AMENDED

February 25, 2010

**H. 4448**

Introduced by Reps. Sandifer, Agnew, Duncan, M.A. Pitts, Neilson, Brady, Gunn, Lowe, Funderburk, Hardwick, Mitchell, Hearn, Pinson, Bales, Clemmons, Toole, D.C. Moss, Ballentine, Willis, Huggins, Long, Simrill, H.B. Brown, Kirsh, Forrester, Rice, Anderson, D.C. Smith, Nanney, Vick, Stewart, T.R. Young, Bowers, Allen, V.S. Moss, Whitmire, Littlejohn, G.R. Smith, Hayes, Cobb‑Hunter, J.R. Smith, Brantley, Gambrell, King, Viers, Bannister, Dillard, Ott, Jefferson, Herbkersman, Allison, Wylie, R.L. Brown, Whipper, Weeks and Hodges

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Read the first time January 28, 2010.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 58‑37‑50 SO AS TO AUTHORIZE ELECTRIC COOPERATIVES AND MUNICIPAL ELECTRIC SYSTEMS TO IMPLEMENT FINANCING SYSTEMS FOR ENERGY EFFICIENCY IMPROVEMENTS, TO GIVE THEM THE AUTHORITY TO FINANCE THE PURCHASE PRICE AND INSTALLATION COST OF ENERGY CONSERVATION MEASURES, TO PROVIDE FOR THE RECOVERY OF THIS FINANCING THROUGH CHARGES PAID FOR BY THE CUSTOMERS BENEFITTING FROM THE INSTALLATION OF THE ENERGY CONSERVATION MEASURES, TO PROTECT THE ENTITIES FROM LIABILITY FOR THE INSTALLATION, OPERATION, AND MAINTENANCE OF THESE MEASURES, TO PROVIDE FOR THE INSTALLATION OF ENERGY EFFICIENCY AND CONSERVATION MEASURES IN RENTAL PROPERTIES, AND TO PROVIDE A MECHANISM FOR RECOVERY OF THE COSTS OF THESE MEASURES INSTALLED IN RENTAL PROPERTIES; AND TO AMEND SECTION 8‑21‑310, AS AMENDED, RELATING TO THE SCHEDULE OF FEES AND COSTS TO BE COLLECTED IN EACH COUNTY BY A CLERK OF COURT, REGISTER OF DEEDS, OR COUNTY TREASURER, SO AS TO ALLOW A FEE BE CHARGED FOR FILING A NOTICE OF A METER CONSERVATION CHARGE.

Amend Title To Conform

Whereas, there are various factors putting upward pressure on the price of electricity and natural gas, and those factors are likely to increase in the foreseeable future; and

Whereas, improvement of residential energy efficiency and conservation can protect South Carolina electricity and natural gas consumers from these price increases; and

Whereas, the implementation of energy efficiency and conservation measures in South Carolina residences will benefit not only the residents of the homes in which such measures are installed, but will benefit all residents of South Carolina by reducing the need for new and expensive sources of electricity generation; and

Whereas, the cost of energy efficiency and conservation measures and the availability of financing for those costs is now, and has been, a major impediment to the widespread adoption of energy efficiency and conservation measures; and

Whereas, South Carolina electricity providers and natural gas providers are in a position to assist their customers with the installation and financing of energy efficiency and conservation measures, provided that appropriate procedures are followed providing for the installation of such measures and the recovery of the cost of such measures; and

Whereas, in order to make energy efficiency and conservation measures available to rental properties, it is appropriate to require the landlords who will benefit from the measures and who voluntarily agree to participate to give notice to tenants who will be living in the rental units in which the energy efficiency and conservation measures are installed. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 37, Title 58 of the 1976 Code is amended by adding:

“Section 58‑37‑50. (A) As used in this section:

(1) ‘Electricity provider’ means an electric cooperative, an investor‑owned electric utility, the South Carolina Public Service Authority, or a municipality or municipal board or commission of public works that owns and operates an electric utility system.

(2) ‘Natural gas provider’ means an investor owned natural gas utility or publicly owned natural gas provider.

