

STATE OF TENNESSEE

PUBLIC CHAPTER NO. 529

SENATE BILL NO. 2300

**By Kyle, Berke, Henry, McNally, Yager, Tate, Finney, Marrero, Herron,
Burchett, Overbey, Barnes, Ford**

Substituted for: House Bill No. 2318

By Winningham, Hackworth, Kevin Brooks, Eldridge, Phillip Johnson, Mike Turner, McCord, Pitts, Curt Cobb, Maddox, McDonald, Hardaway, Miller, John Deberry, Ulysses Jones, Camper, Lollar, Brown, Favors, Watson, Bone, Armstrong, Tindell, Sherry Jones, Shaw, Yokley, Shepard, Pruitt, Borchert, Sontany, Gilmore, Dean, Coleman, McManus, West, Coley, Fitzhugh

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 3, and 22; Title 12, Chapter 3; Title 67, Chapter 6; Title 68, Chapter 120 and Title 71, Chapter 5, relative to energy efficiency and conservation.

WHEREAS, ensuring clean, safe, reliable and affordable energy is critical to the prosperity of Tennessee's economy, the sustainability of Tennessee's environment and the general welfare of Tennessee's citizens; and

WHEREAS, Tennessee's citizens, businesses, and governments face escalating energy costs and varying environmental effects of energy production and consumption; and

WHEREAS, state government, as one of the largest consumers of energy within Tennessee, has the capacity and responsibility to lead by example in improving energy efficiency and conservation; and

WHEREAS, Tennessee sees especially unique opportunities in promoting residential energy efficiency in the wake of findings that show the Volunteer State has the highest per capita residential electricity consumption in the nation; and

WHEREAS, Tennessee is home to a wealth of public and private resources that can drive the development of clean energy technology and increase economic development potential in the energy sector; and

WHEREAS, the governor's task force on energy policy, comprised of representatives of state agencies and the General Assembly and individuals representing business, environmental and other interests, worked throughout 2008 to develop recommendations that could serve as the basis for a sound, comprehensive energy policy for Tennessee; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Clean Energy Future Act of 2009".

SECTION 2. Tennessee Code Annotated, Section 4-3-1012, is amended by deleting the words "office of energy management" in subsection (a) and substituting instead the words "state building energy management program".

SECTION 3. Tennessee Code Annotated, Section 4-3-1012, is amended by adding the following language as a new subsection (c):

(c) The energy management program described in subsection (b) may include, but is not limited to, implementing energy cost saving measures in buildings under the jurisdiction of the State Building Commission. The measures may include, but shall not be limited to, maintenance, repair or replacement of lighting and mechanical equipment and related controls. Energy cost saving measures may be implemented through contracts with energy professionals including, but not limited to, energy service companies, commissioning and retro commissioning firms and agencies and energy auditing consultants. Such contracts are subject to approval by the State Building Commission. All departments, institutions and agencies having control of, or responsibility for, the management or operation of buildings under the jurisdiction of the State Building Commission shall cooperate with state building energy management in implementing energy cost saving measures.

SECTION 4. Tennessee Code Annotated, Section 4-3-1017, is amended by deleting the words "office of energy management" in subsection (a) and substituting instead the words "state building energy management program".

SECTION 5. Tennessee Code Annotated, Section 4-3-1017, is amended by deleting the words "Encouragement of the use of" in subdivision (a)(2) and substituting instead the words "Development and implementation of projects using".

SECTION 6. Tennessee Code Annotated, Section 4-3-1018, is amended by deleting subsection (b) in its entirety and substituting instead the following:

(b) Each person designated as a liaison with the department shall cooperate with and assist the department in conducting energy audits of the building or group of buildings for which such person is the designated liaison, as well as any other studies or plans carried out by the department under the provisions of this chapter or energy efficiency codes. Duties of such person shall include, but not be limited to, collecting energy use and other data requested by the department, assisting the department in identifying energy use reduction opportunities, implementing energy use reduction efforts and monitoring and reporting results following such efforts.

SECTION 7. Tennessee Code Annotated, Section 4-3-1109, is amended by deleting the second sentence of subsection (a) and substituting instead, "Each year, every effort should be made to achieve a target goal that one hundred percent (100%) of newly purchased passenger motor vehicles be energy-efficient motor vehicles.".

