

By: Turner

H.B. No. 1394

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the provision of electricity in this state; providing  
3 civil penalties.

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

5 SECTION 1. Subchapter B, Chapter 15, Utilities Code, is  
6 amended by adding Section 15.0295 to read as follows:

7 Sec. 15.0295. CIVIL PENALTY FOR VIOLATION OF SECTION  
8 39.157. (a) A person who violates Section 39.157 or a rule adopted  
9 or order issued under that section is subject to a civil penalty in  
10 an amount equal to three times the amount of economic benefit gained  
11 by the person as a result of the violation.

12 (b) At the request of the commission, the attorney general  
13 or the appropriate district or county attorney shall institute and  
14 conduct a suit to recover the penalty.

15 (c) On its own initiative, the attorney general, district  
16 attorney, or county attorney may institute and conduct a suit to  
17 recover the penalty. If a district attorney or county attorney  
18 institutes the suit, the district or county attorney shall provide  
19 notice of the suit to the commission and attorney general.

20 (d) The attorney general, at the request of the commission  
21 or on its own initiative, may intervene in a suit brought by a  
22 district or county attorney under Subsection (c). The attorney  
23 general may assume primary responsibility for conducting the suit  
24 if the commission or the attorney general determines that the issue

1 involved is of statewide importance.

2 (e) If a suit is brought by the attorney general or if the  
3 attorney general intervenes in a suit under Subsection (d), the  
4 independent organization certified under Section 39.151 and the  
5 commission shall provide to the attorney general all relevant  
6 information, including otherwise confidential information, related  
7 to the alleged violation. If a suit is brought by a district or  
8 county attorney and the attorney general does not assume primary  
9 responsibility for conducting the suit, the commission, the  
10 independent organization certified under Section 39.151, and the  
11 attorney general shall provide to the district or county attorney  
12 all relevant information, including otherwise confidential  
13 information, related to the alleged violation.

14 (f) The attorney general or district or county attorney may  
15 recover reasonable expenses incurred in obtaining a civil penalty,  
16 including investigation costs, court costs, reasonable attorney's  
17 fees, witness fees, and deposition expenses.

18 (g) Notwithstanding Section 15.033, the court by order  
19 shall provide for a penalty under this section to be paid to the  
20 consumers who incurred economic damage as a result of the violation  
21 so that each identifiable consumer is paid an amount of the total  
22 penalty collected that bears the same proportion to the total  
23 penalty collected as that consumer's economic damage bears to the  
24 total of the economic damage incurred by identifiable consumers as  
25 a result of the violation.

26 SECTION 2. Section 17.008, Utilities Code, is amended by  
27 amending Subsection (h) and adding Subsections (h-1) and (h-2) to

1 read as follows:

2 (h) A retail electric provider may not require a person  
3 applying for residential electric service to provide a security  
4 deposit or advance payment as a condition of service if:

5 (1) the person was a customer of one or more retail  
6 electric providers or electric utilities in this state during the  
7 entire six-month period preceding the request for electric service;

8 (2) the person is not delinquent in payment of any  
9 electric service account on the date the person applies for  
10 service; and

11 (3) during the preceding six-month period, the person  
12 was not late in paying an electric service bill more than once  
13 [This section does not limit a retail electric provider's authority  
14 to require a deposit or advance payment as a condition of service].

15 (h-1) A retail electric provider that is authorized to  
16 require a security deposit or advance payment under Subsection (h)  
17 may not require a payment in an amount that exceeds the lesser of:

18 (1) the greater of:

19 (A) 1/12 of the customer's estimated annual  
20 billing; or

21 (B) the amount of the customer's estimated  
22 billing for the next month; or

23 (2) the difference between the amount determined under  
24 Subdivision (1) and any amount transferred to the retail electric  
25 provider under Subsection (h-2), if the amount transferred to the  
26 retail electric provider under Subsection (h-2) is less than the  
27 amount determined under Subdivision (1).

