

BILL ANALYSIS

C.S.H.B. 280
By: Anchia
Energy Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

During the 80th Legislature, Regular Session, 2007, H.B. 3693 was enacted to increase the state's goal for meeting a percentage of the annual growth in energy demand through energy efficiency measures from 10 to 20 percent. During the interim period, the Public Utilities Commission (PUC) conducted a study to determine whether it is feasible to increase that goal to 50 percent of annual demand. PUC determined that such a goal is feasible by 2015.

C.S.H.B. 280 changes the legislative energy efficiency goal to one percent of the electric utility's peak demand by January 1, 2016, and requires the PUC to conduct two studies.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 280 amends the Utilities Code to establish as an energy efficiency goal of the legislature that electric utilities will assist in building an infrastructure of trained and qualified energy service providers that will allow and encourage the participation of retail electric providers in the delivery of services and that will ensure that all customers will have a choice of and access to market-based energy efficiency alternatives that allow each customer to reduce energy consumption, peak demand, or energy costs. The bill explicitly includes demand-side renewable energy systems in these energy efficiency alternatives.

C.S.H.B. 280 modifies the three sequential energy efficiency goals, for each electric utility to annually provide, through a cost-effective portfolio of market-based standard offer programs, energy efficiency incentives sufficient for retail electric providers and competitive energy service providers to acquire additional energy efficiency for customers other than customers who operate a transmission-level industrial facility. The bill modifies the deadline by which each goal is expected to be met and provides for energy efficient gains equivalent to at least:

- 30 percent of the electric utility's annual growth in demand not including demand from transmission-level industrial facilities, by January 1, 2012, rather than 10 percent by December 31, 2007;
- one-half of one percent of the electric utility's peak demand, not including demand from transmission-level industrial facilities, by January 1, 2013, rather than 15 percent of the electric utility's annual growth in demand of residential and commercial customers by December 31, 2008; and
- one percent of the electric utility's peak demand, not including demand from transmission-level industrial facilities, by January 1, 2016, rather than 20 percent of the electric utility's annual growth in demand of residential and commercial customers by December 31, 2009.

The bill removes provisions that limit the amount an electric utility can spend on its energy

efficiency programs in 2008 and 2009.

C.S.H.B. 280 revises the energy efficiency goal that each electric utility in the Electric Reliability Council of Texas (ERCOT) region shall create specific programs sufficient to facilitate, rather than use its best efforts to encourage and facilitate, the involvement of the region's retail electric providers in the widespread delivery, rather than just delivery, of efficiency programs and programs for demand-side renewable energy systems, rather than demand response programs.

C.S.H.B. 280 establishes the following additional energy efficiency goals: that electric utilities will make their best efforts to ensure continuity in funding for market-based standard offer programs with proven demand at levels consistent with that demand; that a customer who participates in a standard offer load management or demand response program is not precluded from participating in other load management or demand response programs during different intervals; and that for an electric utility operating solely outside of ERCOT in areas of Texas that were included in the Western Electricity Coordinating Council on January 1, 2009, the utility may continue to provide standard offer programs, limited and targeted market transformation programs, or programs that address the major barriers to energy efficiency, or may provide energy efficiency programs and measures directly to a class of customers.

C.S.H.B. 280 requires the Public Utility Commission of Texas (PUC) to annually compute the sum of all measurable and verifiable demand response and load management capacity independently implemented by electric utilities, retail electric providers, and the independent organization certified under provisions for essential organizations relating to the restructuring of the electric utility industry, including programs used to shift load off-peak or reduce local or systemwide peak demand. The bill provides that PUC is not required to act under the bill's requirements for development of new or the expansion of existing programs if the quantity of load management and demand response capacity, measured as a percentage of statewide peak demand, and excluding any reduction resulting from a program in existence on January 1, 2009, exceeds one percent by December 31, 2012, two percent by December 31, 2014, and three percent by December 31, 2016.

C.S.H.B. 280, except as provided in the above paragraph, requires PUC, in cooperation with the certified independent organization, to design new demand response and load management programs, or expand existing programs, including peak load management programs and programs that are designed to enhance the reliability of the grid. The bill requires such programs to be designed to achieve cost savings for consumers, ensure that residential elderly customers, critical care residential customers, and low-income residential customers do not experience harmful health effects from the programs, and ensure that benefits provided by the utility are passed through to the participating customer.