SECTION 8. Tennessee Code Annotated, Section 4-3-1109, is further amended by adding the following language after the second sentence in subsection (a):

The department shall ensure that at least twenty-five percent (25%) of newly purchased passenger motor vehicles procured for use in areas designated by the U.S. Environmental Protection Agency (EPA) as ozone nonattainment areas shall be hybrid-electric vehicles, provided that such vehicles are available at the time of procurement. In the event that such vehicles are not available at the time of procurement, the department may instead meet this mandate by procuring compact fuel-efficient vehicles. In areas not designated by the EPA as ozone nonattainment areas, the department shall ensure that at least twenty-five percent (25%) of newly purchased passenger motor vehicles are hybrid-electric vehicles or compact fuel-efficient vehicles.

SECTION 9. Tennessee Code Annotated, Section 4-3-1109(b)(2), is amended by adding the following language as a new subdivision:

(C) Plans for integrating energy-efficient motor vehicles identified in Tennessee Code Annotated, Section 4-3-1109(c)(1)(E) and (G), into the state passenger motor vehicle fleet.

SECTION 10. Tennessee Code Annotated, Section 4-3-1109(c)(1)(C), is amended by deleting the word "or".

SECTION 11. Tennessee Code Annotated, Section 4-3-1109(c)(1)(D), is amended by inserting after the word "A" and before the word, "vehicle" the words, "compact fuel-efficient vehicle, defined as a".

SECTION 12. Tennessee Code Annotated, Section 4-3-1109(c)(1)(D), is further amended by deleting the word "and" following the semicolon and substituting instead the word "or".

SECTION 13. Tennessee Code Annotated, Section 4-3-1109(c)(1), is further amended by adding the following language as new subdivisions:

(E) An electric vehicle (EV);

(F) A vehicle powered by natural gas; or

(G) A vehicle powered by ultra low sulfur diesel fuel that meets Bin 5, Tier II emission standards mandated by the EPA and that has an EPA-estimated highway mileage rating of at least thirty (30) miles per gallon or greater for the model year purchased.

SECTION 14. Tennessee Code Annotated, Section 12-3-605, is amended by adding the following language as new, appropriately designated subsections:

() All future office equipment, appliances, lighting, and heating and cooling products and systems purchased by and for state agencies shall be Energy Star qualified, provided that such Energy Star qualified products and systems are commercially available.

() Existing purchasing contracts for all state agencies that do not provide as options Energy Star qualified office equipment, appliances, lighting and heating and cooling products and systems shall not be renewed upon expiration. All future contracts for state agencies shall provide as options Energy Star qualified office equipment, appliances, lighting and heating and cooling products and systems.

() The Department of General Services, in consultation with the Department of Finance and Administration, shall establish and publish guidelines providing direction to all state agencies regarding implementation of this section.

SECTION 15. Tennessee Code Annotated, Section 67-6-232(b)(1), is amended by deleting the language "or emerging occupations," and by substituting instead the language "emerging occupations, or clean energy technology, including, but not limited to, clean energy technology research and development and installation,".

SECTION 16. Tennessee Code Annotated, Section 67-6-232(b)(1), is further amended by deleting the period (".") after the words "trade show facilities" and substituting instead the following:

; provided, however, that emerging industry can include those primarily engaged in manufacturing clean energy technology. For the purposes of this section, clean energy technology means technology resulting in energy efficiency, technology used to generate energy from biomass, geothermal, hydrogen, hydropower, landfill gas, nuclear, solar, and wind sources, and technology that is designed to result in the development of advanced coal through carbon capture and sequestration or otherwise any other manner that significantly reduces CO2 emissions per unit of energy generated. Notwithstanding any other provision of this section, businesses engaged in the development and construction of coal fired power plants shall not be eligible for the emerging industry tax credit. The credit provided under this section shall apply only if the Commissioner of Revenue and the Commissioner of Economic and Community Development have determined that allowance of the credit is in the best interests of the state. For purposes of this section, "best interests of the state" includes, but is not limited to, a determination that the taxpayer made the minimum investment as a result of the credit.

SECTION 17. Tennessee Code Annotated, Section 67-6-232(c), is amended by deleting the period (".") after the language "67-4-2109(a)-(c)" and by substituting instead the language "and the exemption provided under § 67-6-206(a).".

SECTION 18. Tennessee Code Annotated, Section 68-120-101(a), is amended in subdivision (1) by inserting the language "energy efficiency;" between the language "structural strength and stability;" and "means of egress;".

