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A Bill

HOUSE BILL 1386

By: Representatives Rice, Hickerson, Baine, Barnett, Bragg, Carnine, Dale, C. Douglas, Fielding,
Hawthorne, Jean, Jett, Kerr, Lampkin, S. Malone, McGill, Slinkard, Vines, Wardlaw, Westerman, Wren,
Wright

By: Senators Files, E. Cheatham, Holland, B. Pierce, G. Stubblefield

For An Act To Be Entitled

AN ACT TO AMEND THE ENERGY CONSERVATION ENDORSEMENT ACT OF 1977; TO ALLOW CERTAIN NONRESIDENTIAL BUSINESS CONSUMERS TO OPT OUT OF UTILITY-SPONSORED ENERGY CONSERVATION PROGRAMS AND MEASURES; TO ALLOW NONRESIDENTIAL BUSINESS CONSUMERS WHO OPT OUT OF UTILITY-SPONSORED ENERGY CONSERVATION PROGRAMS AND MEASURES TO DIRECT THEIR OWN ENERGY CONSERVATION PROGRAMS AND MEASURES; TO ALLOW EXEMPT NONRESIDENTIAL BUSINESS CONSUMERS TO OPT BACK IN TO UTILITY-SPONSORED ENERGY CONSERVATION PROGRAMS AND MEASURES; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO ALLOW CERTAIN NONRESIDENTIAL BUSINESS CONSUMERS TO OPT OUT OF UTILITY-SPONSORED ENERGY CONSERVATION PROGRAMS AND MEASURES AND DIRECT THEIR OWN ENERGY CONSERVATION PROGRAMS AND MEASURES; AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 23-3-405 is amended to read as follows:
23-3-405. Authority of Arkansas Public Service Commission – Rates and



charges – Exemptions.

(a)(1) The Except as otherwise stated in this section, the Arkansas Public Service Commission is authorized to propose, develop, solicit, approve, require, implement, and monitor measures by utility companies which cause the companies to incur costs of service and investments which conserve, as well as distribute, electrical energy and existing supplies of natural gas, oil, and other fuels.

(2) After proper notice and hearings, the programs and measures may be approved and ordered into effect by the commission if it determines they will be beneficial to the ratepayers of such public utilities and to the utilities themselves.

(3) In such instances, the commission shall declare that the cost of such conservation measures is a proper cost of providing utility service. At the time any such programs or measures are approved and ordered into effect, the commission shall also order that the affected public utility company be allowed to increase its rates or charges as necessary to recover any costs incurred by the public utility company as a result of its engaging in any such program or measure.

(b) Nothing in this subchapter shall be construed as limiting or cutting down the authority of the commission to order, require, promote, or engage in other energy conserving actions or measures.

(b) Nothing in this subchapter shall be construed as limiting or cutting down the authority of the commission to order, require, promote, or engage in other energy ~~conserving actions or~~ conservation programs and measures.

(c)(1)(A) A nonresidential business consumer that is classified within sectors 31 through 33 of the North American Industry Classification System, as it existed on January 1, 2013, may provide notice by mail or electronic mail to the commission on or before September 15 of any year of the nonresidential business consumer's decision to opt out of utility-sponsored energy conservation programs and measures and direct the nonresidential business consumer's own energy conservation programs and measures if the nonresidential business consumer:

(i) Satisfies one (1) of the following criteria:

(a) Has a peak electrical demand of at least one megawatt (1 MW) or an annual natural gas usage of seventy thousand

million British Thermal Units (70,000 MMBtu) at a single facility; or

(b) Has multiple facilities with identical ownership in a single public utility's service territory with:

(1) A peak electrical demand that exceeds two hundred kilowatts (200 kW) at each location and an aggregated peak electrical demand of at least one megawatt (1 MW) for all of the locations; or

(2) An annual natural gas usage that exceeds fourteen thousand million British Thermal Units (14,000 MMBtu) at each location and an aggregated annual natural gas usage of seventy thousand million British Thermal Units (70,000 MMBtu) for all of the locations; and

(ii) Has not accepted the installation of or financing or direct monetary compensation in the form of a rebate or incentive to enable the installation of any energy conservation programs and measures by the applicable public utility in the five (5) years preceding the notice.

(B) After proper notice and hearings, the commission may decrease the peak demand requirements under subdivision (c)(1)(A) of this section, but the commission shall not increase the peak demand requirements under subdivision (c)(1)(A) of this section.

(2) The notice of exemption required under subdivision (c)(1) of this section shall include a sworn affidavit from an authorized employee of the nonresidential business consumer that states either:

(A) That:

(i) The nonresidential business consumer meets the criteria stated in subdivision (c)(1)(A) of this section;

(ii) The nonresidential business consumer has implemented or will implement energy conservation programs and measures or has made or will make an investment designated to provide energy savings for the nonresidential business consumer; and

(iii) The energy conservation programs and measures implemented or to be implemented or the investment made or to be made has provided or is expected to provide energy savings for the nonresidential business consumer in an amount that is at least equal to the energy efficiency goals or standards established by the commission at the time the notice is issued under this subsection; or

(B) That:

(i) The nonresidential business consumer meets the criteria stated in subdivision (c)(1)(A) of this section;

(ii) The nonresidential business consumer has exhausted its opportunity to economically conduct further meaningful and cost-effective energy conservation programs and measures; and

(iii) The nonresidential business consumer is unable to realize adequate benefits by participating in the utility-sponsored energy conservation programs and measures for the reasons stated therein.

(d)(1) Upon receipt of a notice of exemption that meets the requirements of subsection (c) of this section, the commission shall issue an order of compliance stating that the nonresidential business consumer has met the requirements of this section and that the rights and limitations of subdivision (d)(2) of this section apply.

(2) Beginning January 1 next following the commission's order of compliance under subdivision (d)(1) of this section:

(A) The nonresidential customer is not required to participate in any utility-sponsored energy conservation programs and measures required by the commission under this section for the applicable public utility;

(B) The public utility company shall not bill a nonresidential business consumer who has been granted an exemption under this subsection for the rates and charges approved by the commission under subdivision (a)(3) of this section; and

(C) The nonresidential customer is not eligible to participate in any energy conservation programs and measures offered by the public utility company under this section.

(3) An exemption and order of compliance issued under this subsection is permanent until it is withdrawn by the nonresidential business consumer under this section.

(e)(1) A nonresidential business consumer seeking to withdraw an exemption granted under this section shall notify the commission by September 15 of any year.

(2) Upon notification of the withdrawal of an exemption under this subsection, the commission shall notify the public utility company of the withdrawal of the exemption.

(3) Beginning with the January billing cycle in the year next following notice of the withdrawal of an exemption under this subsection:

(A) The public utility company shall begin billing the nonresidential business consumer for the rates and charges that apply at the time the exemption is withdrawn; and

(B) The nonresidential business consumer shall be eligible to participate in any energy conservation programs and measures offered by the public utility company under this section.

(f) The commission shall revise its rules and promulgate new rules only to the extent required to allow the commission to incorporate and comply with subsections (c) through (e) of this section.

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the costs of operations for large industrial and manufacturing businesses continue to rise; that the Arkansas unemployment rate continues to be high; that the state of the economy has dramatically affected Arkansas businesses, resulting in layoffs of numerous Arkansans; that reducing the costs of natural gas and electricity used by Arkansas businesses would provide these businesses with additional revenues to support an increase in their number of employees, which would increase productivity and provide lucrative employment for Arkansans; and that this act is necessary to aid the continual recovery of the Arkansas economy. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2013.

APPROVED: 03/01/2013