

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

A Bill

HOUSE BILL 1050

5 By: Representative D. Altes
6

For An Act To Be Entitled

8 AN ACT TO PROMOTE ENERGY EFFICIENCY AND CONSERVATION
9 IN RESIDENCES; TO AUTHORIZE UTILITIES TO PROVIDE
10 FINANCING FOR ENERGY EFFICIENCY AND CONSERVATION
11 IMPROVEMENTS IN RESIDENCES; AND FOR OTHER PURPOSES.
12

Subtitle

13 TO PROMOTE ENERGY EFFICIENCY AND
14 CONSERVATION IN RESIDENCES AND TO
15 AUTHORIZE UTILITIES TO PROVIDE FINANCING
16 FOR ENERGY EFFICIENCY AND CONSERVATION
17 IMPROVEMENTS IN RESIDENCES.
18
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20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code Title 23, Chapter 3, is amended to add an
24 additional subchapter to read as follows:

25 Subchapter 3 – Energy Efficiency and Conservation Financing Act
26

27 23-3-801. Title.

28 This subchapter shall be known and may be cited as the “Energy
29 Efficiency and Conservation Financing Act”.
30

31 23-3-802. Findings.

32 The General Assembly finds that:

33 (1) There are various factors putting upward pressure on the
34 price of electricity and natural gas, and those factors are likely to
35 increase in the foreseeable future;

36 (2) Improvement of residential energy efficiency and



1 conservation can protect electricity and natural gas consumers from these
 2 price increases;

3 (3) The implementation of energy efficiency and conservation
 4 measures in residences will benefit not only the residents of the homes in
 5 which the measures are installed, but also all residents of the state by
 6 reducing the need for new and expensive sources of generation;

7 (4) The costs of energy efficiency and conservation measures and
 8 the availability of financing for these costs are major impediments to the
 9 widespread adoption of energy efficiency and conservation measures; and

10 (5) Electricity providers and natural gas providers are in a
 11 position to assist their customers with the installation and financing of
 12 energy efficiency and conservation measures if appropriate procedures are
 13 followed for the installation of the energy efficiency and conservation
 14 measures and the recovery of the costs of the energy efficiency and
 15 conservation measures.

16
 17 23-3-803. Definitions.

18 As used in this subchapter:

19 (1) "Customer" means a homeowner or tenant receiving electricity
 20 or natural gas as a:

21 (A) Retail customer; or

22 (B) A member of an electricity provider or natural gas
 23 provider;

24 (2) "Electricity provider" means an electric cooperative, an
 25 investor-owned electric utility, and any other electric utility subject to
 26 the jurisdiction of the Arkansas Public Service Commission;

27 (3)(A) "Energy efficiency and conservation measure" means:

28 (i) An improvement, repair, alteration, or
 29 betterment designed to reduce energy consumption or operating costs of a
 30 residence; or

31 (ii) A device, fixture, or furnishing that is
 32 designed to reduce energy consumption or operating costs by being added to or
 33 used in a residence.

34 (B) "Energy efficiency and conservation measure" includes
 35 without limitation one (1) or more of the following:

36 (i) Insulation for the residence or a system within

1 the residence;

2 (ii) A storm window or door;

3 (iii) Caulking or weather stripping;

4 (iv) A multiglazed window or door;

5 (v) A heat-absorbing or heat-reflective glazed and
 6 coated window or door system;

7 (vi) Additional glazing;

8 (vii) A reduction in glass area;

9 (viii) Other window or door system modification that
 10 reduces energy consumption;

11 (ix) An automated or computerized energy control
 12 system;

13 (x) A heating, ventilating, or air conditioning
 14 system modification or replacement;

15 (xi) A replacement or modification of a lighting
 16 fixture to increase the energy efficiency of the lighting system;

17 (xii) An indoor air-quality improvement;

18 (xiii) A solar-powered device or system;

19 (xiv) A wind-powered device or system; and

20 (xv) A preinstallation energy audit or analysis;

21 (4) "Energy efficiency financing agreement" means a written
 22 agreement between a customer and either an electricity provider or a natural
 23 gas provider for the electricity provider or natural gas provider to finance
 24 the implementation of one (1) or more energy efficiency and conservation
 25 measures;