1        (h-2) Notwithstanding Subsection (h), a retail electric  
2 provider or electric utility that holds a security deposit or  
3 advance payment from a residential customer shall transfer the  
4 deposit or payment to the new retail electric provider when the  
5 service is switched or transferred.

6        SECTION 3. Section 39.101(h), Utilities Code, is amended to  
7 read as follows:

8        (h) A retail electric provider, power generation company,  
9 aggregator, or other entity that provides retail electric service  
10 may not disconnect service to a residential customer during an  
11 extreme weather emergency or on a weekend day. The entity providing  
12 service shall defer collection of the full payment of bills that are  
13 due during an extreme weather emergency until after the emergency  
14 is over and shall offer ~~[work with]~~ customers a deferred payment  
15 plan providing for a period of not less than five months for a  
16 customer to pay deferred amounts ~~[to establish a pay schedule for~~  
17 ~~deferred bills]~~. For purposes of this subsection, "extreme weather  
18 emergency" means ~~[a period when]~~:

19        (1) a day for which the National Weather Service  
20 forecasts that the ~~[previous day's highest]~~ temperature will reach  
21 or fall below ~~[did not exceed]~~ 32 degrees Fahrenheit in any part of  
22 a county in the relevant service territory ~~[and the temperature is~~  
23 ~~predicted to remain at or below that level for the next 24 hours~~  
24 ~~according to the nearest National Weather Service reports]; [or]~~

25        (2) a day for which the National Weather Service  
26 forecasts that the heat index will reach or exceed 100 degrees  
27 Fahrenheit in any part of a county in the relevant service

1 territory; or

2 (3) a period when, [issues a heat advisory for any  
3 county in the relevant service territory, or when such an advisory  
4 has been issued] on any one of the previous two calendar days, the  
5 National Weather Service observes a heat index of 100 degrees  
6 Fahrenheit or more in any part of a county in the relevant service  
7 territory.

8 SECTION 4. Section 39.101, Utilities Code, is amended by  
9 adding Subsection (i) to read as follows:

10 (i) During the period beginning on July 1 and ending on  
11 September 30 each year, a retail electric provider, power  
12 generation company, aggregator, or other entity that provides  
13 retail electric service may not disconnect service to a residential  
14 customer who is at a higher risk of heat-related illness. The  
15 entity providing service shall defer until after September 30  
16 collection of the full payment of bills for service that are due  
17 during that period and shall offer the customer a deferred payment  
18 plan providing for a period of not less than five months for the  
19 customer to pay deferred amounts. The entity providing service  
20 shall allow the customer to initiate a renegotiation of the  
21 deferred payment plan one time during the deferment period  
22 regardless of whether the customer's economic or financial  
23 circumstances have changed. For purposes of this subsection, a  
24 residential customer is at a higher risk of heat-related illness if  
25 the customer's household includes:

26 (1) an infant or child who is younger than four years  
27 of age;

1           (2) a person who is at least 65 years of age;

2           (3) a person who is eligible for lifeline service  
3 under Section 55.015(d-1); or

4           (4) a person for whom an interruption or suspension of  
5 electric service will create a dangerous or life-threatening  
6 condition.

7           SECTION 5. Subchapter C, Chapter 39, Utilities Code, is  
8 amended by adding Sections 39.1013 and 39.1015 to read as follows:

9           Sec. 39.1013. STANDARD SERVICE AGREEMENT. (a) The  
10 commission by rule shall prescribe the form of a term of service  
11 document or other document that serves as a contract to provide  
12 retail electric service to a residential customer or that  
13 prescribes the terms of that service contract.

14           (b) In adopting the rules, the commission shall ensure that  
15 a document described by Subsection (a):

16           (1) is available in English and Spanish and, as  
17 appropriate, in the language in which the retail electric service  
18 is marketed;

19           (2) specifies all provisions relating to rates and  
20 fees in a clear format and in language readily understandable by  
21 customers; and

22           (3) is in a standard format that will permit  
23 comparisons between price and service offerings.