C.S.H.B. 280 adds the following items to the list of actions for which the PUC, subject to certain limitations, is required to provide oversight and adopt rules and procedures to ensure that the utilities can achieve the energy efficiency goals:

- ensuring that programs are implemented in a manner in which program incentives are passed on to end-use customers through rebates, discounts on products and services, and other direct benefits that reduce the costs of the products and services to the end-use customer, rather than ensuring the program rules encourage the value of the incentives to be passed on to the end-use customer;
- ensuring that standard offer programs operate at a scale sufficient to ensure that all eligible customers have access to energy efficiency programs and program benefits;
- establishing a minimum standard offer payment available to all eligible customers that may be reduced by the amount of other available state incentives equal to at least 70 percent of avoided cost as determined by the PUC for the installation of demand-side renewable energy systems;

- on application by a utility, and when considered necessary by the PUC, increasing or decreasing the demand reduction goals based on each utility's capacity to implement efficiency measures and demand response programs, and providing incentives under provisions for certain incentives to reward utilities administering energy efficiency programs that exceed the minimum established goals;
- without compromising the ability to achieve statewide energy efficiency goals, developing different standards for program offerings in remote regions of Texas and for program offerings in regions of Texas where the demand for energy efficiency services exceeds the local utilities' capacity to provide them, to allow a utility to partner with local governments and community organizations to provide energy efficiency services; and
- establishing standards for consumer disclosures by energy services companies that include the expected reduction of energy consumption, the anticipated payback period, and disclosure of any incentive received from the energy service provider from the state or federal government.

C.S.H.B. 280 prohibits the average of the aggregate cost for energy efficiency programs for individual utilities located in areas in which customer choice has been introduced from exceeding \$0.0010 per kilowatt hour for nontransmission level customers in any calendar year, regardless of whether the costs are part of the utility's energy efficiency cost recovery factor, or are included in the utility's most recent base rate case.

C.S.H.B. 280 provides that, with regard to the PUC establishing a procedure for reviewing and evaluating market-transformation energy efficiency program options, a market-transformation program that is launched as a pilot program may be continued for more than three years only if the PUC determines that the pilot program is an appropriate means of addressing special market barriers that prevent or inhibit the measure or behavior addressed by the pilot program from being delivered or adopted through normal market channels, under the electric utility's standard offer programs. The bill removes a provision authorizing the PUC to evaluate certain abilities of a market-transformation energy-efficiency program that includes a list of potential program options.

C.S.H.B. 280 authorizes the PUC to establish, and each electric utility to implement, additional market-transformation energy-efficiency programs that encourage the use of new building technologies and construction practices that are anticipated to be included in a new edition of the International Residential Code or International Energy Conservation Code; offer incentives for a building that meets federal Energy Star standards or exceeds by at least 15 percent the energy conservation standards of the most current edition of the International Residential Code or International Energy Conservation Code; offer increased incentives for a building that exceeds by at least 30 percent the energy conservation standards of the most current edition of the International Residential Code or International Energy Conservation Code; and encourage the testing of new building technologies and construction practices that integrate renewable energy into building designs.

C.S.H.B. 280 requires each electric utility to administer an energy efficiency program designed to also meet an energy savings goal calculated from its demand savings goal, using a 25 percent "capacity factor," defined as the ratio of the utility's annual energy savings goal, in kilowatt hours, to the peak demand goal for the year, in kilowatts, multiplied by the number of hours in the year.

C.S.H.B. 280 authorizes a utility to work with municipalities or other governmental entities to establish building energy codes that promote greater energy efficiency than the minimum standards required by state or local law. The bill authorizes the utility, if it and a governmental entity develop a building energy code, to count not more than 50 percent of the savings in peak demand and energy savings that result in the first 12 months after the code is implemented toward the utility's goal for energy efficiency.

C.S.H.B. 280 requires the PUC to exempt costs related to marketing, information dissemination, and training from the spending cap under provisions for energy efficiency research and development. The bill, for purposes of the provision on energy efficiency goals defines "demand-side renewable energy system" as an energy generation system that uses distributed renewable generation, as defined under provisions for restructuring of the electric utility industry; or that reduces the need for energy consumption by using a renewable energy technology or natural mechanism of the environment, including a geothermal heat pump or solar water heater.

C.S.H.B. 280 amends the Government Code to create the office of energy efficiency deployment in the state energy conservation office and to require the office of energy efficiency deployment to design and implement a statewide campaign to educate consumers, utilities, and public entities about, and to promote the use of, energy efficiency and demand response programs available in Texas. The bill authorizes the office of energy efficiency deployment and the state energy conservation office to enter into contracts for professional services to carry out this statewide campaign. The bill requires the office of energy efficiency deployment to collaborate with retail electric providers, transmission and distribution utilities, and energy service providers in designing and implementing such a campaign.

C.S.H.B. 280 requires the PUC to conduct a study paid for by electric utilities regarding the feasibility of mechanisms to decouple electric utility revenues and earnings from the amount of electricity consumed by utility customers so that investor-owned electric utilities, electric transmission and distribution utilities, municipally owned electric utilities, and electric cooperatives may prevent fluctuations in retail electric energy consumption from affecting the ability of those types of utilities to recover fixed costs of service that do not ordinarily vary directly with changes in electric energy consumption or sales volume. The bill requires the study to address disincentives to the promotion of efficient use of electricity by better practices and better technology, including concerns regarding a utility's lost revenues from electricity sales that may result from energy efficiency improvements or energy saving practices that reduce electricity consumption, and concerns regarding a utility's recovery of the utility's costs for programs promoting electric energy efficiency. The bill additionally requires the study to address the effects of decoupling electric utility revenues and earnings from the amount of electricity consumed by customers, including the effect decoupling would have on low-income customers. The bill authorizes the PUC to consider and evaluate mechanisms proposed or applied in other states for: allowing rates of return on energy efficiency investments in a manner like those for other capital investments; providing an increased rate of return on overall investments or on energy efficiency investments; providing financial incentives for meeting energy efficiency targets; and recovering energy efficiency program costs.

