By: Anchia, Farrar H.B. No. 280

Substitute the following for H.B. No. 280:

By: Strama C.S.H.B. No. 280

A BILL TO BE ENTITLED

AN ACT

relating to energy efficiency goals and programs and demand reduction targets; creating an office of energy efficiency deployment in the state energy conservation office.

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

SECTION 1. Section 39.905, Utilities Code, is amended by amending Subsections (a), (b), and (d) and adding Subsections (a-1), (a-2), (b-5), (d-1), (d-2), (d-3), (e-1), and (h) to read as follows:

(a) It is the goal of the legislature that:

(1) electric utilities will administer energy efficiency incentive programs in a market-neutral, nondiscriminatory manner but will not offer underlying competitive services;

(2) 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, in all customer classes, will have a choice of and access to energy efficiency alternatives and other choices from the market, including demand-side renewable energy systems, that allow each customer to reduce energy consumption, peak demand, or energy costs;

(3) except as provided by Subsection (b)(8), each

electric utility annually will provide, through a cost-effective portfolio of market-based standard offer programs or limited, targeted, market-transformation programs, incentives sufficient for retail electric providers and competitive energy service providers to acquire additional [~~cost-effective~~] energy efficiency for [~~residential and commercial~~] customers other than customers who operate a transmission-level industrial facility, equivalent to at least:

(A) 30 [~~10~~] percent of the electric utility's annual growth in demand, not including demand from transmission-level industrial facilities, [~~of residential and commercial customers~~] by January 1, 2012 [~~December 31, 2007~~];

(B) one-half of one [~~15~~] percent of the electric utility's peak [~~annual growth in~~] demand, not including demand from transmission-level industrial facilities, [~~of residential and commercial customers~~] by January 1, 2013; and [~~December 31, 2008, provided that the electric utility's program expenditures for 2008 funding may not be greater than 75 percent above the utility's program budget for 2007 for residential and commercial customers, as included in the April 1, 2006, filing; and~~

[~~(C) 20 percent of the electric utility's annual growth in demand of residential and commercial customers by December 31, 2009, provided that the electric utility's program expenditures for 2009 funding may not be greater than 150 percent above the utility's program budget for 2007 for residential and commercial customers, as included in the April 1, 2006, filing;~~]

(C) one percent of the electric utility's peak

demand, not including demand from transmission-level industrial facilities, by January 1, 2016;

(4) each electric utility in the ERCOT region shall create specific programs sufficient to [~~use its best efforts to encourage and~~] facilitate the involvement of the region's retail electric providers in the widespread delivery of efficiency programs and programs for demand-side renewable energy systems [~~demand response programs~~] under this section;

(5) retail electric providers in the ERCOT region, and electric utilities outside of the ERCOT region, shall provide customers with energy efficiency educational materials; [~~and~~]

(6) notwithstanding Subsection (a)(3), electric utilities shall continue to make available, at 2007 funding and participation levels, any load management standard offer programs developed for industrial customers and implemented prior to May 1, 2007;

(7) 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;

(8) 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

(9) for an electric utility operating solely outside of ERCOT in areas of this state that were included in the Western Electricity Coordinating Council on January 1, 2009, the utility may:

(A) continue to provide standard offer programs, limited and targeted market transformation programs, or programs that address the major barriers to energy efficiency as required by Subdivision (3); or

(B) provide energy efficiency programs and measures directly to a class of customers.

(a-1) The commission annually shall 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 Section 39.151, including programs used to shift load off-peak or reduce local or systemwide peak demand. The commission is not required to act under Subsection (a-2) 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:

(1) one percent by December 31, 2012;

(2) two percent by December 31, 2014; and

(3) three percent by December 31, 2016.

(a-2) Except as provided by Subsection (a-1), the commission, in cooperation with the independent organization certified under Section 39.151, shall 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. Programs adopted under this subsection must be designed to:

(1) achieve cost savings for consumers;

(2) ensure that residential elderly customers, critical care residential customers, and low-income residential customers do not experience harmful health effects from the programs; and

(3) ensure that benefits provided by the utility are passed through to the participating customer.