26 (5) "Low Income Home Energy Assistance Program" means the
 27 federal program;

28 (A) Authorized under 42 U.S.C. §§ 8621-8630, as it existed
 29 on January 1, 2011;

30 (B) Administered and funded by the United States
 31 Department of Health and Human Services on the federal level; and

32 (C) Administered locally by the Office of Community
 33 Services;

34 (6) "Meter conservation charge" means the charge placed on a
 35 customer's account by which an electricity provider or natural gas provider
 36 may recover the costs, including the financing costs, of an energy efficiency

1 and conservation measure;

2 (7) "Natural gas provider" means an investor-owned natural gas
3 utility or publicly owned natural gas provider subject to the jurisdiction of
4 the commission;

5 (8) "Notice of meter conservation charge" means the written
6 notice by which a subsequent purchaser or tenant of a residence will be given
7 notice that he or she will be required to pay a meter conservation charge;

8 (9) "Preinstallation energy audit and analysis" means a written
9 document that includes the following information:

10 (A) An estimate of the cost of installation, modification,
11 or remodeling of the energy efficiency and conservation measure, including
12 without limitation the cost of analysis, design, engineering, installation,
13 commissioning, maintenance, repair, debt service, postinstallation project
14 monitoring, savings measurement and verification, and data collection and
15 reporting;

16 (B) An estimate of the energy cost savings resulting from
17 the energy efficiency and conservation measure;

18 (C) The qualifications of the qualified provider;

19 (D) A signed verification stating that:

20 (i) The qualified provider is a current member in
21 good standing of the Energy Service Company or Energy Service Provider
22 category of the National Association of Energy Service Companies; or

23 (ii) The commission or an independent engineer
24 engaged by the commission has reviewed and approved the energy audit and
25 analysis;

26 (E) A statement from an Arkansas-licensed professional
27 engineer that the engineer was a member of the team that completed the
28 preinstallation energy audit and analysis of the residence;

29 (F) The reasonably expected useful life of each
30 recommended energy efficiency and conservation measure; and

31 (G) When appropriate, a guarantee by the qualified
32 provider regarding the costs and savings associated with the energy
33 efficiency and conservation measure;

34 (10) "Qualified provider" means a person or business that:

35 (A) Possesses a valid Arkansas contractor's license;

36 (B) Is certified by the Building Performance Institute;

1 (C) Has a minimum of five (5) years' experience in the
2 analysis, design, implementation, and installation of energy efficiency and
3 conservation measures;

4 (D) Has the technical and financial capability to ensure
5 that the energy efficiency or conservation measure generates energy cost
6 savings; and

7 (E) Has the ability to provide maintenance and ongoing
8 measurement of the energy efficiency and conservation measure to ensure and
9 verify energy savings;

10 (11) "Residence" means a currently occupied, privately owned
11 residence of a person; and

12 (12) "Weatherization Assistance Program" means the federal
13 program;

14 (A) Authorized under 42 U.S.C. §§ 6861-6873, as it existed
15 on January 1, 2011;

16 (B) Administered and funded by the United States
17 Department of Energy on the federal level; and

18 (C) Administered locally by the Office of Community
19 Services.

20
21 23-3-804. Energy efficiency financing agreements – Limitations.

22 (a)(1) An electricity provider or natural gas provider may enter into
23 an energy efficiency financing agreement with a customer or a landlord of a
24 customer to finance the purchase price and installation cost of one (1) or
25 more energy efficiency and conservation measures.

26 (2) The energy efficiency financing agreement shall specify:

27 (A) The total cost of each energy efficiency and
28 conservation measure;

29 (B)(i) The interest rate to be charged to finance the
30 costs of the energy efficiency and conservation measure.

31 (ii) The interest rate shall be a fixed rate over
32 the term of the energy efficiency financing agreement and shall not exceed
33 the lesser of the following:

34 (a) Four percent (4%) above the stated yield
35 for one-year treasury bills as published by the Federal Reserve at the time
36 the energy efficiency financing agreement is executed; or

1 (b) The maximum interest allowed by Arkansas
 2 law;

3 (C) The period of time for repayment by the customer;

4 (D) The amount of each payment;

5 (E) The frequency of the payments;

6 (F) That any indebtedness created under this section may
 7 be paid in full without penalty at any time before it is due.

