant. The agreement must provide notice to the landlord of the provisions contained in subsection (H)(3).

(3) With respect to a subsequent tenant occupying a rental unit benefiting from the installation of energy efficiency and conservation measures, the electricity provider or natural gas provider may continue to recover the costs, including financing costs, of the measures through a meter conservation charge on the account associated with the rental property occupied by the tenant. With respect to a subsequent tenant, the landlord must give a written notice of meter conservation charge in the same manner as required by Section 27‑40‑420. If the landlord fails to give the subsequent tenant the required notice of meter conservation charge, the tenant may deduct from his rent, for no more than one‑half of the term of the rental agreement, the amount of the meter conservation charge paid to the electricity provider or natural gas provider.

(I) Agreements entered pursuant to the provisions of this section are exempt from the provisions of the South Carolina Consumer Protection Code, Chapter 2, Title 37.

(J) An electricity provider or natural gas provider may contract with third parties to perform functions permitted under this section, including the financing of the costs of energy efficiency and conservation measures. A third party must comply with all applicable provisions of this section.

(K) The provisions of this section apply only to energy efficiency and conservation measures for a residence already occupied at the time the measures are taken. The procedures allowed by this section may not be used with respect to a new residence or a residence under construction. The provisions of this section may not be used to implement energy efficiency or conservation measures that result in the replacement of natural gas appliances or equipment with electric appliances or equipment or that result in the replacement of electric appliances or equipment with natural gas appliances or equipment unless the customer who seeks to install the energy efficiency or conservation measure is being provided electric and natural gas service by the same provider.

(L) Electricity providers or natural gas providers may offer their customers other types of financing agreements available by law, instead of the option established in this section, for the types of energy efficiency or conservation measures described in this section.

(M)(1) An electricity provider or natural gas provider must not obtain funding from the following federal programs to provide loans provided by this section:

(a) the Low Income Home Energy Assistance Program (LIHEAP), created by Title XXVI of the Omnibus Budget Reconciliation Act of 1981 and codified as Chapter 94, Title 42 of the United States Code, as amended by the Human Services Reauthorization Act of 1984, the Human Services Reauthorization Act of 1986, the Augustus F. Hawkins Human Services Reauthorization Act of 1990, the National Institutes of Health Revitalization Act of 1993, the Low Income Home Energy Amendments of 1994, the Coats Human Services Reauthorization Act of 1998, and the Energy Policy Act of 2005 which is administered and funded by the United States Department of Health and Human Services on the federal level and administered locally by community action agencies;

(b) the Weatherization Assistance Program, created by Title IV of the Energy Conservation and Production Act of 1976 and codified as Part A, Subchapter III, Chapter 81, Title 42 of the United States Code, amended by the National Energy Conservation Policy Act, the Energy Security Act, the Human Services Reauthorization Act of 1984, and the State Energy Efficiency Programs Improvement Act of 1990 and administered and funded by the United States Department of Energy on the federal level and administered locally by community action agencies.

(2) Nothing in this section changes the exclusive administration of these programs by local community action agencies through the South Carolina Governor’s Office of Economic Opportunity pursuant to its authority pursuant to the provisions of Chapter 45, Title 43, the Community Economic Opportunity Act of 1983.

(3) Nothing in this subsection prevents a customer or member of an electricity provider or natural gas provider from obtaining services under the Low Income Home Energy Assistance Program or the Weatherization Assistance Program.”

SECTION 2. Section 8‑21‑310 of the 1976 Code, as last amended by Act 329 of 2002, is further amended by adding a new item at the end to read:

“(23) for filing a notice of meter conservation charge as permitted by Section 58‑37‑50, ten dollars.”

SECTION 3. Section 27‑50‑40 (A) of the 1976 Code is amended by adding an item at the end to read:

“(8) existence of a meter conservation charge, as permitted by Section 58‑37‑50, that applies to electricity or natural gas service to the property.”

SECTION 4. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

There should be no cost to the General Fund of the State with the adoption of this bill.