24           Sec. 39.1015. CANCELLATION OR TERMINATION FEES. (a) A  
25 retail electric provider may not charge a residential customer who  
26 requests cancellation or termination of retail electric service  
27 provided on a month-to-month basis a fee relating to the

1 cancellation or termination.

2 (b) A fee relating to the early cancellation or termination  
3 of retail electric service provided to a residential customer under  
4 a term contract may not exceed \$100.

5 SECTION 6. Subchapter C, Chapter 39, Utilities Code, is  
6 amended by adding Section 39.110 to read as follows:

7 Sec. 39.110. RETAIL ELECTRIC ENERGY EFFICIENCY PROGRAMS.

8 (a) This section applies only to an affiliated retail electric  
9 provider that serves at least 50 percent of the residential  
10 customers in the affiliated transmission and distribution  
11 utility's certificated service area.

12 (b) An affiliated retail electric provider, in accordance  
13 with the provider's least-cost procurement plan under Section  
14 39.2024, shall provide energy efficiency programs that offer in a  
15 nondiscriminatory manner a variety of choices to all classes of  
16 customers in the service area described by Subsection (a).

17 (c) An affiliated retail electric provider may provide an  
18 energy efficiency program directly to customers or contract with  
19 another person to provide a program.

20 (d) The commission shall adopt rules as necessary to  
21 implement this section. At a minimum, the rules must require that a  
22 program administered under this section supplement and not supplant  
23 energy efficiency incentive programs administered by electric  
24 utilities under Section 39.905.

25 SECTION 7. (a) Subchapter E, Chapter 39, Utilities Code, is  
26 amended by adding Sections 39.2023 and 39.2024 to read as follows:

27 Sec. 39.2023. STANDARD OFFER SERVICE. (a) This section

1 applies only to an affiliated retail electric provider in relation  
2 to which the commission determines that less than 50 percent of the  
3 residential customers in the affiliated transmission and  
4 distribution utility's certificated service area before the onset  
5 of customer choice are served by nonaffiliated retail electric  
6 providers on the date the commission makes a determination under  
7 Subsection (e).

8 (b) The commission shall require an affiliated retail  
9 electric provider to offer a standard retail service package to  
10 residential customers of the affiliated transmission and  
11 distribution utility.

12 (c) The commission shall set the price for the standard  
13 offer service for the affiliated retail electric provider at an  
14 amount that allows the provider to recover the provider's fuel and  
15 other costs and a reasonable retail margin determined by the  
16 commission. The commission may not set the price at a higher amount  
17 unless the provider demonstrates that a higher price is necessary  
18 to implement the least-cost procurement system required by Section  
19 39.2024 or is necessary to ensure system reliability.

20 (d) The commission, on its own motion or on the motion of the  
21 affiliated retail electric provider, the office, or an affected  
22 person, may, at any time, review and adjust the affiliated retail  
23 electric provider's standard offer service price to ensure that the  
24 price:

25 (1) accurately reflects the cost of providing  
26 electricity to residential customers; and

27 (2) includes an appropriate retail margin.



1       (e) At least once each state fiscal year, the commission  
2 shall determine the applicability of this section to each  
3 affiliated retail electric provider.

4       Sec. 39.2024. LEAST-COST PROCUREMENT. (a) An affiliated  
5 retail electric provider required to provide standard offer service  
6 under Section 39.2023 shall use a least-cost procurement planning  
7 process to systematically evaluate all available supply options to  
8 ensure that the provider acquires sufficient, reliable,  
9 cost-effective, and environmentally responsible resources to meet  
10 its customers' needs.

11       (b) An affiliated retail electric provider shall comply  
12 with the provider's approved least-cost procurement plan in  
13 procuring resources to meet the provider's standard offer service  
14 obligation under Section 39.2023.

