

SENATE AMENDMENTS

2nd Printing

By: Darby

H.B. No. 2263

A BILL TO BE ENTITLED

AN ACT

relating to the authority of a natural gas local distribution company to offer energy conservation programs.

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

SECTION 1. Chapter 104, Utilities Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. NATURAL GAS ENERGY CONSERVATION PROGRAMS

Sec. 104.401. DEFINITIONS. In this subchapter:

(1) "Energy conservation program" means a program that promotes energy conservation or energy efficiency.

(2) "Local distribution company" means a gas utility that operates a retail gas distribution system.

Sec. 104.402. ENERGY CONSERVATION PROGRAM AUTHORITY. (a) A local distribution company may offer to customers and prospective customers and provide to customers an energy conservation program in the manner provided by this subchapter.

(b) The railroad commission has exclusive original jurisdiction over energy conservation programs implemented by local distribution companies.

(c) A political subdivision served by a local distribution company that implements an energy conservation program approved by the railroad commission under this subchapter may not limit, restrict, or otherwise prevent an eligible customer from participating in the energy conservation program based on the type

1 or source of energy delivered to the customer.

2 Sec. 104.403. ENERGY CONSERVATION PROGRAM COST RECOVERY.

3 (a) The railroad commission shall allow a local distribution
4 company to recover:

5 (1) costs prudently incurred to implement one or more
6 energy conservation programs, including costs incurred to design,
7 market, implement, administer, and deliver an energy conservation
8 program; and

9 (2) if the company provides an earnings monitoring
10 report for the preceding calendar year demonstrating that the
11 company did not earn above the rate of return established in the
12 latest effective rates approved by the railroad commission for the
13 company, an amount equal to the reduction in the company's marginal
14 revenues due to lower sales or demand resulting from the energy
15 conservation program.

16 (b) The railroad commission by rule shall require a local
17 distribution company that implements an energy conservation
18 program under this subchapter to submit to the railroad commission
19 an annual report on:

20 (1) the performance of the company's energy
21 conservation programs for the preceding year; and

22 (2) the company's planned energy conservation programs
23 for the upcoming year.

24 (c) An application for cost recovery under Subsection (a)
25 must include:

26 (1) a summary of and objectives for the local
27 distribution company's energy conservation programs;

- 1 (2) a description of each program;
2 (3) a proposed budget for each program;
3 (4) the projected consumption reduction or cost
4 savings for each program; and
5 (5) any public input compiled by the local
6 distribution company on the proposed programs as required by the
7 railroad commission.

8 (d) The railroad commission by rule may:

- 9 (1) determine a cost recovery mechanism for timely
10 recovery of costs described by Subsection (a); and
11 (2) ensure that costs described by Subsection (a) are
12 allocated to the customer classes eligible for participation in the
13 energy conservation program.

14 (e) Energy conservation programs proposed under this
15 section may be combined in a portfolio to provide incentives and
16 services to encourage energy conservation. The portfolio:

- 17 (1) must be designed to overcome barriers to the
18 adoption of energy-efficient equipment, technologies, and
19 processes and be designed to change customer behavior as necessary;
20 and

21 (2) may include measures such as:

- 22 (A) direct financial incentives;
23 (B) technical assistance and information,
24 including building energy performance analyses performed by the
25 local distribution company or a third party approved by the
26 company;
27 (C) discounts or rebates for products; and

1 (D) weatherization for low-income customers.

2 (f) A proceeding filed under this section is not a
3 ratemaking proceeding for the purposes of Section 103.022.

4 (g) A local distribution company implementing an energy
5 conservation program under this subchapter shall reimburse the
6 railroad commission for the utility's proportionate share of the
7 railroad commission's costs related to administration of reviewing
8 and approving or denying cost recovery applications under this
9 subchapter.