(b) Subject to the limitations of Subsection (b-5), the [~~The~~] commission shall provide oversight and adopt rules and procedures to ensure that the utilities can achieve the goal of this section, including:

(1) establishing an energy efficiency cost recovery factor for ensuring timely and reasonable cost recovery for utility expenditures made to satisfy the goal of this section;

(2) establishing an incentive under Section 36.204 to reward utilities administering programs under this section that exceed the minimum goals established by this section;

(3) providing a utility that is unable to establish an energy efficiency cost recovery factor in a timely manner due to a rate freeze with a mechanism to enable the utility to:

(A) defer the costs of complying with this section; and

(B) recover the deferred costs through an energy efficiency cost recovery factor on the expiration of the rate freeze period;

(4) ensuring that the costs associated with programs provided under this section are borne by the customer classes that receive the services under the programs; [~~and~~]

(5) 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; [~~the program rules encourage the value of the incentives to be passed on to the end-use customer~~]

(6) ensuring that standard offer programs operate at a scale sufficient to ensure that all eligible customers have access to the programs and program benefits under this section;

(7) 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 commission for the installation of demand-side renewable energy systems;

(8) on application by a utility, and when considered necessary by the commission, increasing or decreasing the demand reduction goals under Subsection (a) based on each utility's capacity to implement efficiency measures and demand response programs, and providing incentives under Section 36.204 to reward utilities administering programs under this section that exceed the minimum goals established under this section;

(9) without compromising the ability to achieve statewide energy efficiency goals, developing different standards for program offerings in remote regions of this state and for program offerings in regions of this state 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

(10) 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.

(b-5) Notwithstanding any other provision of this title, the average of the aggregate cost for programs under this section for individual utilities located in areas in which customer choice has been introduced may not exceed $0.0010 per kilowatt hour for nontransmission level customers in any calendar year, regardless of whether the costs:

(1) are part of the utility's energy efficiency cost recovery factor under this section; or

(2) are included in the utility's most recent base rate case.

(d) The commission shall establish a procedure for reviewing and evaluating market-transformation program options described by this section [~~subsection~~] and other options. A market-transformation program that is launched as a pilot program may be continued for more than three years only if the commission 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 [~~In evaluating program~~

~~options, the commission may consider the ability of a program option to reduce costs to customers through reduced demand, energy savings, and relief of congestion. Utilities may choose to implement any program option approved by the commission after its evaluation in order to satisfy the goal in Subsection (a), including:~~

[~~(1) energy-smart schools;~~

[~~(2) appliance retirement and recycling;~~

[~~(3) air conditioning system tune-ups;~~

[~~(4) the use of trees or other landscaping for energy efficiency;~~

[~~(5) customer energy management and demand response programs;~~

[~~(6) high performance residential and commercial buildings that will achieve the levels of energy efficiency sufficient to qualify those buildings for federal tax incentives;~~

[~~(7) programs for customers who rent or lease their residence or commercial space;~~

[~~(8) programs providing energy monitoring equipment to customers that enable a customer to better understand the amount, price, and time of the customer's energy use;~~

[~~(9) energy audit programs for owners and other residents of single-family or multifamily residences and for small commercial customers;~~

[~~(10) net-zero energy new home programs;~~

[~~(11) solar thermal or solar electric programs; and~~

[~~(12) programs for using windows and other glazing~~

~~systems, glass doors, and skylights in residential and commercial buildings that reduce solar gain by at least 30 percent from the level established for the federal Energy Star windows program~~].

(d-1) In addition to the market-transformation programs described by Subsection (d), the commission may establish, and if established, each electric utility may implement, market-transformation incentive programs that:

(1) 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;

(2) 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;

(3) 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

(4) encourage the testing of new building technologies and construction practices that integrate renewable energy into building designs.

(d-2) Each electric utility shall 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. For purposes of this subsection, "capacity

factor" is 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.

(d-3) A utility may 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. If a utility and governmental entity develop a building energy code under this subsection, the utility may 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.

(e-1) The commission shall exempt costs related to marketing, information dissemination, and training from the requirements of Subsection (e).

