

BILL ANALYSIS

Senate Research Center
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S.B. 552
By: Carona
Natural Resources
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, energy efficiency programs are developed and administered by multiple state agencies. At least five agencies have energy efficiency tasks, and the lack of coordination between these programs can result in inconsistent implementation, overlap, and duplication. Additionally, some energy efficiency programs may not be fully monitored due to strained resources.

S.B. 552 would create an Energy Efficiency Coordination Council (council) to facilitate coordination among state agencies that administer energy efficiency programs and ensure that all such programs are designed and implemented effectively. This bill would designate the State Energy Conservation Office (SECO) to house the council, and membership would include representatives from the Texas Commission on Environmental Quality, the Electric Reliability Council of Texas, the Public Utility Commission of Texas, the Railroad Commission of Texas, SECO, the Texas Department of Housing and Community Affairs, the Texas Facilities Commission, the Texas Water Development Board, the Water Conservation Advisory Council, the Texas Department of Rural Affairs, the Energy Systems Lab at Texas A&M University; and four members who represent low-income ratepayers, residential ratepayers, commercial or industrial ratepayers, and environmental concerns. General duties of the council would include reviewing, recommending, and approving state agency energy efficiency plans as well as the statewide plan to be composed by the director of SECO; setting a statewide savings target for electricity, natural gas, and electricity use from water; collecting information on energy saving and demand reductions; maintaining a public website; and issuing annual reports on energy efficiency.

As proposed, S.B. 552 amends current law relating to the creation of the Energy Efficiency Coordination Council and to statewide energy efficiency, and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Energy Efficiency Coordination Council in SECTION 1 (Sections 470.101 and 470.251, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle E, Title 4, Government Code, by adding Chapter 470, as follows:

CHAPTER 470. ENERGY EFFICIENCY COORDINATION COUNCIL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 470.001. DEFINITIONS. Defines "council," "director," "energy efficiency program," "energy efficiency service provider," "institution of higher education," "presiding officer," "state agency," and "utility provider" in this chapter.

Sec. 470.002. APPLICATION OF SUNSET ACT. Provides that the Energy Efficiency Coordination Council (council) is subject to Chapter 325 (Sunset Law). Provides that the

council is abolished and this chapter expires September 1, 2023, unless continued in existence as provided by that chapter.

Sec. 470.003. APPLICATION OF PUBLIC INFORMATION; OPEN MEETINGS. Provides that the council is subject to Chapters 551 (Open Meetings) and 552 (Public Information).

[Reserves Sections 470.004-470.050 for expansion.]

SUBCHAPTER B. COUNCIL

Sec. 470.051. ESTABLISHMENT. Provides that the council is established to maximize energy efficiency statewide while protecting the environment.

Sec. 470.52. COUNCIL MEMBERSHIP. (a) Provides that the council is composed of the following 15 members:

(1) 11 ex officio members as follows:

(A) the chairperson of the Texas Commission on Environmental Quality;

(B) the chief executive officer of the Electric Reliability Council of Texas;

(C) the chairperson of the Public Utilities [sic] Commission of Texas;

(D) the chairperson of the Railroad Commission of Texas;

(E) the director of the State Energy Conservation Office;

(F) the executive director of the Texas Department of Housing and Community Affairs;

(G) the executive director of the Texas Facilities Commission;

(H) the executive administrator of the Texas Water Development Board;

(I) the presiding officer of the Water Conservation Advisory Council;

(J) the executive director of the Texas Department of Rural Affairs; and

(K) the director of the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System; and

(2) four public members as follows:

(A) one member appointed by the lieutenant governor to represent low-income ratepayers;

(B) one member appointed by the governor at the recommendation of the speaker of the house of representatives to represent residential ratepayers;

(C) one member appointed by the lieutenant governor to represent either commercial or industrial ratepayers; and

(D) one member appointed by the governor at the recommendation of the speaker of the house of representatives to represent an environmental organization.

(b) Requires that the four public members be appointed with the advice and consent of the senate.

(c) Requires that appointments to the council be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(d) Provides that the ex officio members and the appointed members serve as voting members of the council.

Sec. 470.053. TERMS; VACANCY. (a) Provides that appointed members of the council serve staggered six-year terms, with the terms of one or two members, as applicable, expiring on February 1 of each odd-numbered year.

(b) Requires that a vacancy in the office of an appointed member of the council be filled for the unexpired term in the same manner as the original appointment.