10 (h) A local distribution company recovering costs of an
11 energy conservation program under Subsection (a) shall apply to the
12 railroad commission at least once every three years under this
13 subchapter for review and approval of the company's energy
14 conservation programs.

15 SECTION 2. This Act takes effect immediately if it receives
16 a vote of two-thirds of all the members elected to each house, as
17 provided by Section 39, Article III, Texas Constitution. If this
18 Act does not receive the vote necessary for immediate effect, this
19 Act takes effect September 1, 2023.

ADOPTED

MAY 21 2023

By: Burgin Hughes

H.B. No. 2263

Substitute the following for H.B. No. 2263 :

Substituted
Secretary of the Senate

By: Burgin Hughes

C.S.H.B. No. 2263

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(2) "Local distribution company" means a gas utility that operates a retail gas distribution system.

Sec. 104.402. ENERGY CONSERVATION PROGRAM AUTHORITY. (a)

A local distribution company may offer to customers and prospective customers and provide to customers an energy conservation program in the manner provided by this subchapter.

(b) The railroad commission has exclusive original jurisdiction over energy conservation programs implemented by local distribution companies.

(c) A political subdivision served by a local distribution company that implements an energy conservation program approved by the railroad commission under this subchapter may not limit, restrict, or otherwise prevent an eligible customer from participating in the energy conservation program based on the type

1 or source of energy delivered to the customer.

2 Sec. 104.403. ENERGY CONSERVATION PROGRAM COST RECOVERY.

3 (a) A local distribution company may recover costs of energy
4 conservation programs implemented under this subchapter if
5 approved by the railroad commission in the manner provided by this
6 subchapter. A local distribution company seeking to recover the
7 costs must apply to the railroad commission before beginning
8 recovery of the costs and at least once every three years after the
9 date the company first applies for the cost recovery.

10 (b) If the railroad commission approves the local
11 distribution company's application or approves the application
12 with modifications, the company may recover costs prudently
13 incurred to implement the energy conservation programs, including
14 costs incurred to design, market, implement, administer, and
15 deliver an energy conservation program.

16 (c) If the local distribution company provides an earnings
17 monitoring report for the preceding calendar year demonstrating
18 that the company did not earn above the rate of return established
19 in the latest effective rates approved by the railroad commission
20 for the company, the railroad commission may allow the company to
21 recover an amount equal to the reduction in the company's marginal
22 revenues due to lower sales or demand resulting from the energy
23 conservation program.

24 (d) The railroad commission by rule shall require a local
25 distribution company that implements an energy conservation
26 program under this subchapter to submit to the railroad commission
27 an annual report on:

1 (1) the performance of the company's energy
2 conservation programs for the preceding year; and

3 (2) the company's planned energy conservation programs
4 for the upcoming year.

5 (e) An application for cost recovery under Subsection (a)
6 must include:

7 (1) a summary of and objectives for the local
8 distribution company's energy conservation programs;

9 (2) a description of each program;

10 (3) a proposed budget for each program;

11 (4) the projected consumption reduction or cost
12 savings for each program; and

13 (5) any public input compiled by the local
14 distribution company on the proposed programs as required by the
15 railroad commission.

16 (f) The railroad commission by rule may:

17 (1) determine a cost recovery mechanism for timely
18 recovery of costs described by Subsection (a); and

19 (2) ensure that costs described by Subsection (a) are
20 allocated to the customer classes eligible for participation in the
21 energy conservation program.

22 (g) Energy conservation programs proposed under this
23 section may be combined in a portfolio to provide incentives and
24 services to encourage energy conservation. The portfolio:

25 (1) must be designed to overcome barriers to the
26 adoption of energy-efficient equipment, technologies, and
27 processes and be designed to change customer behavior as necessary;

1 and

2 (2) may include measures such as:

3 (A) direct financial incentives;

4 (B) technical assistance and information,
5 including building energy performance analyses performed by the
6 local distribution company or a third party approved by the
7 company;

8 (C) discounts or rebates for products; and

9 (D) weatherization for low-income customers.