SECTION 19. Tennessee Code Annotated, Section 68-120-101(a), is amended by adding the following as a new subdivision (8):

(8) Shall not include mandatory sprinkler requirements for one-family and two-family dwellings; however, notwithstanding the foregoing, local governments may adopt more stringent requirements for one-family and two-family dwellings;

(9) The department shall analyze the cost and effectiveness of sprinkler equipment in one-family and two-family dwellings in areas where residential sprinklers are in use, including Tennessee and other states deemed appropriate by the department, and report the results of such analysis to the general assembly on or before May 1, 2010. In conducting such analysis, the department shall seek input from nonprofit and business groups or organizations including, but not limited to, the Tennessee Fire Chiefs Association and the Home Builders Association of Tennessee.

SECTION 20. Tennessee Code Annotated, Section 68-120-101(b), is amended by deleting subdivision (1) in its entirety and by substituting instead the following language:

(1)(A) The standards established pursuant to subsection (a) apply to municipal, county, state and private buildings, including one-family and two-family dwellings, unless otherwise provided by statute.

(B)(i) Notwithstanding subdivision (b)(1)(A), the standards established pursuant to subsection (a) relative to one-family and two-family dwellings do not apply in any county or municipality in which the legislative body of the county or municipality, by a two-thirds (2/3) vote, adopts a resolution to exempt the county or municipality, as appropriate, from the application of statewide standards for one-family and two-family dwellings within the jurisdictional boundaries of the county or municipality, as appropriate; provided, however, any action by the county legislative body concerning the implementation of this subdivision (b)(1)(B)(i) shall be limited to the jurisdictional boundaries outside any municipality located within such county. Upon approving the resolution, the presiding officer of the legislative body shall notify the state fire marshal of the actions taken hereunder.

(ii)(a) An initial resolution following July 1, 2009, may be adopted by a county or municipal legislative body to take effect on July 1, 2010, or at a later date stated in the resolution.

(b) A resolution adopted pursuant to subdivision (b)(1)(B)(ii)(a) or the adoption of any other resolution, shall expire one hundred eighty (180) days following the date of the election for the local legislative body next occurring following the adoption of the resolution, but an earlier expiration date may be stated in the resolution.

(C) The governing body of any such county or of a municipality located in any such county which has taken the action pursuant to subdivision (b)(1)(B) is authorized to reverse such action by adopting a resolution to apply the provisions of subsection (a) with respect to one-family and two-family dwellings within the jurisdictional boundaries of the municipality or county, as appropriate; provided, that, any action by the county legislative body concerning its actions shall be limited to the

jurisdictional boundaries outside any municipality located within such county. The presiding officer of the governing body shall notify the state fire marshal of the approval of the resolution.

SECTION 21. Tennessee Code Annotated, Section 68-120-101(b)(2), is amended by deleting subdivision (A) in its entirety and substituting instead the following language:

(A) The local jurisdiction has chosen to adopt and enforce building construction and fire safety codes for construction of all buildings; for construction of all buildings other than one-family and two-family dwellings; or for construction of one-family and two-family dwellings only; and

(i) For one-family and two-family construction, it has adopted the International Residential Code, published by the International Code Council, Inc.,

(ii) For construction other than one-family and two-family dwellings, it has adopted a building construction safety code consisting of the International Building Code, published by the International Code Council, Inc., and either:

(a) The International Fire Code, published by the International Code Council, Inc.; or

(b) The Uniform Fire Code, published by the National Fire Protection Association, Inc., if adopted on or after July 1, 2006; and

SECTION 22. Tennessee Code Annotated, Section 68-120-101(b)(2), is amended by deleting subdivision (B) in its entirety and substituting instead the following language:

(B) It is adequately enforcing its code and performing any reviews of construction plans and specifications and inspections required by the state fire marshal under this section.

SECTION 23. Tennessee Code Annotated, Section 68-120-101(b)(4), is amended by deleting subdivision (A) in its entirety and substituting instead the following language:

(A) The local government's building construction safety code publications are not current within seven (7) years of the date of the latest editions thereof, unless otherwise approved by the state fire marshal in writing, provided, however, that nothing herein shall require a local government to adopt a standard more stringent than the standards enforced by the state fire marshal, pursuant to this section, or to adopt a mandatory sprinkler requirement for one-family and two-family dwellings; or

SECTION 24. Tennessee Code Annotated, Section 68-120-101(c)(1), is amended by inserting the words "Renovations of existing" before the words "one-family and two-family dwellings;"

SECTION 25. Tennessee Code Annotated, Section 68-120-101, is amended by adding the following as a new subsection (f):

(f)(1)(A) The state fire marshal may, in addition to the other provisions of this part, authorize and appoint any person, employed by any municipality or county or acting through a professional corporation pursuant to § 48-101-601, who meets the qualifications enumerated in subdivision (f)(2) as a commissioned deputy building inspector in this division, who shall have all the power of other deputies and assistants to enter any one-family and two-family dwellings to make inspections of the buildings and their contents, and to report the inspections in writing to the commissioner. The commissioner is directed to contract with each deputy building inspector through the municipality or county employing the inspector or the inspector's professional corporation to provide one-family and two-family building inspection services. The contracts shall be entered into between the commissioner, with the approval of the Commissioner of Finance and Administration, and the professional corporation employing the building inspector and the building inspectors shall not be deemed employees of the state for payroll purposes or otherwise.

