

BILL ANALYSIS

C.S.S.B. 546
By: Fraser
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 Utility Commission of Texas (PUC) conducted a study to determine whether it is feasible to increase that goal to 50 percent of annual demand. The PUC determined that such a goal is feasible by 2015.

C.S.S.B. 546 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 three 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.S.B. 546 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.S.B. 546 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.S.B. 546 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.S.B. 546 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.S.B. 546 requires ERCOT 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.

C.S.S.B. 546 requires the Public Utility Commission of Texas (PUC) to determine whether the implementation of additional measures or programs is necessary to facilitate demand response, and prohibits an additional demand response measure or program implemented under these provisions from impeding the proper functioning of the electricity market in ERCOT or increasing net electricity costs for customers. The bill requires the PUC, to the extent that demand response programs can satisfy the reasonable requirements of ancillary services, and consistent with reliability requirements, to ensure that demand response programs have the opportunity to compete with generation, including the provision of ancillary services.

C.S.S.B. 546 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;
- 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.

The bill removes from the list of actions ensuring the program rules encourage the value of the incentives to be passed on to the end-use customer.

C.S.S.B. 546 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.S.B. 546 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.S.B. 546 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.S.B. 546 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.S.B. 546 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.S.B. 546 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.S.B. 546 provides that an electric utility that was not subject to provisions for legislative energy efficiency goals on January 1, 2009, is subject to the goals as amended by this bill on the effective date of the utility's final rates as determined in the utility's first rate case filed with the PUC on or after January 1, 2010. The bill requires the energy efficiency goals to apply to each electric utility, as defined by state law.

C.S.S.B. 546 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.S.B. 546 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.S.B. 546 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.S.B. 546 requires the 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; 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.S.B. 546 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.S.B. 546 requires the PUC to conduct a study paid for by electric utilities regarding the potential for demand response and load management programs in Texas and to submit to the legislature a report of the commission's findings not later than January 15, 2011. The bill requires the report to:

- identify the types of demand response and load management programs that are most effective in reducing systemwide peak demand, reducing local peak demand, keeping downward pressure on electricity rates, reducing emissions, and facilitating the integration of renewable energy resources in the electric grid or otherwise improving the reliability of the grid;
- provide estimates of the economic and achievable potential in Texas for each identified program in terms of peak demand reductions, electricity rate reductions, emissions savings, and avoided costs of generation, transmission, and distribution;
- quantify the costs, effects on rates, potential cost savings, and other economic benefits of each identified program for the electricity market in Texas and for consumers in Texas, by customer class on a dollar per kilowatt hour basis;
- state whether each identified program would be most effective if administered by the independent organization certified under provisions governing essential organizations in the electric utility industry, electric utilities, retail electric providers, or all three in combination;
- state whether residential elderly customers, critical care residential customers, or low-income residential customers would be unfairly affected by, or would experience any harmful health effects from, each identified program;
- identify potential barriers to the successful creation of, operation of, and participation in wholesale or retail demand response and load management programs;

- state whether the creation of additional demand response or load management programs would have an adverse effect on existing demand response and load management programs; and
- state whether demand response and load management programs would achieve reductions in statewide peak demand of five percent by January 1, 2016, and identify policies, goals, and programs that would facilitate the achievement of that goal.

C.S.S.B. 546 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.S.B. 546 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 specifies demand-side renewable energy systems as included among market alternatives for energy efficiency, whereas the original does not. The substitute differs from the original by clarifying that the incentives to acquire additional energy efficiency each electric utility is to provide are to be provided annually and by making an exception for provisions authorizing demand reduction goals to be increased or decreased when considered necessary by the Public Utility Commission of Texas (PUC).

C.S.S.B. 546 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 establishing that certain energy efficiency goals do not include demand from transmission-level industrial facilities and are measured by percentage of peak demand, rather than percentage of annual growth in demand.

C.S.S.B. 546 differs from the original by clarifying that each utility in the Electric Reliability Council of Texas (ERCOT) region 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.S.B. 546 differs from the original by establishing additional energy efficiency goals and removing some goals established in the original; by modifying authorizations for an electric utility operating outside of ERCOT to apply to such a utility operating solely outside of ERCOT; and by removing provisions on alternative goals for certain utilities, duplication of a state energy efficiency requirement by a federal one, and outreach activities.

C.S.S.B. 546 differs from the original by requiring ERCOT to take certain steps in relation to demand response and load management capacity; requiring the PUC to determine whether additional measures or programs are necessary to facilitate demand response; 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 that exceed minimum standards, and exemption of certain costs from the cap on research and development expenditures. The substitute differs from the original by providing that an electric utility that was

not subject to energy efficiency goals on January 1, 2009, is subject to the energy efficiency goals on the effective date of the utility's final rates as determined in the utility's first rate case filed with the PUC on or after January 1, 2010, whereas the original makes such a utility subject to the energy efficiency goals on a phased-in basis, as prescribed by the PUC, starting from the effective date of the final rates from the first rate case filed by the electric utility with the commission after January 1, 2010.

C.S.S.B. 546 removes provisions included in the original relating to certain energy efficiency programs in an institution of higher education, and adds provisions providing for 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 three studies and by removing the provision repealing the authorization to combine certain reports. 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.