10 (h) A proceeding filed under this section is not a
11 ratemaking proceeding for the purposes of Section 103.022.

12 (i) A local distribution company implementing an energy
13 conservation program under this subchapter shall reimburse the
14 railroad commission for the utility's proportionate share of the
15 railroad commission's costs related to administration of reviewing
16 and approving or denying cost recovery applications under this
17 subchapter.

18 SECTION 2. This Act takes effect immediately if it receives
19 a vote of two-thirds of all the members elected to each house, as
20 provided by Section 39, Article III, Texas Constitution. If this
21 Act does not receive the vote necessary for immediate effect, this
22 Act takes effect September 1, 2023.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 22, 2023

TO: Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2263 by Darby (Relating to the authority of a natural gas local distribution company to offer energy conservation programs.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2263, As Passed 2nd House : a negative impact of (\$723,628) through the biennium ending August 31, 2025.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five- Year Impact:

<i>Fiscal Year</i>	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2024	(\$361,814)
2025	(\$361,814)
2026	(\$361,814)
2027	(\$361,814)
2028	(\$361,814)

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	Probable (Cost) from General Revenue Fund 1	<i>Change in Number of State Employees from FY 2023</i>
2024	(\$361,814)	3.0
2025	(\$361,814)	3.0
2026	(\$361,814)	3.0
2027	(\$361,814)	3.0
2028	(\$361,814)	3.0

Fiscal Analysis

The bill would grant Railroad Commission (RRC) exclusive jurisdiction over energy conservation programs established by local distribution companies (LDCs). The bill would permit LDCs to recover costs incurred from implementing energy conservation programs and, as applicable, amounts equal to the reduction in marginal revenues due to lower sales or demand resulting from these programs if the LDCs submit an application to the RRC for review at least once every three years and are approved for cost recovery. The bill would allow the RRC to determine cost recovery mechanisms for these costs and to ensure that these costs are allocated to the appropriate customer classes.

The bill would direct the RRC to require annual reports containing certain information to be submitted to the RRC by local distribution companies which implement energy conservation programs under this subchapter.

The bill would require participating local distribution companies to reimburse the RRC for their proportionate share of the agency's costs related to reviewing and approving or denying cost recovery applications.

Methodology

Based on information provided by the Railroad Commission (RRC), this analysis assumes the cost for implementing the provisions of this bill would include \$361,814 and 3.0 FTEs each fiscal year. According to the RRC, the first would be an Accountant VII which would consider and design cost recovery mechanisms and rulemaking, review applications from local distribution companies, and review the submitted annual energy conservation program reports. The second would be an Auditor IV which would verify compliance with the cost recovery mechanism described in the Commission's rulemaking. The final FTE would be an Administrative Law Judge II which would examine and recommend approval or denial of cost recovery applications filed pursuant to this subchapter that are referred to the agency's Hearings Division. Estimated salary, benefit, and payroll contribution expenses for these three positions would total \$316,814 each fiscal year. Operating expenses would total \$45,000 each fiscal year.

The fiscal implications of local distribution companies reimbursing the RRC cannot be determined because the timing and amounts of the proportionate share for each participating company that would reimburse RRC to mitigate program costs is unknown.

Technology

Railroad Commission does not anticipate additional technology needs resulting from the implementation of this bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 455 Railroad Commission

LBB Staff: JMc, SD, MOc, EJ, AF, MW

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 19, 2023

TO: Honorable Brian Birdwell, Chair, Senate Committee on Natural Resources & Economic Development

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2263 by Darby (relating to the authority of a natural gas local distribution company to offer energy conservation programs.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2263, Committee Report 2nd House, Substituted : a negative impact of (\$723,628) through the biennium ending August 31, 2025.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

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Fiscal Analysis

The bill would grant Railroad Commission (RRC) exclusive jurisdiction over energy conservation programs established by local distribution companies (LDCs). The bill would permit LDCs to recover costs incurred from implementing energy conservation programs and, as applicable, amounts equal to the reduction in marginal revenues due to lower sales or demand resulting from these programs if the LDCs submit an application to the RRC for review at least once every three years and are approved for cost recovery. The bill would allow the RRC to determine cost recovery mechanisms for these costs and to ensure that these costs are allocated to the appropriate customer classes.