C.S.H.B. 280 requires the PUC to report the conclusions of the study to the lieutenant governor, the speaker of the house of representatives, and each committee of the 82nd Legislature that has jurisdiction over electric utilities, requiring the report to include recommendations tailored by category to investor-owned electric utilities, electric transmission and distribution utilities, municipally owned electric utilities, and electric cooperatives; include recommendations on the use of a credit trading system to achieve increased energy efficiency; and state whether decoupling will result in an increase in the installation of energy efficiency measures by consumers, whether decoupling will result in higher or lower energy bills for consumers, whether decoupling will result in higher or lower electricity rates, whether decoupling will result in lower risk to electric utilities, and whether electric utility rates of return should be reduced as a result of decoupling. The bill requires the report and recommendations to be delivered not later than January 31, 2011, and to contain specific recommendations regarding transmission and distribution utility revenues and earnings in relation to electric energy efficiency, including legislative proposals.

C.S.H.B. 280 requires PUC to conduct a study paid for by electric utilities regarding the programs offered under provisions for the legislative energy efficiency goal in the Utilities Code, that must address:

- the effectiveness of the programs required by the legislative goal for energy efficiency in the Utilities Code, and whether the cost caps described in those provisions should be revised;
- the feasibility of increasing existing energy efficiency efforts to achieve a two percent reduction of electric utility peak demand, not including demand from transmission level industrial facilities, not later than January 1, 2021;
- an assessment of the cost impact, by customer class, on a dollar per kilowatt hour basis, necessary to achieve a one percent reduction in electric utility peak demand, not including demand from transmission level customers, not later than January 1, 2016, and a two percent reduction in electric utility peak demand, not including demand from transmission level customers, not later than January 1, 2021;
- whether demand response and load management programs designed under provisions of the bill will result in a reduction of statewide peak demand of four percent not later than January 1, 2019, and five percent not later than January 1, 2021;
- the cost impact, by customer class on a dollar per kilowatt hour basis, of demand response and load management programs designed under provisions of the bill; and
- the level of free ridership on programs described by provisions for the legislative energy efficiency goal in the Utilities Code.

The bill requires the PUC to report the conclusions of the study to the lieutenant governor, the speaker of the house of representatives, and each committee of the 82nd Legislature that has jurisdiction over electric utilities not later than December 15, 2012.

C.S.H.B. 280 prohibits either PUC study from being performed by a person who performs services for an electric utility, who has performed services for an electric utility in the two years before the study begins, or who is in the process of bidding to perform services for an electric utility at the time the study begins.

C.S.H.B. 280 repeals Section 39.905(b-2), Utilities Code, requiring the PUC to conduct a study regarding cost-effective energy efficiency in Texas.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 280 adds a provision not included in the original relating to the creation of an infrastructure of trained and qualified service providers to assist in meeting the energy efficiency goal. The substitute includes demand-side renewable energy systems among market alternatives for energy efficiency, whereas the original does not. The substitute differs from the original by clarifying that each electric utility is to provide programs annually.

C.S.H.B. 280 differs from the original by requiring electric utilities to provide incentives for electric providers to acquire additional energy efficiency for customers other than customers who operate a transmission-level industrial facility, rather than for residential and commercial customers, as in the original. The substitute differs from the original by providing different deadlines for certain energy efficiency goals and by providing for certain energy efficiency goals to be measured by percentage of peak demand, rather than percentage of annual growth in demand.

C.S.H.B. 280 differs from the original by clarifying that the Electric Reliability Council of Texas shall create specific programs sufficient to involve regional providers, rather than use its best efforts to encourage involvement, and by specifying that the delivery of certain programs be widespread, whereas the original does not so specify.

C.S.H.B. 280 removes the December 31, 2009 energy efficiency goal.

C.S.H.B. 280 differs from the original by establishing additional energy efficiency goals; requiring the Public Utility Commission of Texas (PUC) to take certain steps in relation to demand response and load management capacity; adding items over which the PUC is to provide oversight and adopt rules and procedures to ensure that the utilities can achieve the energy efficiency goals; setting maximum allowable cost for certain programs; modifying provisions to establish a procedure for reviewing and evaluating market-transformation program options; and providing for additional types of market-transformation programs. The substitute differs from the original by providing for an energy savings goal calculation from a demand savings goal, establishment of building energy codes, exemption of certain costs from the cap on research and development expenditures, and the creation of the office of energy efficiency deployment. The substitute adds a definition for "demand-side renewable energy system" not in the original. The substitute differs from the original by requiring the PUC to conduct two studies and by repealing provisions for a study by the PUC. The substitute differs from the original by changing the effective date from on passage, or if the act does not receive the necessary vote, September 1, 2009, to September 1, 2009.