(3) ‘Meter conservation charge’ means the charge placed on a customer’s bill by which electricity providers and natural gas providers recover the costs, including financing costs, of energy efficiency and conservation measures.

(4) ‘Notice of meter conservation charge’ means the written notice by which subsequent purchasers or tenants are given notice that they are required to pay a meter conservation charge.

(5) ‘Customer’ means a homeowner or tenant receiving electricity as a retail customer only.

(6) ‘Community action agency’ means a nonprofit eleemosynary corporation providing, among other things, weatherization services to a homeowner or tenant.

(B) Electricity providers and natural gas providers may enter into written agreements with customers and landlords of customers for the financing of the purchase price and installation cost of energy efficiency and conservation measures. These agreements may provide that these costs must be recovered by a meter conservation charge to the customer’s electricity or natural gas account, provided that the electricity provider or natural gas provider complies with the provisions of this section. A failure to pay the meter conservation charge may be treated by the electricity provider or natural gas provider as a failure to pay the electricity or natural gas bill, and the electricity provider or natural gas provider may disconnect electricity or natural gas service for nonpayment of the meter conservation charge, provided the electricity or natural gas provider complies with the applicable provisions of Article 25, Chapter 31, Title 5; Article 17, Chapter 11, Title 6; Article 17, Chapter 49, Title 33; Article 11, Chapter 5, Title 58; Article 21, Chapter 27, Title 58; and any applicable rules, regulations, or ordinances relating to disconnections.

(C) An agreement permitted by subsection (B) plainly must state the interest rate to be charged to finance the costs of the energy efficiency and conservation measures. The interest rate must be a fixed rate over the term of the agreement and it must not exceed four percent above the stated yield for one‑year treasury bills as published by the Federal Reserve at the time the agreement is entered.

(D) An electricity provider or natural gas provider may recover the costs, including financing costs, of these measures from its members or customers directly benefiting from the installation of the energy efficiency and conservation measures. This recovery must be through a meter conservation charge to the account of the member or customer and must be shown by a separate line item on the account.

(E) An electricity provider or natural gas provider shall assume no liability for the installation, operation, or maintenance of energy efficiency and conservation measures when these measures are performed by a third party, and shall not provide any warranty as to the merchantability of the measures or the fitness for a particular purpose of these measures, and no action must be maintained against a electricity provider or natural gas provider relating to the failure of these measures. Nothing in this section may be construed to limit any rights or remedies of utility customers and landlords of utility customers against other parties to a transaction involving the purchase and installation of energy conservation measures.

(F) Before entering into a contract contemplated by this section, the electricity provider or natural gas provider shall cause to be performed an energy audit on the residence considered for the energy efficiency measures. The energy audit must be conducted by an energy auditor certified by the Building Performance Institute or similar organization. The audit must provide an estimate of the costs of the proposed measures and the expected energy savings associated with those measures. A contract entered following completion of an energy audit must specify the measures to be completed and the contractor responsible for completion of these measures. Upon completion of the work, it must be inspected by an energy auditor certified by the Building Performance Institute or similar organization. Any work which is determined not to have been done properly must be remedied by the responsible contractor. Until the work has been remedied, funds due to the contractor must be held in escrow by the electricity provider or natural gas provider.

(G) An electricity provider or natural gas provider that enters into an arrangement as provided in this section may recover the costs, including financing costs, of energy efficiency and conservation measures from subsequent purchasers of the residence in which the measures are installed, provided the electricity provider or natural gas provider gives record notice that the residence is subject to this arrangement. Notice must be given, at the expense of the filer, by filing a notice of meter conservation charge with the appropriate office for the county in which the residence is located, pursuant to Section 30‑5‑10. The notice of meter conservation charge does not constitute a lien on the property, but is intended to give a purchaser of the residence notice that the residence is subject to a meter conservation charge. Notice is deemed to have been given if a search of the property records of the county discloses the existence of the charge and informs a prospective purchaser how to ascertain the amount of the charge and the length of time it is expected to remain in effect.