Sec. 470.054. ELIGIBILITY OF PUBLIC MEMBERS. Prohibits a person from being a public member of the council if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency as a utility provider or energy efficiency service provider;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the council;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the council; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the council other than compensation or reimbursement authorized by law for council membership, attendance, or expenses.

Sec. 470.055. CONFLICT OF INTEREST. (a) Defines "Texas trade association" in this section.

(b) Prohibits a person from being a public member of the council and from being a council employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association of utility providers or energy efficiency service providers; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association of utility providers or energy efficiency service providers.

(c) Prohibits a person from being a member of the council or acting as the general counsel to the council if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists) because of the person's activities for compensation on behalf of a profession related to the operation of the council.

Sec. 470.056. GROUND FOR REMOVAL. (a) Provides that it is a ground for removal from the council that an appointed member:

- (1) is ineligible for membership under Section 470.054 or 470.055;
- (2) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (3) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the council.

(b) Provides that the validity of an action of the council is not affected by the fact that it is taken when a ground for removal of a council member exists.

(c) Requires the director, if the director has knowledge that a potential ground for removal exists, to notify the presiding officer of the council of the potential ground. Requires the presiding officer to then notify the governor and the attorney general that a potential ground for removal exists. Requires the director, if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of the council, who is required to then notify the governor and the attorney general that a potential ground for removal exists.

Sec. 470.057. APPOINTED MEMBER TRAINING PROGRAM. (a) Prohibits a person who is appointed to and qualifies for office as a member of the council from voting, deliberating, or being counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section.

(b) Requires that the training program provide the person with information regarding:

- (1) this chapter;
- (2) the programs, functions, rules, and budget of the council;
- (3) the results of the most recent formal audit of the council;
- (4) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and
- (5) any applicable ethics policies adopted by the council or the Texas Ethics Commission.

(c) Entitles a person appointed to the council to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Sec. 470.058. PRESIDING OFFICER. Provides that the director of the State Energy Conservation Office serves as presiding officer of the council.

Sec. 470.059. MEETINGS. (a) Requires the council to meet at least quarterly and at other times at the call of the presiding officer.

(b) Requires that each meeting of the council be webcast and archived online.

[Reserves Sections 470.060-470.100 for expansion.]

SUBCHAPTER C. GENERAL DUTIES OF COUNCIL AND DIRECTOR

Sec. 470.101. RULES. Requires the council to adopt rules necessary to administer this chapter and rules governing the development and implementation of the state energy efficiency plan.

Sec. 470.102. PUBLIC TESTIMONY. Requires the council to develop and implement policies that provide the public with an opportunity to appear before the council and to speak on any issue under the jurisdiction of the council.

Sec. 470.103. DIVISION OF POLICY AND DIRECTOR RESPONSIBILITIES. Requires the council to develop and implement policies that clearly separate the policymaking responsibilities of the council and the management responsibilities of the director and the staff of the council.

Sec. 470.104. COMPLAINTS. (a) Requires the council to maintain a system to promptly and efficiently act on complaints filed with the council. Requires the council to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) Requires the council to make information available describing its procedures for complaint investigation and resolution.

(c) Requires the council to periodically notify the complaint parties of the status of the complaint until final disposition.

Sec. 470.105. USE OF TECHNOLOGY. Requires the council to implement a policy requiring the council to use appropriate technological solutions to improve the council's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the council on the Internet.

Sec. 470.106. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) Requires the council to develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking) for the adoption of council rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies) to assist in the resolution of internal and external disputes under the council's jurisdiction.

(b) Requires that the council's procedures relating to alternative dispute resolution conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires the council to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Sec. 470.107. DIRECTOR. (a) Requires the director of the State Energy Conservation Office to appoint a representative of the office to serve as director for the council.

(b) Requires the director to:

(1) set the date, time, and place of council meetings; and

(2) provide administrative support to the council using existing resources and appropriations of the State Energy Conservation Office.

(c) Requires that all materials, if the council is abolished, be transferred to the director and the state archives.

Sec. 470.108. ADVISORY AND AD HOC COMMITTEES. Authorizes the council to form advisory or ad hoc committees composed of individuals from the public and private sectors to review policy matters related to the council's purpose.