15       (c) Every three years, each affiliated retail electric  
16 provider in this state shall file with the commission a least-cost  
17 procurement plan that systematically evaluates all available  
18 supply options during the next 10-year period. The plan must  
19 include:

20               (1) an estimate of the provider's supply and demand  
21 forecast for that period;

22               (2) the resource mix with which the provider intends  
23 to meet the supply obligation during that period, including:

24                       (A) demand-side management programs;

25                       (B) long-term purchased power contracts;

26                       (C) short-term purchased power contracts;

27                       (D) procurement through wholesale markets by

1 request for proposals; and

2 (E) spot-market purchases;

3 (3) a detailed evaluation of each reasonable long-term  
4 and short-term procurement and demand-side management strategy,  
5 regardless of whether the provider ultimately recommends using that  
6 strategy;

7 (4) the short-term and long-term environmental  
8 effects of the resource mix;

9 (5) the specific criteria the provider will use to  
10 evaluate and to select or reject a resource or a strategy; and

11 (6) the range of probable costs for each resource or  
12 strategy.

13 (d) The commission, on its own motion, or on the motion of  
14 the affiliated retail electric provider, the office, or an affected  
15 person, may convene a public hearing on the adequacy and merits of  
16 the least-cost procurement plan. Any interested person may  
17 intervene in the hearing and, at the hearing, may present evidence  
18 and cross-examine witnesses regarding the contents and adequacy of  
19 the plan.

20 (e) Not later than the 180th day after the date the  
21 affiliated retail electric provider submits a least-cost  
22 procurement plan, the commission shall issue an interim order  
23 approving the plan, approving the plan as modified by the  
24 commission, or remanding the plan for additional proceedings. The  
25 commission may extend the deadline for not more than 30 days for  
26 extenuating circumstances.

27 (f) The commission, on its own motion or on the motion of the

1 affiliated retail electric provider, the office, or an affected  
2 person, may periodically review an approved least-cost procurement  
3 plan to determine whether the plan should be modified because of  
4 changed market conditions.

5 (b) Not later than the 30th day after the date this Act takes  
6 effect, the Public Utility Commission of Texas shall make the  
7 determination required by Section 39.2023(e), Utilities Code, as  
8 added by this section, for each affiliated retail electric provider  
9 in this state.

10 (c) Not later than the 60th day after this Act takes effect,  
11 the Public Utility Commission of Texas shall set the initial  
12 standard offer service price for each affiliated retail electric  
13 provider that the commission determines is subject to Section  
14 39.2023, Utilities Code, as added by this section. The initial  
15 price must be equal to the price to beat made available to  
16 residential customers by the provider on December 31, 2006,  
17 adjusted to reflect the averaged cost of natural gas on the second  
18 day before the date the price is set. The commission may adjust  
19 that price as necessary to reflect fuel costs until the date the  
20 commission determines the standard offer service price required by  
21 Section 39.2023, Utilities Code, as added by this section.

22 (d) Not later than October 1, 2007, the Public Utility  
23 Commission of Texas shall adopt a staggered schedule for the  
24 submission of least-cost procurement plans by affiliated retail  
25 electric providers under Section 39.2024, Utilities Code, as added  
26 by this section.

27 SECTION 8. Section 39.352(g), Utilities Code, is amended to

1 read as follows:

2 (g) If a retail electric provider serves an aggregate load  
3 in excess of 300 megawatts within this state, not less than 25  
4 ~~[five]~~ percent of the provider's total ~~[the]~~ load in megawatt hours  
5 in this state must consist of residential customers. This  
6 requirement applies to an affiliated retail electric provider only  
7 with respect to load served outside of the affiliated transmission  
8 and distribution utility's certificated ~~[electric utility's]~~  
9 service area, and, in relation to that load, the affiliated retail  
10 electric provider shall meet the requirements of this subsection by  
11 serving residential customers outside of the affiliated  
12 transmission and distribution utility's certificated ~~[electric~~  
13 ~~utility's]~~ service area. For the purpose of this subsection, the  
14 load served by retail electric providers that are under common  
15 ownership shall be combined. A retail electric provider may meet  
16 the requirements of this subsection by demonstrating on an annual  
17 basis that it serves residential load amounting to 25 ~~[five]~~  
18 percent of its total load or ~~[7]~~ by demonstrating that another  
19 retail electric provider serves sufficient qualifying residential  
20 load on its behalf ~~[7 or by paying an amount into the system benefit~~  
21 ~~fund equal to \$1 multiplied by a number equal to the difference~~  
22 ~~between the number of megawatt hours it sold to residential~~  
23 ~~customers and the number of megawatt hours it was required to sell~~  
24 ~~to such customers, or in the case of an affiliated retail electric~~  
25 ~~provider, \$1 multiplied by a number equal to the difference between~~  
26 ~~the number of megawatt hours sold to residential customers outside~~  
27 ~~of the electric utility's service area and the number of megawatt~~

