**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “STATE DEPARTMENT OF ENERGY RESTRUCTURING ACT” BY ADDING ARTICLE 8 TO CHAPTER 3, TITLE 1, SO AS TO ESTABLISH THE STATE DEPARTMENT OF ENERGY TO BE HEADED BY THE STATE ENERGY DIRECTOR WHO IS APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE, AND TO PROVIDE FOR THE POWERS, DUTIES, AND FUNCTIONS OF THE DEPARTMENT; AND TO REPEAL ARTICLE 4, CHAPTER 52, TITLE 48 RELATING TO THE STATE ENERGY OFFICE.

Whereas, it is imperative that South Carolina have a strategic plan for energy in order to compete in a changing economy, both in the United States and worldwide; and

Whereas, the need for alternate energy sources in business and in our personal lives, in a knowledge-based economy, it is imperative for South Carolina to have a strategic plan for energy; and

Whereas, with proper measures and programs in place, South Carolina can improve the competitiveness of energy businesses that operate in our State and will attract and entice other businesses, entrepreneurs, and energy industries; and

Whereas, nurturing industries in alternate energy development will increase the wealth of citizens of South Carolina through employment opportunities and greater income by expanding current industries in this sector and the development of new industries; and

Whereas, the importance of adoption of sound public policy in energy sectors could and should work hand in hand with commerce, and therefore it is logical that there should be a Cabinet seat for the head of energy. Now, therefore,

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

SECTION 1. This act may be cited as the “State Department of Energy Restructuring Act”.

SECTION 2. Chapter 3, Title 1 of the 1976 Code is amended by adding:

“Article 8

State Department of Energy

Section 1‑3‑500. (A) There is created the State Department of Energy (department). The department is headed by the State Energy Director (director) who is appointed by the Governor with the advice and consent of the Senate. The director serves at the pleasure of the Governor.

(B) The department shall serve as the principal energy planning entity for the State. Its primary purpose is to develop and implement a well‑balanced energy strategy and to increase the efficiency of use of all energy sources throughout South Carolina through the implementation of the Plan for State Energy Policy. The department does not function as a regulatory body.

Section 1‑3‑505. The department may be organized in a manner the director considers most appropriate to carry out various duties, responsibilities, and authorities assigned to the department.

Section 1‑3‑510. In carrying out the purposes of the Plan for State Energy Policy, the department shall:

(1) provide informational and technical assistance programs to assist with residential, commercial, governmental, industrial, and transportation conservation and efficiency and to encourage the use of renewable indigenous energy resources;

(2) promote continued and expanded energy research and development programs geared toward the energy needs of the State;

(3) evaluate and certify energy conservation products in cooperation with the South Carolina Energy Research and Development Center;

(4) examine and consider the desirability and feasibility of mechanisms for tax incentives, low‑interest loans, and other financing means for cost‑effective energy consideration and efficiency and use of renewable and indigenous energy resources, and advocate their implementation when considered appropriate;

(5) work with the Public Service Commission and other groups to promote appropriate financial incentives for electric and gas utilities to maximize the use of cost‑effective demand‑side options in meeting future energy needs;

(6) promote the adoption and use of energy efficient building codes and certification procedures for builders, heating and cooling specialists, and building inspectors;

(7) promote energy efficiency in manufactured housing;

(8) promote the use of less‑polluting transportation fuels, public transportation and other transportation alternatives, higher mileage and less‑polluting vehicles, and work with state and local entities through policy development, planning, and advocacy to encourage reduction in the need for vehicle travel;

(9) ensure that state government agencies establish comprehensive energy efficiency plans and become models for energy efficiency in South Carolina, and assist the Department of Education in achieving energy efficiency in public schools;

(10) collect currently published and publicly available energy data and provide energy information clearinghouse functions and conduct long‑range energy planning;

(11) assist the General Assembly in assessing the public economic and environmental interest on issues related to energy production, transportation, and use and provide information on the public interest in appropriate forums; and

(12) ensure that any future energy strategy that promotes carbon‑free, nongreenhouse gas emitting sources includes nuclear energy, renewable energy resources, and energy conservation and efficiency.

Section 1‑3‑515. The department annually shall submit to the General Assembly a Plan for State Energy Policy that includes, but is not limited to:

(1) activities by the department to carry out the Plan for State Energy Policy;

(2) recommendations for long‑term quantitative and qualitative energy goals for the residential, commercial, industrial, transportation, governmental, and utility sectors, and measures of progress for these goals;

(3) identification of obstacles to efficiency for which legislative, regulatory, or other governmental remedies are appropriate.