8 (3) The energy efficiency financing agreement may provide that:

9 (A) The costs shall be recovered by a meter conservation
 10 charge on the customer's electricity account or natural gas account; and

11 (B) The energy cost savings are guaranteed by a qualified
 12 provider to the extent necessary to pay the costs of the energy efficiency
 13 and conservation measure, including all costs of financing and annual
 14 services that may include the measurement and verification of the guaranteed
 15 savings.

16 (b) An electricity provider or natural gas provider may enter into an
 17 energy efficiency financing agreement with a customer only if a qualified
 18 provider finds that the cost of the energy efficiency and conservation
 19 measure is less than the amount that will be saved in energy costs within the
 20 repayment period stated in the energy efficiency financing agreement.

21 (c) An electricity provider or natural gas provider may recover the
 22 costs, including the financing costs, of the energy efficiency and
 23 conservation measure:

24 (1) From the customer who directly benefits from the energy
 25 efficiency and conservation measure; and

26 (2) Through a meter conservation charge, which shall be listed
 27 as a separate line item on the account of the customer.

28 (d)(1) An electricity provider or natural gas provider may:

29 (A) Treat a failure to pay the meter conservation charge
 30 as a failure to pay the electricity account or natural gas account; and

31 (B) Suspend or terminate electricity service or natural
 32 gas service for nonpayment of the meter conservation charge.

33 (2) An electricity provider or natural gas provider acting under
 34 this subsection shall comply with the rules of the Arkansas Public Service
 35 Commission regarding suspension or termination of service.

36 (e) This section shall not be used to:

1 (1) Finance an energy efficiency and conservation measure for a
2 new residence or a residence under construction; or

3 (2) Implement an energy efficiency and conservation measure that
4 results in the replacement of a natural gas appliance or equipment with an
5 electric appliance or equipment or that results in the replacement of an
6 electric appliance or equipment with a natural gas appliance or equipment,
7 unless the customer who seeks to install the energy efficiency and
8 conservation measure is being provided electricity service and natural gas
9 service by the same provider.

10
11 23-3-805. Electricity provider or natural gas provider not liable.

12 (a) An electricity provider or natural gas provider shall not:

13 (1) Assume liability for the installation, operation, or
14 maintenance of an energy efficiency and conservation measure when the energy
15 efficiency and conservation measure is performed by a third party;

16 (2) Provide any warranty as to the merchantability or the
17 fitness for a particular purpose of the energy efficiency and conservation
18 measure;

19 (3) Assume liability for a preinstallation energy audit and
20 analysis performed by a third party; or

21 (4) Provide a warranty relating to a preinstallation energy
22 audit and analysis performed by a third party.

23 (b) No action shall be maintained against an electricity provider or
24 natural gas provider relating to the failure of an energy efficiency and
25 conservation measure.

26 (c) This section does not limit any rights or remedies of a customer
27 or landlord of a customer against another party to a transaction involving
28 the purchase and installation of an energy efficiency and conservation
29 measure.

30
31 23-3-806. Preinstallation energy audit and analysis.

32 (a) Before entering into an energy efficiency financing agreement, the
33 electricity provider or natural gas provider shall perform or engage a third
34 party to perform a preinstallation energy audit and analysis on the
35 residence.

36 (b) The preinstallation energy audit and analysis shall:

1 (1) Be conducted by a qualified provider; and

2 (2) Specify each energy efficiency and conservation measure to
3 be completed.

4 (c)(1) The owner of the residence shall choose the qualified provider
5 who will complete each energy efficiency and conservation measure.

6 (2) Upon request, the electricity provider or natural gas
7 provider shall provide the owner of the residence with a list of qualified
8 providers.

9
10 23-3-807. Review of completed energy efficiency and conservation
11 measures – Remedies.

12 (a) An energy auditor certified by the Building Performance Institute
13 shall inspect each completed energy efficiency and conservation measure.

14 (b) If an energy auditor determines that an energy efficiency and
15 conservation measure was done improperly or is inappropriately sized for the
16 intended use, then the responsible qualified provider shall remedy the
17 problem without additional cost to the customer, the electricity provider, or
18 the natural gas provider.