(H) An electricity provider or natural gas provider may enter into arrangements for the installation of energy efficiency and conservation measures and the recovery of the costs, including financing costs, of these measures with respect to rental properties by filing a notice of meter conservation charge as provided in subsection (G) and by complying with the provisions of this subsection:

(1) The energy audit required by subsection (F) above must be conducted and the results provided to both the landlord and tenant living in the rental property at the time the arrangement is entered.

(2) If both the landlord and tenant agrees, the electricity provider or natural gas provider may recover the cost of the energy efficiency and conservation measures, including financing cost, through a meter conservation charge to the tenant’s electricity or natural gas account.

(3) With respect to a subsequent tenant occupying a rental unit benefiting from the installation of energy efficiency and conservation measures, the electricity provider or natural gas provider may continue to recover the cost, including financing cost, of these measures through a meter conservation charge to the electricity or natural gas account of a subsequent tenant. With respect to a subsequent tenant, the landlord is required to give a written notice of meter conservation charge in the same manner as required by Section 27‑40‑420. If the landlord fails to give the subsequent tenant the required notice of meter conservation charge, the tenant may deduct from his rent the amount of the meter conservation charge paid to the electricity provider or natural gas provider.

(I) Arrangements entered pursuant to the provisions of this section are exempt from the provisions of the South Carolina Consumer Protection Code, Chapter 2, Title 37.

(J) An electricity provider or natural gas provider may contract with third parties to perform functions permitted under this section, including the financing of the costs of energy efficiency and conservation measures. A third party shall comply with all applicable provisions of this section.

(K) The provisions of this section apply only to energy efficiency and conservation measures for a residence already occupied at the time these measures are taken. The procedures allowed by this section may not be used with respect to a new residence or a residence under construction. The provisions of this section may not be used to implement energy efficiency or conservation measures that result in the replacement of natural gas appliances or equipment with electric appliances or equipment or that result in the replacement of electric appliances or equipment with natural gas appliances or equipment unless the customer who seeks to install the energy efficiency or conservation measure is being provided electric and natural gas service by the same provider.

(L) Electricity providers and natural gas providers may offer other types of optional financing agreements, otherwise available by law and instead of the option established in this section, to their customers for the types of energy efficiency and conservation measures described in this section.

(M)(1) An electricity provider or natural gas provider must not obtain funding from the following federal programs to provide loans provided by this section:

(a) the Low Income Home Energy Assistance Program (LIHEAP), created by Title XXVI of the Omnibus Budget Reconciliation Act of 1981 and codified as Chapter 94, Title 42 of the United States Code, as amended by the Human Services Reauthorization Act of 1984, the Human Services Reauthorization Act of 1986, the Augustus F. Hawkins Human Services Reauthorization Act of 1990, the National Institutes of Health Revitalization Act of 1993, the Low‑Income Home Energy Amendments of 1994, the Coats Human Services Reauthorization Act of 1998, and the Energy Policy Act of 2005 and which is administered and funded by the United States Department of Health and Human Services on the federal level and administered locally by community action agencies;

(b) the Weatherization Assistance Program, created by Title IV of the Energy Conservation and Production Act of 1976 and codified as Part A, Subchapter III, Chapter 81, Title 42 of the United States Code, amended by the National Energy Conservation Policy Act, the Energy Security Act, the Human Services Reauthorization Act of 1984, and the State Energy Efficiency Programs Improvement Act of 1990 and administered and funded by the United States Department of Energy on the federal level and administered locally by community action agencies.

(2) Nothing in this section changes the exclusive administration of these programs by local community action agencies through the South Carolina Governor’s Office of Economic Opportunity pursuant to its authority pursuant to the provisions of Chapter 45, Title 43, the Community Economic Opportunity Act of 1983.

(3) Nothing in this subsection prevents a customer or member of an electricity provider or natural gas provider from obtaining services under the Low Income Home Energy Assistance Program or the Weatherization Assistance Program.”

SECTION 2. Section 8‑21‑310 of the 1976 Code, as last amended by Act 329 of 2002, is further amended by adding a new item at the end to read:

“(23) for filing a notice of meter conservation charge as permitted by Section 58‑37‑50, ten dollars.”

SECTION 3. This act takes effect upon approval by the Governor.

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