Sec. 470.109. STANDING ADVISORY COMMITTEE. (a) Requires the council to establish a standing advisory committee composed of 15 members. Requires the council to appoint one member to represent each of the following:

(1) low-income communities;

(2) historically disadvantaged communities;

(3) the elderly;

(4) local governments;

(5) public schools;

(6) institutions of higher education;

(7) small business;

(8) agriculture;

(9) the nonprofit sector;

(10) the environment;

(11) public health;

(12) the energy efficiency service industry;

(13) ratepayers from the deregulated market;

(14) ratepayers from the cooperative electric market; and

(15) ratepayers from municipally owned utilities.

(b) Requires each member of the standing advisory committee to serve as liaison to the council on energy efficiency as related to the interest represented.

(c) Requires the standing advisory committee to make recommendations to the council regarding the effect of energy efficiency programs on the interests listed in Subsection (a) and creating or improving energy efficiency programs to better serve those interests.

(d) Authorizes the standing advisory committee, in accordance with Subchapter E, to request that persons submit documents and data to the council and seek the assistance of the staff of any state agency, utility provider, or energy efficiency service provider.

(e) Requires the standing advisory committee to meet at least four times each calendar year.

(f) Provides that the standing advisory committee is subject to Chapters 551 and 552.

(g) Provides that Chapter 2110 (State Agency Advisory Committees) does not apply to the standing advisory committee.

[Reserves Sections 470.110-470.150 for expansion.]

SUBCHAPTER D. FINANCIAL PROVISIONS

Sec. 470.151. ACCEPTANCE OF GIFTS OR GRANTS. (a) Authorizes the council, in addition to legislative appropriations, to accept gifts and grants from the federal government, state government, and private sources to carry out the purposes of this chapter.

(b) Provides that the use of a gift or grant is subject to the limitations contained in the gift or grant.

Sec. 470.152. ENERGY EFFICIENCY ACCOUNT. Provides that the energy efficiency account is a dedicated account in the general revenue fund. Provides that the account consists of:

- (1) appropriations of money by the legislature to the council;
- (2) gifts, grants, and other donations received for the account; and
- (3) interest earned on the investment of money in the account.

[Reserves Sections 470.153-470.200 for expansion.]

SUBCHAPTER E. STATE ENERGY EFFICIENCY PLAN

Sec. 470.201. PROPOSED STATE ENERGY EFFICIENCY PLAN. (a) Requires the director to prepare a proposed state energy efficiency plan every six years and to revise and update the plan biennially.

(b) Requires that the state energy efficiency plan:

- (1) propose strategies to correct deficiencies in energy efficiency programs and efforts throughout this state;
- (2) propose strategies to utilize new technology to achieve greater energy efficiency throughout this state;
- (3) propose strategies to involve institutions of higher education in energy efficiency, including through research and development; and
- (4) provide recommendations to the legislature and governor for implementation of the strategies proposed by the plan.

(c) Requires the council to establish guidelines for the development of the state energy efficiency plan and to provide guidance to the director in developing the plan.

(d) Requires the director to consult with all appropriate energy efficiency-related state agencies before development of the state energy efficiency plan.

(e) Requires the director to submit the proposed plan to the council for approval by a majority vote.

Sec. 470.202. STATE ENERGY EFFICIENCY PROGRAMS, GOALS, AND RECOMMENDATIONS. (a) Requires the council to coordinate with state agencies, utility providers, energy efficiency service providers, and other organizations and persons to develop and administer energy efficiency programs.

(b) Requires the council to set statewide savings targets for electricity, natural gas, and electric consumption that results from the diversion, transportation, delivery, treatment, or purification of water, wastewater, and storm water to reduce peak demand and overall demand for the resources by at least 20 percent not later than 2020 compared to the peak demand and overall demand for the resources in 2011. Requires the council biennially to:

(1) assess the statewide progress toward achieving the goals; and

(2) update the goals based on the statewide assessment, potential for achieving the goals, and development of new technology.

(c) Requires the council to evaluate, review, and make recommendations for improvements to energy efficiency programs and proposed energy efficiency programs in its annual and biennial reports.

(d) Requires the council to make recommendations for best practices for state agencies, utility providers, and energy efficiency service providers to coordinate, increase the comprehensiveness, and reduce costs in the delivery of energy efficiency products and services to customers.

(e) Requires each state agency to consider the council's recommendations and to submit to the council written comments on the feasibility of the recommendations not later than the 180th day after the date the agency receives the council's recommendations.

Sec. 470.203. COLLECTION AND SUBMISSION OF ENERGY INFORMATION. (a) Requires the council to:

(1) collect information regarding energy savings and demand reduction by reviewing energy efficiency programs in this state; and

(2) submit the information collected to:

(A) the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System;

(B) the State Energy Conservation Office; and

(C) the Electric Reliability Council of Texas.