Section 1‑3‑520. (A) There is established the Energy Advisory Committee, whose members are appointed by the director. Members serve at the pleasure of the director. The committee is composed as follows:

(1) two representatives of investor‑owned electricity companies;

(2) two representatives of electric cooperatives;

(3) one representative of the South Carolina Public Service Authority, who serves ex officio;

(4) one representative of municipally owned electric utilities;

(5) one representative of publicly owned natural gas companies;

(6) one representative of investor‑owned gas companies;

(7) one representative of oil suppliers or dealers;

(8) one representative of propane suppliers or dealers;

(9) one representative of nonprofit public transportation providers;

(10) two representatives of industrial consumers;

(11) two representatives of commercial consumers;

(12) two representatives of individual consumers; one must be the Executive Director of the Office of Regulatory Staff or his designee, who serves ex officio;

(13) two representatives of environmental groups; and

(14) one at‑large member appointed by the director.

(B) The director shall appoint one of the committee members to serve as chairman. The members of the Energy Advisory Committee are not eligible for per diem payments or for reimbursement for lodging or meals. The functions of the Energy Advisory Committee are advisory to the department. The committee shall meet at least annually and at the call of the chair or at the request of at least six members to receive information on the activities of the department and the formulation and implementation of the Plan for State Energy Policy. It may comment and advise on the activities and the plan as considered appropriate by members of the committee. The department may seek advice and guidance from the committee as considered appropriate by the director. Members shall adopt rules governing meeting attendance and abide by these rules.

(C) Members of the Energy Advisory Committee serving in office on July 1, 2011, shall continue to serve until their successors are appointed and qualify.

Section 1‑3‑525. Where possible, the department shall encourage consolidating other offices or programs in state government related to energy, energy efficiency, and energy reliability.

Section 1‑3‑530. The establishment of the department as provided for in this article, must be evaluated if restructuring or reorganizing of state government takes place so as to identify and provide for the proper placement of the office upon restructuring or reorganizing.

Section 1‑3‑535. Funding for the department, as created in this article, must be derived from existing financial resources available to the State and may be derived from oil overcharge funds. Personnel for the department must be derived from the consolidation of existing state government personnel slots with no new FTE’s.

Section 1‑3‑540. The department shall develop energy efficient code standards for state‑owned and leased buildings, including public school buildings. These standards must provide for life‑cycle cost effectiveness.

Section 1‑3‑545. (A)(1) Each state agency and public school district shall submit for approval to the department an energy conservation plan for buildings in use on July 1, 2011, with a goal to reduce energy consumption by at least one percent annually for five consecutive years beginning July 1, 2011. The plan also must have a goal of ultimately reducing energy consumption for buildings in use on July 1, 2011, by twenty percent by July 1, 2020, relative to year 2000 levels. An agency shall implement all available cost‑effective energy‑saving measures to pursue these goals. In determining whether an energy‑saving method is cost effective, an agency should primarily consider the measure’s cost effectiveness over a five‑year period rather than within one fiscal year. The department shall provide agency assistance and information needed to help meet these goals.

(2) The provisions of this section do not apply to a building designed, constructed or rehabilitated, and maintained in compliance with the Energy Independence and Sustainable Construction Act of 2007.

(B) In order to monitor energy consumption, the department shall determine those state buildings that require individual metering. Metering must be installed by the agency, the cost of which must be borne by the agency responsible for the utility bill for the building.

(C)(1) Each state agency and public school district annually shall submit energy conservation reports in the manner and at the times required by the department.

(2) An agency that does not attain the annual reduction goals required by this section shall include in its report a detailed justification that it implemented all available, cost‑effective energy conservation methods.

(3) An agency that submits a report indicating it has implemented all available, cost‑effective energy‑saving measures as contemplated in subsection (A) is exempt from these reporting requirements for a year in which a subsequent report would indicate no status change. The agency shall notify the department that the agency is exempt under this item.

(D) Each public school district and state agency shall submit to the department and each state agency shall include in its annual report to the State Budget and Control Board:

(1) activities undertaken implementing its energy conservation plan; and

(2) progress made in achieving its energy conservation goals.

(E) The department shall compile the reports submitted pursuant to subsection (C) to be submitted annually, no later than December thirty‑first, to the General Assembly. The department shall provide suggested formats for plans and goals that must be submitted pursuant to subsection (A), reporting forms for reports required by subsection (C), and all technical assistance necessary for state agencies and school districts to satisfy the requirements of these subsections.