The bill would direct the RRC to require annual reports containing certain information to be submitted to the RRC by local distribution companies which implement energy conservation programs under this subchapter.

The bill would require participating local distribution companies to reimburse the RRC for their proportionate share of the agency's costs related to reviewing and approving or denying cost recovery applications.

Methodology

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The fiscal implications of local distribution companies reimbursing the RRC cannot be determined because the timing and amounts of the proportionate share for each participating company that would reimburse RRC to mitigate program costs is unknown.

Technology

Railroad Commission does not anticipate additional technology needs resulting from the implementation of this bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 455 Railroad Commission

LBB Staff: JMc, MOc, EJ, AF, MW

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 16, 2023

TO: Honorable Brian Birdwell, Chair, Senate Committee on Natural Resources & Economic Development

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2263 by Darby (Relating to the authority of a natural gas local distribution company to offer energy conservation programs.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2263, As Engrossed : a negative impact of (\$723,628) through the biennium ending August 31, 2025.

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Fiscal Analysis

The bill would grant Railroad Commission (RRC) exclusive jurisdiction over energy conservation programs established by local distribution companies (LDCs). The bill would require a LDC recovering costs of an energy conservation program to apply to the RRC every three years for review and approval of the program. The bill would require RRC to permit LDCs to recover costs incurred from implementing energy conservation programs and, as applicable, amounts equal to the reduction in marginal revenues due to lower sales or demand resulting from these programs if the LDCs submit an application to the RRC for review and approval which contains certain information. The bill would allow the RRC to determine cost recovery mechanisms for these costs and to ensure that these costs are allocated to the appropriate customer classes.

The bill would direct the RRC to require annual reports containing certain information to be submitted to the RRC by local distribution companies which implement energy conservation programs under this subchapter.

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Technology

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Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 455 Railroad Commission

LBB Staff: JMc, MOc, EJ, AF, MW

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

April 19, 2023

TO: Honorable Craig Goldman, Chair, House Committee on Energy Resources

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2263 by Darby (relating to the authority of a natural gas local distribution company to offer energy conservation programs.), Committee Report 1st House, Substituted

Estimated Two-year Net Impact to General Revenue Related Funds for HB2263, Committee Report 1st House, Substituted : a negative impact of (\$723,628) through the biennium ending August 31, 2025.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

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Fiscal Analysis

The bill would grant Railroad Commission (RRC) exclusive jurisdiction over energy conservation programs established by local distribution companies. The bill would allow local distribution companies to recover costs incurred from implementing energy conservation programs if they submit an application to the RRC for review and approval which contains certain information, including any public input, on their energy conservation programs at least every three years and the RRC approves cost recovery for their programs. The bill would allow the RRC to determine cost recovery mechanisms for these implementation costs and to ensure that these costs are allocated to the appropriate customer classes.

The bill would direct the RRC to require annual reports containing certain information to be submitted to the RRC by local distribution companies which implement energy conservation programs under this subchapter.

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Source Agencies: 455 Railroad Commission

LBB Staff: JMc, AF, MW, EJ

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

March 26, 2023

TO: Honorable Craig Goldman, Chair, House Committee on Energy Resources

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2263 by Darby (Relating to the authority of a natural gas local distribution company to offer energy conservation programs.), As Introduced

Estimated Two-year Net Impact to General Revenue Related Funds for HB2263, As Introduced : a negative impact of (\$723,628) through the biennium ending August 31, 2025.

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