(b) Requires each state agency, utility provider, and energy efficiency service provider to submit information required under this chapter or council rule to the council in an electronic format and within the time required by this chapter or council rule.

(c) Requires the State Energy Conservation Office to annually submit the following information to the Electric Reliability Council of Texas:

(1) the total energy savings and demand reduction determined by the office from all available sources for use in the reliability council's annual reports; and

(2) the total energy savings and demand reduction potential for use in the reliability council's long-term forecasting.

(d) Requires the Texas Engineering Experiment Station of The Texas A&M University System to submit information on pollution reduction, including reductions in nitrogen oxides, volatile organic compounds, and carbon dioxide, that results from energy efficiency programs to the Texas Commission on Environmental Quality and the United States Environmental Protection Agency for inclusion in the state's air quality plans.

Sec. 470.204. STANDARDIZED CONTRACTS, REPORTING METHODS, AND DISCLOSURE FORMS. (a) Requires the council to study and to create:

(1) standardized energy contracts, including contracts that have as a contracting party:

(A) a state agency;

(B) a utility provider;

(C) an energy efficiency service provider; or

(D) a residential consumer;

(2) a standardized method of reporting information required under this chapter or council rule; and

(3) a standard disclosure form for energy service efficiency providers to provide to consumers to assist consumers in making informed decisions on energy efficiency investments or purchases.

(b) Requires that the disclosure form required under Subsection (a)(3) include:

(1) information on the full scope of incentives, including all utility, municipal, county, state, and federal incentives, available to a consumer for energy efficiency measures the consumer considers;

(2) information on the incentives provided to an energy efficiency service provider to market an energy efficiency program offered to consumers by the provider;

(3) information on any other incentives available for related energy efficiency programs, products, or services; and

(4) the consumer's estimated energy savings and time required to achieve the savings.

(c) Requires an energy efficiency service provider to provide the standard disclosure form to each consumer considering making an energy efficiency investment or purchase from the provider.

Sec. 470.205. IMPLEMENTATION OF STATE ENERGY EFFICIENCY PLAN. Requires the council to promote the implementation of the state energy efficiency plan.

Sec. 470.206. DATA COLLECTION. Requires the director, in accordance with rules adopted by the council, to set standards, to collect and to distribute data necessary to support specific state energy efficiency plan goals.

Sec. 470.207. FAILURE TO SUBMIT DATA; CIVIL PENALTY. (a) Requires the council, if the director does not receive necessary data from a utility provider or energy efficiency service provider required to report the data under this chapter or council rule, to send to the person a notice requiring the person to submit the data not later than the 30th day after the date on which the person receives the notice.

(b) Provides that a person that does not submit the data during the 30-day period is subject to a civil penalty of not more than \$500 for each day the entity fails to submit the data following the 30-day period.

(c) Requires the attorney general, on request of the director, to bring an action in the name of the state to recover the civil penalty under this section. Entitles the attorney general to recover all reasonable costs of prosecuting the action, including reasonable attorney's fees, investigative costs, witness fees, deposition costs, and court costs.

Sec. 470.208. INTERNET WEBSITE. Requires the council to create and to maintain a public Internet website. Requires that the website meet the state's minimum standards for accessibility and include:

- (1) each annual and biennial report produced by the council;
- (2) a user-friendly page that allows a consumer to search by the consumer's address energy efficiency programs available in the consumer's service area;
- (3) comprehensive information on energy efficiency that allows the website to serve as the state's main resource for all energy efficiency information; and
- (4) a list of every energy efficiency program reviewed by the council organized by state agency, public utility, or energy efficiency service provider with appropriate links.

Sec. 470.209. ANNUAL REPORT. (a) Requires the council annually to prepare a report that includes:

- (1) information about each energy efficiency program reviewed by the council;
- (2) the goals of each energy efficiency program;
- (3) the actual results, including the costs, benefits, and emissions reductions, associated with each energy efficiency program;
- (4) the energy savings associated with each energy efficiency program;
- (5) the job creation results of each energy efficiency program;
- (6) an assessment of the potential for efficiency in electric, gas, and water use;
- (7) recommendations for program changes to increase the efficiency of energy use in this state;

- (8) recommendations for the standardization of data collection and reporting on the costs, benefits, and emissions reductions;
- (9) the likely impact of energy efficiency programs on utility rates; and
- (10) any other data the council by rule requires.