(F) For purposes of this article:

(1) ‘Energy consumption’ includes, but is not limited to, electricity, natural gas, fuel oil, and propane. Energy consumption must be measured using BTU’s for each gross square foot.

(2) ‘State agency’ means a state government agency subject to the procurement code. For state institutions of higher learning, this definition only applies to those facilities greater than ten thousand gross square feet and does not include those facilities whose function is defined as athletics or research. For state technical colleges, this definition does not apply to those facilities whose primary function is to provide technical training and education in programs where significant energy consumption is necessary for the conduct of the academic program.

Section 1‑3‑550. An agency’s budget must not be reduced by the full amount of money saved through energy conservation measures. Appropriate financial incentives to encourage the reinvestment of energy costs savings into additional energy conservation areas must be provided. Energy savings must be divided among the agency, the general fund, and debt retirement of capital expenditures on energy efficiency. Agencies must be encouraged to reinvest their savings into energy conservation areas, where practical.

Section 1‑3‑555. Pursuant to Section 1‑3‑550, an agency’s savings realized in the prior fiscal year from implementing an energy conservation measure as compared to a baseline energy use as certified by the department, may be retained and carried forward into the current fiscal year. This savings, as certified by the department, first must be used for debt retirement of capital expenditures, if any, on the energy conservation measure, after which time savings may be used for agency operational purposes and where practical, reinvested into energy conservation areas. The agency shall report all actual savings in the energy portion of its annual report to the department.

Section 1‑3‑560. (A) A vendor of energy conservation products making an energy conservation claim and attempting to sell to state government shall submit the product to the department for evaluation and certification.

(B) Energy conservation products certified by the department may be purchased by a state agency subject to the state procurement code, but only if the department considers use of the energy conservation product more cost efficient than an uncertified product over a five‑year period. The department may certify only a product that meets or exceeds the Federal Energy Star standards designed by the United States Environmental Protection Agency and the United States Department of Energy.

(C) A state agency shall submit a disclaimer statement to the department with its annual report stating that it did not purchase an energy conservation product that had not been certified by the department.

(D) Each state agency head shall require the agency’s procurement officer or other person authorized to purchase supplies for the agency to replace an incandescent light bulb used by the agency with a compact fluorescent bulb when the incandescent bulb needs to be replaced, and if the agency determines use of a compact fluorescent bulb is more cost effective over a five‑year period than use of an incandescent bulb. A state agency may purchase incandescent bulbs for the agency if the agency verifies, in writing, that compelling circumstances require the use of incandescent bulbs.

Section 1‑3‑565. The department shall establish a mechanism for a revolving loan fund for state agencies and political subdivisions of the State to use for energy conservation measures. Repayment may be from the savings in the entity’s utility budget.

Section 1‑3‑570. (A) A governmental unit may enter into a guaranteed energy, water, or wastewater savings contract for a duration of more than one year with vendors of guaranteed energy, water, or wastewater savings programs. The financing for the guaranteed energy, water, or wastewater savings contracts may be provided by the vendor of the guaranteed energy, water, or wastewater savings program or by a third‑party financial institution or company. No funds disclaimer clause as provided for in Section 11‑35‑2030 is required in these contracts. Repayment may be made from savings on the agency utility budget.

(B) A governmental unit may award a guaranteed energy, water, or wastewater savings contract pursuant to Section 11‑35‑1530 or in the case of a governmental unit not subject to the South Carolina Consolidated Procurement Code, pursuant to other applicable procurement law if it includes a written guarantee that savings will meet or exceed the cost of energy, water, or wastewater conservation measures. A governmental unit may request that the department review the methodology used by the guaranteed energy, water, or wastewater savings vendor to project and measure savings and future billable revenues. The department shall deliver the written approval or shall deliver a written notice that it has determined not to deliver the approval within thirty days of the receipt of a guaranteed energy, water, or wastewater performance contract. The department is authorized to charge a reasonable hourly rate for its review of guaranteed energy, water, or wastewater savings programs or guaranteed energy, water, or wastewater savings contracts, and the payment of the charges may be included in the financing for the guaranteed energy, water, or wastewater savings contract.

(C) For purposes of this section, ‘governmental unit’ means a state government agency, department, institution, college, university, technical school, legislative body, or other establishment or official of the executive, judicial, or legislative branches of this State authorized by law to enter into contracts including all local political subdivisions including, but not limited to, counties, municipalities, public school districts, or public service or special purpose districts.