1 ~~hours it was required to sell to such customers outside of the~~  
2 ~~electric utility's service area].~~ Qualifying residential load may  
3 not include customers served by an affiliated retail electric  
4 provider in its own service area. Each retail electric provider  
5 shall file reports with the commission that are necessary to  
6 implement this subsection. ~~[This subsection applies for 36 months~~  
7 ~~after retail competition begins.]~~ The commission shall adopt rules  
8 to implement this subsection.

9 SECTION 9. (a) Sections 39.903(a), (b), (d), (e), and (h),  
10 Utilities Code, are amended to read as follows:

11 (a) The commission shall adopt and enforce rules requiring  
12 electric utilities to establish a system benefit fund as a trust  
13 fund outside of the state treasury to be used ~~[is an account in the~~  
14 ~~general revenue fund. Money in the account may be appropriated]~~  
15 only for the purposes provided by this section ~~[or other law].~~ The  
16 commission shall provide for the fund to be held by a financial  
17 institution eligible to be a depository for state funds under  
18 Chapter 404, Government Code. Interest earned on the ~~[system~~  
19 ~~benefit]~~ fund shall be credited to the fund. ~~[Section 403.095,~~  
20 ~~Government Code, does not apply to the system benefit fund.]~~

21 (b) The system benefit fund is financed by a nonbypassable  
22 fee set by the commission in an amount not to exceed 65 cents per  
23 megawatt hour and ~~[. The system benefit fund fee is]~~ allocated to  
24 customers based on the amount of kilowatt hours used. An electric  
25 utility shall remit the fees to the fund in accordance with  
26 procedures approved by the commission.

27 (d) The commission shall annually review and approve system

1 benefit fund accounts, projected revenue requirements, and  
2 proposed nonbypassable fees. The commission by rule shall adopt  
3 review procedures, including a method for administrative review, as  
4 the commission determines is necessary to ensure that the fund is  
5 funded and that disbursements from the fund are properly made. The  
6 commission may provide for the fund to be operated by a contractor.  
7 The commission may require an electric utility or retail electric  
8 provider to provide information as necessary to assess  
9 contributions to and disbursements from the fund, and that  
10 information is not subject to disclosure under Chapter 552,  
11 Government Code. The commission shall provide for disbursements  
12 from the fund to be made promptly and efficiently so that an  
13 electric utility or retail electric provider does not experience an  
14 unnecessary cash-flow problem as a result of administrative delay.  
15 ~~[The commission shall report to the electric utility restructuring~~  
16 ~~legislative oversight committee if the system benefit fund fee is~~  
17 ~~insufficient to fund the purposes set forth in Subsection (c) to the~~  
18 ~~extent required by this section.]~~

19 (e) Money in the system benefit fund may be used  
20 ~~[appropriated to provide funding]~~ solely for the following  
21 ~~[regulatory]~~ purposes, in the following order of priority:

22 (1) programs to:

23 (A) assist low-income electric customers by  
24 providing the 10 percent reduced rate prescribed by Subsection (h);  
25 and

26 (B) provide one-time bill payment assistance to  
27 electric customers who are or who have in their households one or