(h) In this section, "demand-side renewable energy system" means an energy generation system that:

(1) uses distributed renewable generation, as defined by Section 39.916; or

(2) 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.

SECTION 2. Chapter 447, Government Code, is amended by adding Section 447.0025 to read as follows:

Sec. 447.0025. OFFICE OF ENERGY EFFICIENCY DEPLOYMENT. (a) The office of energy efficiency deployment is created in the state

energy conservation office.

(b) The office of energy efficiency deployment shall 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 the state. The office of energy efficiency deployment and the state energy conservation office may enter into contracts for professional services to carry out this statewide campaign.

(c) In designing and implementing a campaign under Subsection (b), the office of energy efficiency deployment shall collaborate with retail electric providers, transmission and distribution utilities, and energy service providers.

SECTION 3. (a) The Public Utility Commission of Texas shall 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.

(b) The study must address:

(1) disincentives to the promotion of efficient use of electricity by better practices and better technology, including concerns regarding:

(A) a utility's lost revenues from electricity sales that may result from energy efficiency improvements or energy saving practices that reduce electricity consumption; and

(B) a utility's recovery of the utility's costs for programs promoting electric energy efficiency; and

(2) 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.

(c) In conducting the study, the Public Utility Commission of Texas may consider and evaluate mechanisms proposed or applied in other states for:

(1) allowing rates of return on energy efficiency investments in a manner like those for other capital investments;

(2) providing an increased rate of return on overall investments or on energy efficiency investments;

(3) providing financial incentives for meeting energy efficiency targets; and

(4) recovering energy efficiency program costs.

(d) The study may not be performed by a person:

(1) who performs services for an electric utility;

(2) who has performed services for an electric utility in the two years before the study begins; or

(3) who is in the process of bidding to perform services for an electric utility at the time the study begins.

(e) The Public Utility Commission of Texas shall 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.

(f) The report must:

(1) include recommendations tailored by category to investor-owned electric utilities, electric transmission and distribution utilities, municipally owned electric utilities, and electric cooperatives;

(2) include recommendations on the use of a credit trading system to achieve increased energy efficiency; and

(3) state:

(A) whether decoupling will result in an increase in the installation of energy efficiency measures by consumers;

(B) whether decoupling will result in higher or lower energy bills for consumers;

(C) whether decoupling will result in higher or lower electricity rates;

(D) whether decoupling will result in lower risk to electric utilities; and

(E) whether electric utility rates of return should be reduced as a result of decoupling.

(g) The report and recommendations must be delivered not later than January 31, 2011, and must contain specific recommendations regarding transmission and distribution utility revenues and earnings in relation to electric energy efficiency, including legislative proposals.

SECTION 4. (a) The Public Utility Commission of Texas shall conduct a study paid for by electric utilities regarding the

programs offered under Section 39.905, Utilities Code. The study must address:

(1) the effectiveness of the programs required by Section 39.905, Utilities Code, and whether the cost caps described by Subsection (b-5) of that section should be revised;

(2) 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;

(3) an assessment of the cost impact, by customer class, on a dollar per kilowatt hour basis, necessary to achieve:

(A) a one percent reduction in electric utility peak demand, not including demand from transmission level customers, not later than January 1, 2016; and

(B) a two percent reduction in electric utility peak demand, not including demand from transmission level customers, not later than January 1, 2021;

(4) whether demand response and load management programs designed under Sections 39.905(a-1) and (a-2), Utilities Code, 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;

(5) the cost impact, by customer class on a dollar per kilowatt hour basis, of demand response and load management programs designed under Sections 39.905(a-1) and (a-2), Utilities Code; and

(6) the level of free ridership on programs described

by Section 39.905, Utilities Code.

(b) The study may not be performed by a person:

(1) who performs services for an electric utility;

(2) who has performed services for an electric utility in the two years before the study begins; or

(3) who is in the process of bidding to perform services for an electric utility at the time the study begins.

(c) Not later than December 15, 2012, the Public Utility Commission of Texas shall 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.

SECTION 5. Section 39.905(b-2), Utilities Code, is repealed.

SECTION 6. This Act takes effect September 1, 2009.