**LOCAL GOVERNMENT IMPACT:**

The FIST network of local governments was surveyed to determine the impact of this bill on municipal governments. Municipal respondents indicated that participation by municipal electric systems is voluntary. In addition, if a municipality elects to participate, the bill provides a mechanism for cost recovery.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 58‑37‑50, SO AS TO AUTHORIZE ELECTRICITY PROVIDERS AND NATURAL GAS PROVIDERS TO IMPLEMENT FINANCING AGREEMENTS FOR THE INSTALLATION OF ENERGY EFFICIENCY AND CONSERVATION IMPROVEMENTS, TO PROVIDE FOR THE RECOVERY OF THE FINANCING THROUGH CHARGES PAID FOR BY THE CUSTOMERS BENEFITTING FROM THE INSTALLATION OF THE ENERGY EFFICIENCY AND CONSERVATION MEASURES; TO PROTECT THE ENTITIES FROM LIABILITY FOR THE INSTALLATION, OPERATION, AND MAINTENANCE OF THE MEASURES; TO PROVIDE FOR THE INSTALLATION OF ENERGY EFFICIENCY AND CONSERVATION MEASURES IN RENTAL PROPERTIES; AND TO PROVIDE A MECHANISM FOR RECOVERY OF THE COSTS OF THE MEASURES INSTALLED IN RENTAL PROPERTIES; TO AMEND SECTION 8‑21‑310, SO AS TO ALLOW CLERKS OF COURT AND REGISTERS OF DEEDS TO CHARGE A FEE FOR FILING A NOTICE OF METER CONSERVATION CHARGE; AND TO AMEND SECTION 27-50-40, SO AS TO REQUIRE THE DISCLOSURE OF A METER CONSERVATION CHARGE BY SELLERS OF REAL PROPERTY.

Whereas, there are various factors putting upward pressure on the price of electricity and natural gas, and those factors are likely to increase in the foreseeable future; and

Whereas, improvement of residential energy efficiency and conservation can protect South Carolina electricity and natural gas consumers from these price increases; and

Whereas, the implementation of energy efficiency and conservation measures in South Carolina residences will benefit not only the residents of the homes in which the measures are installed, but also all residents of South Carolina by reducing the need for new and expensive sources of generation; and

Whereas, the costs of energy efficiency and conservation measures and the availability of financing for these costs are now, and have been, major impediments to the widespread adoption of energy efficiency and conservation measures; and

Whereas, South Carolina electricity providers and natural gas providers are in a position to assist their customers with the installation and financing of energy efficiency and conservation measures, provided that appropriate procedures are followed for the installation of the measures and the recovery of the costs of the measures; and

Whereas, in order to make energy efficiency and conservation measures available to rental properties, it is appropriate to require the landlords who will benefit from the measures and who voluntarily agree to participate to give notice to tenants who will be living in the rental units in which the energy efficiency and conservation measures are installed. Now, therefore,

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

SECTION 1. Chapter 37, Title 58 of the 1976 Code is amended by adding:

“Section 58‑37‑50. (A) As used in this section:

(1) ‘Electricity provider’ means an electric cooperative, an investor-owned electric utility, the South Carolina Public Service Authority, or a municipality or municipal board or commission of public works that owns and operates an electric utility system.

(2) ‘Natural gas provider’ means an investor-owned natural gas utility or publicly owned natural gas provider.

(3) ‘Meter conservation charge’ means the charge placed on a customer’s account by which electricity providers and natural gas providers recover the costs, including financing costs, of energy efficiency and conservation measures.

(4) ‘Notice of meter conservation charge’ means the written notice by which subsequent purchasers or tenants will be given notice that they will be required to pay a meter conservation charge.

(5) ‘Customer’ means a homeowner or tenant receiving electricity or natural gas as a retail customer.

(B) Electricity providers and natural gas providers may enter into written agreements with customers and landlords of customers for the financing of the purchase price and installation costs of energy efficiency and conservation measures. These agreements may provide that the costs must be recovered by a meter conservation charge on the customer’s electricity or natural gas account, provided that the electricity providers and natural gas providers comply with the provisions of this section. A failure to pay the meter conservation charge may be treated by the electricity provider or natural gas provider as a failure to pay the electricity or natural gas account, and the electricity provider or natural gas provider may disconnect electricity or natural gas service for nonpayment of the meter conservation charge, provided the electricity provider or natural gas provider complies with the provisions of Article 25, Chapter 31, Title 5; Article 17, Chapter 11, Title 6; Article 17, Chapter 49, Title 33; Article 11, Chapter 5, Title 58; Article 21, Chapter 27, Title 58; Article 5, Chapter 31, Title 58; and any applicable rules, regulations, or ordinances relating to disconnections.

(C) Any agreement permitted by subsection (B) must state plainly the interest rate to be charged to finance the costs of the energy efficiency and conservation measures. The interest rate must be a fixed rate over the term of the agreement and must not exceed four percent above the stated yield for one‑year treasury bills as published by the Federal Reserve at the time the agreement is entered. Any indebtedness created under the provisions of this section may be paid in full at any time before it is due without penalty.

(D) An electricity provider or natural gas provider may recover the costs, including financing costs, of these measures from its members or customers directly benefiting from the installation of the energy efficiency and conservation measures. Recovery must be through a meter conservation charge to the account of the member or customer and must be shown by a separate line item on the account.

