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2 89th General Assembly
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4

A Bill

HOUSE BILL 1386

5 By: Representatives Rice, Hickerson, Baine, Barnett, Bragg, Carnine, Dale, C. Douglas, Fielding,
6 Hawthorne, Jean, Jett, Kerr, Lampkin, S. Malone, McGill, Slinkard, Vines, Wardlaw, Westerman, Wren,
7 Wright
8 By: Senators Files, E. Cheatham, Holland, B. Pierce, G. Stubblefield
9

For An Act To Be Entitled

11 AN ACT TO AMEND THE ENERGY CONSERVATION ENDORSEMENT
12 ACT OF 1977; TO ALLOW CERTAIN NONRESIDENTIAL BUSINESS
13 CONSUMERS TO OPT OUT OF UTILITY-SPONSORED ENERGY
14 CONSERVATION PROGRAMS AND MEASURES; TO ALLOW
15 NONRESIDENTIAL BUSINESS CONSUMERS WHO OPT OUT OF
16 UTILITY-SPONSORED ENERGY CONSERVATION PROGRAMS AND
17 MEASURES TO DIRECT THEIR OWN ENERGY CONSERVATION
18 PROGRAMS AND MEASURES; TO ALLOW EXEMPT NONRESIDENTIAL
19 BUSINESS CONSUMERS TO OPT BACK IN TO UTILITY-
20 SPONSORED ENERGY CONSERVATION PROGRAMS AND MEASURES;
21 TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.
22
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Subtitle

25 TO ALLOW CERTAIN NONRESIDENTIAL BUSINESS
26 CONSUMERS TO OPT OUT OF UTILITY-SPONSORED
27 ENERGY CONSERVATION PROGRAMS AND MEASURES
28 AND DIRECT THEIR OWN ENERGY CONSERVATION
29 PROGRAMS AND MEASURES; AND TO DECLARE AN
30 EMERGENCY.
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33 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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35 SECTION 1. Arkansas Code § 23-3-405 is amended to read as follows:
36 23-3-405. Authority of Arkansas Public Service Commission – Rates and



1 charges – Exemptions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (A) That:

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

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

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

1 (B) That:

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

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

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

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

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

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

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

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

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

31 (e)(1) A nonresidential business consumer seeking to withdraw an
32 exemption granted under this section shall notify the commission by September
33 15 of any year.

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

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

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

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

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

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