(D) For purposes of this section, ‘guaranteed energy, water, or wastewater savings contract’ means a contract for the evaluation and recommendation of energy, water, or wastewater conservation measures and for implementation of one or more of these measures. The contract must provide that all payments, except obligations on termination of the contract before its expiration, must be made over time and the energy, water, or wastewater cost savings or billable revenue increases resulting from implementation of the energy, water, or wastewater conservation measures may be used to make payments for the energy, water, or wastewater conservation systems installed pursuant to guaranteed energy, water, or wastewater savings contracts. Annual revenues or savings from the guaranteed contract may be less than annual payments, if during the length of the contract aggregate savings occur as provided for by the terms of the contract.

(E) For purposes of this section ‘energy, water, or wastewater conservation measure’ means a training program, facility alteration, or technology upgrade designed to produce measurable, long‑term reductions in energy, water, wastewater, or other consumption, personnel costs, operational costs including, but not limited to:

(1) insulation of the building structure or systems within the building;

(2) storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;

(3) automated or computerized energy control systems;

(4) heating, ventilating, or air conditioning system modifications or replacements;

(5) replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;

(6) energy recovery systems;

(7) cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

(8) water and sewer conservation measures including, without limitation, plumbing fixtures and infrastructure;

(9) equipment upgrades that improve accuracy of billable revenue generating systems;

(10) automated, electronic, or remotely controlled systems or measures that reduce direct personnel costs; and

(11) such other energy, water, or wastewater measures as may provide measurable, long‑term operating costs reductions or billable revenue increases.

Section 1‑3‑575. (A) The department shall assist the Materials Management Office as established in Section 11‑35‑810 and all governmental bodies defined in and subject to the Consolidated Procurement Code, by identifying goods which are ‘energy efficient’ or for which the State can achieve long‑term savings through consideration of life-cycle costs. The department shall compile a list of these goods. Before issuing any solicitation for these goods, the procuring agency shall notify the department which shall assist in drafting or reviewing specifications for the goods being procured and which shall approve the specifications before issuing the solicitation. Upon request of a governmental body, the department shall provide assistance in evaluating bids or offers received in response to the solicitation to ensure that procurements are made in accordance with the purposes and policies of this article.

(B) The department shall assist the Office of the State Engineer and all governmental bodies defined in and subject to the Consolidated Procurement Code by drafting energy conservation standards to be applied in the design and construction of buildings that are owned or lease/purchased by these governmental bodies. Before any construction contracts are bid under Section 11‑35‑3020, the State Engineer’s Office or the governmental body soliciting the bids shall review the plans and specifications to ensure that they are in compliance with the standards drafted by the department. The department shall provide assistance in reviewing these plans and specifications upon the request of the State Engineer’s Office or the affected governmental body.

(C) The department shall provide the Office of Property Management of the State Budget and Control Board, Division of General Services, information to be used in evaluating energy costs for buildings or portions of buildings proposed to be leased by governmental bodies that are defined in and subject to the Consolidated Procurement Code. The information provided must be considered with the other criteria provided by law by a governmental body before entering into a real property lease.

Section 1‑3‑580. (A) The Energy Efficient Manufactured Homes Incentive Program is established to provide financial incentives for the purchase and installation of energy efficient manufactured homes in South Carolina. A person who purchases a manufactured home designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency’s energy saving efficiency requirements or which has been designated as meeting or exceeding such requirements under each agency’s ENERGY STAR program from a retail dealership licensed by the South Carolina Manufactured Housing Board for use in this State is eligible for a nonrefundable income tax credit equal to seven hundred fifty dollars. The credit may be claimed beginning July 1, 2011, and no later than July 1, 2021.

(B) The department shall adopt rules pursuant to this article to develop tax credit applications and administer the issuance of tax credits and must track and report on the fiscal and energy impacts of this program.

Section 1‑3‑585. (A) Each agency shall consider reductions of its energy, water, and wastewater use, and shall implement recommended conservation measures to the degree the agency determines that the measures are cost effective. An audit must be performed by internal or external auditors, or by an energy services company in the manner provided in Section 48‑52‑670. Audit results and recommendations must be included in the report to the department.

(B) Each agency shall comply with this section by July 1, 2012.”

SECTION 3. Article 4, Chapter 52, Title 48 of the 1976 Code is repealed.

SECTION 4. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