(E) An electricity provider or natural gas provider shall assume no liability for the installation, operation, or maintenance of energy efficiency and conservation measures when the measures are performed by a third party, and shall not provide any warranty as to the merchantability of the measures or the fitness for a particular purpose of the measures, and no action may be maintained against the electricity provider or natural gas provider relating to the failure of the measures. Nothing in this section may be construed to limit any rights or remedies of utility customers and landlords of utility customers against other parties to a transaction involving the purchase and installation of energy efficiency and conservation measures.

(F) Before entering into an agreement contemplated by this section, the electricity provider or natural gas provider shall cause to be performed an energy audit on the residence considered for the energy efficiency measures. The energy audit must be conducted by an energy auditor certified by the Building Performance Institute or similar organization. The audit must provide an estimate of the costs of the proposed energy efficiency and conservation measures and the expected savings associated with the measures, and it must recommend measures appropriately sized for the specific use contemplated. An agreement entered following completion of an energy audit shall specify the measures to be completed and the contractor responsible for completion of the measures. The choice of a contractor to perform the work must be made by the owner of the residence. Upon request, the electricity provider or natural gas provider must provide the owner of the residence with a list of contractors qualified to do the work. Upon completion of the work, it must be inspected by an energy auditor certified by the Building Performance Institute or similar organization. Any work that is determined to have been done improperly or to be inappropriately sized for the intended use must be remedied by the responsible contractor. Until the work has been remedied, funds due to the contractor must be held in escrow by the electricity provider or natural gas provider.

(G) An electricity provider or natural gas provider that enters into an agreement as provided in this section may recover the costs, including financing costs, of energy efficiency and conservation measures from subsequent purchasers of the residence in which the measures are installed, provided the electricity provider or natural gas provider gives record notice that the residence is subject to the agreement. Notice must be given, at the expense of the filer, by filing a notice of meter conservation charge with the appropriate office for the county in which the residence is located, pursuant to Section 30‑5‑10. The notice of meter conservation charge does not constitute a lien on the property but is intended to give a purchaser of the residence notice that the residence is subject to a meter conservation charge. Notice is deemed to have been given if a search of the property records of the county discloses the existence of the charge and informs a prospective purchaser: (1) how to ascertain the amount of the charge and the length of time it is expected to remain in effect, and (2) of his obligation to notify a tenant if the purchaser leases the property as provided in subsection (H)(3).

(H) An electricity provider or natural gas provider may enter into agreements for the installation of energy efficiency and conservation measures and the recovery of the costs, including financing costs, of the measures with respect to rental properties by filing a notice of meter conservation charge as provided in subsection (G) and by complying with the provisions of this subsection:

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(2) If both the landlord and tenant agree, the electricity provider or natural gas provider may recover the costs of the energy efficiency and conservation measures, including financing costs, through a meter conservation charge on the tenant’s electricity or natural gas account. The agreement must provide notice to the landlord of the provisions contained in subsection (H)(3).

(3) With respect to a subsequent tenant occupying a rental unit benefiting from the installation of energy efficiency and conservation measures, the electricity provider or natural gas provider may continue to recover the costs, including financing costs, of the measures through a meter conservation charge on the electricity or natural gas account of the subsequent tenant. With respect to a subsequent tenant, the landlord must give a written notice of meter conservation charge in the same manner as required by Section 27‑40‑420. If the landlord fails to give the subsequent tenant the required notice of meter conservation charge, the tenant may deduct from his rent, for no more than one-half of the term of the rental agreement, the amount of the meter conservation charge paid to the electricity provider or natural gas provider.

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(J) An electricity provider or natural gas provider may contract with third parties to perform functions permitted under this section, including the financing of the costs of energy efficiency and conservation measures. A third party must comply with all applicable provisions of this section.

(K) The provisions of this section apply only to energy efficiency and conservation measures for a residence already occupied at the time the measures are taken. The procedures allowed by this section may not be used with respect to a new residence or a residence under construction. The provisions of this section may not be used to implement energy efficiency or conservation measures that result in the replacement of natural gas appliances or equipment with electric appliances or equipment or that result in the replacement of electric appliances or equipment with natural gas appliances or equipment unless the customer who seeks to install the energy efficiency or conservation measure is being provided electric and natural gas service by the same provider.

(L) Electricity providers or natural gas providers may offer their customers other types of financing agreements available by law, instead of the option established in this section, for the types of energy efficiency or conservation measures described in this section.”

SECTION 2. Section 8‑21‑310 of the 1976 Code, as last amended by Act 329 of 2002, is further amended by adding a new item at the end to read:

“(23) for filing a notice of meter conservation charge as permitted by Section 58‑37‑50, ten dollars.”

SECTION 3. Section 27-50-40 (A) of the 1976 Code is amended by adding an item at the end to read:

“(8) existence of a meter conservation charge, as permitted by Section 58-37-50, that applies to electricity or natural gas service to the property.”

SECTION 4. This act takes effect upon approval by the Governor.

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