19 (c) The electricity provider or natural gas provider shall hold the
20 funds due the qualified provider in escrow until the work has been remedied.

21
22 23-3-808. Recovery from subsequent purchaser – Notice.

23 (a) If the electricity provider or natural gas provider gives notice
24 that the residence is subject to the energy efficiency financing agreement,
25 the electricity provider or natural gas provider may recover the costs,
26 including the financing costs, of an energy efficiency and conservation
27 measure from a subsequent purchaser of the residence in which the energy
28 efficiency and conservation measure is installed.

29 (b) The electricity provider or natural gas provider shall give notice
30 that a residence is subject to an energy efficiency financing agreement by
31 filing a notice of meter conservation charge with the recorder of deeds for
32 the county in which the residence is located.

33 (c) The notice of meter conservation charge does not constitute a lien
34 on the residence but is intended to give a subsequent purchaser of the
35 residence notice that the residence is subject to a meter conservation
36 charge.

1 (d) Notice is deemed to have been given if a search of the property
2 records of the county discloses the existence of the charge and informs a
3 prospective purchaser:

4 (1) How to ascertain the amount of the charge and the length of
5 time it is expected to remain in effect; and

6 (2) Of the purchaser's obligation to notify a tenant if the
7 purchaser leases the property as provided in § 23-3-809.

8
9 23-3-809. Rental property – Notice.

10 (a) An electricity provider or natural gas provider may enter into an
11 energy efficiency financing agreement with respect to a rental property by:

12 (1) Filing a notice of meter conservation charge as provided in
13 § 23-3-808;

14 (2) Conducting a preinstallation energy audit and analysis; and

15 (3) Providing the results of the preinstallation energy audit
16 and analysis to the landlord and the tenant residing in the rental property
17 at the time the energy efficiency financing agreement is executed.

18 (b)(1) If both the landlord and the tenant agree, the electricity
19 provider or natural gas provider may recover the costs of the energy
20 efficiency and conservation measure, including the financing costs, through a
21 meter conservation charge on the account associated with the rental property
22 occupied by the tenant.

23 (2) The agreement between the landlord and the tenant shall
24 include the notice requirements stated in subdivision (c)(2) of this section.

25 (c)(1) With respect to a subsequent tenant occupying a rental unit
26 benefiting from an energy efficiency and conservation measure, the
27 electricity provider or natural gas provider may continue to recover the
28 costs, including the financing costs, of the energy efficiency and
29 conservation measure through a meter conservation charge on the account
30 associated with the rental property occupied by the tenant.

31 (2)(A) With respect to a subsequent tenant, the landlord shall
32 give written notice of a meter conservation charge in the manner required for
33 notice under § 18-17-303(b) before the tenant enters into a rental agreement.

34 (B) If the landlord fails to give the subsequent tenant
35 the required notice of meter conservation charge, then the tenant may deduct
36 from his or her rent, for no more than one-half (1/2) of the term of the

1 rental agreement, the amount of the meter conservation charge paid to the
2 electricity provider or natural gas provider.

3
4 23-3-810. Authority to contract with third parties.

5 (a) An electricity provider or natural gas provider may contract with
6 a third party to perform a function permitted under this subchapter,
7 including financing the costs of an energy efficiency and conservation
8 measure.

9 (b) The third party with which an electricity provider or natural gas
10 provider contracts shall comply with the requirements of this subchapter.

11
12 23-3-811. Limitation on use of federal funds.

13 (a) An electricity provider or natural gas provider shall not obtain
14 funding from the following programs to provide the financing permitted under
15 this subchapter:

16 (1) The Low Income Home Energy Assistance Program; and

17 (2) The Weatherization Assistance Program.

18 (b) This section does not change the exclusive administration of the
19 Low Income Home Energy Assistance Program and the Weatherization Assistance
20 Program by the Office of Community Services through the Department of Human
21 Services.

22 (c) This section does not prevent a customer from obtaining services
23 under the Low Income Home Energy Assistance Program or the Weatherization
24 Assistance Program.

25
26 23-3-812. Rules.

27 (a) The Arkansas Public Service Commission shall promulgate rules to
28 implement this subchapter.

29 (b) The commission may adopt rules regarding architectural or
30 engineering standards as needed to implement this subchapter.

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