(b) Requires the council to:

(1) submit each annual report to:

- (A) each state agency with an energy efficiency program; and
- (B) the Electric Reliability Council of Texas; and

(2) post the reports on its Internet website.

(c) Requires each state agency, utility provider, energy efficiency service provider, or other person required to submit an annual report to the council under this chapter or council rule to submit the report not later than October 1 of each year.

Sec. 470.210. BIENNIAL REPORT. (a) Requires the council to submit an electronic report to each member of the legislature not later than October 1 of each even-numbered year.

(b) Requires that the biennial report include:

- (1) an executive summary of the council's accomplishments and a link to the council's public website;
- (2) the information typically provided in an annual report;
- (3) updates to the state energy efficiency plan;
- (4) a comparison of the structure, goals, and results of energy efficiency programs in this state to the structure, goals, and results of energy efficiency programs of the five most populous states and of any other state the council considers appropriate; and
- (5) policy recommendations to the legislature that require statutory revisions.

[Reserves Sections 470.211-470.250 for expansion.]

SUBCHAPTER F. COST-EFFECTIVENESS STANDARDS FOR ENERGY EFFICIENCY PROGRAMS

Sec. 470.251. SELECTION OF COST-EFFECTIVENESS STANDARDS. (a) Requires the council to study various methods for evaluating, measuring, and verifying the cost-effectiveness of energy efficiency programs.

(b) Authorizes the council by rule, on completion of the study, to adopt cost-effectiveness standards. Authorizes the council to:

- (1) adopt one cost-effectiveness standard for all state energy efficiency programs; or

(2) authorize different cost-effectiveness standards for different energy efficiency programs if the council has a rational basis for the varying standards.

(c) Requires the council to review the study, as part of the state energy efficiency plan, and authorizes the council to adopt or amend rules on the best practices of cost-effectiveness standards.

(d) Requires the council, until the council studies and adopts cost-effectiveness standards, to evaluate the cost-effectiveness of energy efficiency programs in its annual reports using:

(1) the criteria listed in Section 470.252; and

(2) any other cost-effectiveness testing method used by a state agency in evaluating the agency's energy efficiency programs and to include the agency's testing results in the annual report.

Sec. 470.252. COST-EFFECTIVENESS STANDARD. (a) Requires the council to evaluate whether a state agency's or utility provider's energy efficiency program is cost-effective by determining whether the program benefits exceed the program costs.

(b) Requires that costs and benefits be considered regardless of whether the costs are paid for or benefits experienced by the participant, the business, the government agency, or any other individual.

(c) Provides that program costs include:

(1) direct program costs, including program design, administration, incentives, implementation, marketing, measurement, and evaluation;

(2) incremental costs of an energy efficiency measure, including installation, over an equivalent baseline measure for new construction; and

(3) ongoing customer costs, including increased operation and maintenance costs, reduced productivity, and lost economic development opportunities, to the extent the costs can be reasonably quantified and valued.

(d) Provides that program benefits include:

(1) avoided electric generation costs, including energy and capacity costs, using estimates of market prices and adjusting for line losses differentiated by time periods that influence market prices and market price reductions caused by the reduced energy demand, including peak and off-peak periods and summer and winter periods;

(2) avoided transmission and distribution costs, using estimates of transmission and distribution utility marginal transmission and distribution costs, differentiated by time periods that influence costs;

(3) avoided fossil fuel costs, using estimated savings in oil, gas, coal, or other fossil fuel use, at estimated fossil fuel prices;

(4) other resource benefits, such as reduced water and sewer costs; and

(5) non-resource benefits, including customer benefits such as reduced operation and maintenance costs, deferred replacement costs, productivity improvements, economic development benefits, reduced health care and pollution costs, and any other environmental benefits.

(e) Requires that the present value of the energy efficiency program benefits be calculated over the projected life of the measures installed under the energy efficiency program.

SECTION 2. (a) Requires the governor, in appointing the initial appointed members of the Energy Efficiency Coordination Council created under Chapter 470, Government Code, as added by this Act, to appoint one member to a term expiring February 1, 2013, one member to a term expiring February 1, 2015, and two members to terms expiring February 1, 2017.

(b) Requires the council to adopt rules, procedures, and forms necessary to implement Chapter 470, Government Code, as added by this Act, not later than May 1, 2012.

SECTION 3. Effective date: upon passage or September 1, 2011.