1 more seriously ill or disabled low-income persons and who have been  
2 threatened with disconnection for nonpayment;

3 (2) customer education programs, administrative  
4 expenses incurred by the commission in implementing and  
5 administering this chapter, and expenses incurred by the office  
6 under this chapter;

7 (3) programs to assist low-income electric customers  
8 by providing the targeted energy efficiency programs described by  
9 Subsection (f)(2);

10 (4) programs to assist low-income electric customers  
11 by providing the 20 percent reduced rate prescribed by Subsection  
12 (h); and

13 (5) reimbursement to the commission and the Health and  
14 Human Services Commission for expenses incurred in the  
15 implementation and administration of an integrated eligibility  
16 process created under Section 17.007 for customer service discounts  
17 relating to retail electric service, including outreach expenses  
18 the commission determines are reasonable and necessary.

19 (h) The commission shall adopt rules for a retail electric  
20 provider to determine a reduced rate for eligible customers to be  
21 discounted off the standard retail service package as approved by  
22 the commission under Section 39.106, or the price to beat  
23 established by Section 39.202, whichever is lower. Municipally  
24 owned utilities and electric cooperatives shall establish a reduced  
25 rate for eligible customers to be discounted off the standard  
26 retail service package established under Section 40.053 or 41.053,  
27 as appropriate. The reduced rate for a retail electric provider

1 shall result in a total charge that is at least 10 percent and, if  
2 sufficient money in the system benefit fund is available, up to 20  
3 percent, lower than the amount the customer would otherwise be  
4 charged. To the extent the system benefit fund is insufficient to  
5 fund the initial 10 percent rate reduction, the commission may  
6 increase the fee to an amount not more than 65 cents per megawatt  
7 hour, as provided by Subsection (b). If the fee is set at 65 cents  
8 per megawatt hour and ~~[or if]~~ the commission determines that money  
9 in the fund is ~~[appropriations are]~~ insufficient to fund the 10  
10 percent rate reduction, the commission may reduce the rate  
11 reduction to less than 10 percent. For a municipally owned utility  
12 or electric cooperative, the reduced rate shall be equal to an  
13 amount that can be fully funded by that portion of the nonbypassable  
14 fee proceeds paid by the municipally owned utility or electric  
15 cooperative that is allocated to the utility or cooperative by the  
16 commission under Subsection (e) for programs for low-income  
17 customers of the utility or cooperative. The reduced rate for  
18 municipally owned utilities and electric cooperatives under this  
19 section is in addition to any rate reduction that may result from  
20 local programs for low-income customers of the municipally owned  
21 utilities or electric cooperatives.

22 (b) The Public Utility Commission of Texas shall adopt rules  
23 under Section 39.903, Utilities Code, as amended by this section,  
24 as soon as is practicable. Fees for the system benefit fund  
25 collected under Section 39.903, Utilities Code, before the  
26 effective date of this section shall be remitted to the comptroller  
27 of public accounts for deposit in the general revenue fund. Fees



1 for the system benefit fund collected under Section 39.903,  
2 Utilities Code, after the effective date of this section shall be  
3 remitted to the Public Utility Commission of Texas not later than 31  
4 days after the fees are collected until the commission adopts rules  
5 governing the remittance of the fees to the trust fund established  
6 under that section, as amended by this section. The Public Utility  
7 Commission of Texas shall hold fees remitted to it under this  
8 subsection in trust for the benefit of the system benefit fund until  
9 that fund is established as provided by this section and shall  
10 transfer those fees to the fund on the date the fund is established.

11 SECTION 10. (a) The change in law made by this Act applies  
12 only to a violation committed on or after September 1, 2007. For  
13 purposes of this section, a violation is committed before September  
14 1, 2007, if any element of the violation occurs before that date.

15 (b) A violation committed before September 1, 2007, is  
16 covered by the law in effect when the violation was committed, and  
17 the former law is continued in effect for that purpose.

18 SECTION 11. This Act takes effect September 1, 2007.