(B) A deputy building inspector shall be certified by the State of Tennessee as:

(i) a building inspector pursuant to § 68-120-113; or

(ii) a plumbing inspector pursuant to § 68-120-118;

or

(iii) a mechanical inspector pursuant to § 68-120-118.

A deputy building inspector shall be limited in performing inspections to the discipline in which they are certified.

(C) The commissioner shall provide a program to ensure that one-family and two-family building construction inspection services are available throughout the state on a timely basis. An inspection shall be considered timely if it is performed within three (3) working days of when the request is made to the inspector, except that an inspection of a footer shall be considered timely if it is performed within one (1) working day of when the request is made to the inspector.

(2)(A) Deputy building inspectors appointed by the commissioner are authorized to inspect one-family and two-family building construction upon receipt of a request from the owner of the property, a licensed contractor, or from municipal governing bodies, or from the county legislative body of the county in which

the buildings are located. Each inspector, either through their municipality, county or professional corporation, shall be authorized to charge for and receive a fee for each inspection.

(B) The state fire marshal shall establish a schedule of fees to pay the cost incurred by the department for the administration and enforcement of this part.

(C) The state fire marshal may require the inspection of one-family and two-family dwellings with or without a request, in the same manner that inspections are made in accordance with § 68-102-116, and the remedies for dangerous conditions shall be the same as provided in § 68-102-117; provided, that no fees shall be charged for making inspections directed by the state fire marshal as authorized by those sections.

(D) No inspection fees may be charged except where an actual inspection is made.

(3) The state fire marshal may promulgate such rules and regulations as necessary to carry out the provisions of this part, in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

SECTION 26. Tennessee Code Annotated, Section 71-5-401, is amended by deleting the section in its entirety and substituting instead the following:

71-5-401.

(a)(1) The Department of Human Services shall administer any funding received under the federal low-income energy assistance and weatherization programs, any other federal funds for energy assistance or energy conservation for residential units and any state funds appropriated to the department for purposes of providing to eligible persons energy assistance and residential weatherization as defined by federal law or regulation. To meet the goal of the American Recovery and Reinvestment Act of 2009, the department shall ensure that there are qualified contractors and contracting firms, energy auditors and auditing firms, and energy inspectors and inspection firms qualified to provide weatherization services and products.

(2) Administration in accordance with state plan approved by federal government or state law.

(i) The department shall administer the low-income energy assistance and weatherization programs in accordance with the state plan for each program as approved by the federal government for any federal funding, and in accordance with any provisions of state law for any state funding provided for such assistance.

(ii) The provisions of the state plan approved by the federal government governing the expenditure of federal funds for such programs shall supersede any state law or regulations that are inconsistent with the approved state plan.

(3) Rulemaking authority.

(i) The department shall have the power to promulgate any necessary regulations to administer the low-income energy assistance and weatherization programs pursuant to the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(ii) If necessary to provide for the immediate expenditure of any emergency low-income energy assistance or weatherization funds in the event of any severe energy crisis or disaster as declared by the governor, or to provide timely assistance under any funding criteria that require the expenditure of such funds under any short-term funding program, the department shall have authority to promulgate any necessary regulations to implement the provision of such assistance by public necessity rule; provided, that any permanent rules shall be promulgated pursuant to the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(b)(1) The department may allocate to the residential weatherization program any funds received for energy assistance under the federal low-income energy assistance program or from any other federal energy assistance fund up to the maximum amount permitted by federal law.

(2) Any separate state funding for energy assistance shall be allocated as authorized in the annual appropriations act.

(c) Notwithstanding any state law or regulation to the contrary, the department may provide residential weatherization assistance at any percentage of the federal income poverty level that is permitted by federal law.

(d) Benefit levels shall be determined based upon those prescribed by federal law.

SECTION 27. Tennessee Code Annotated, Section 71-5-402, is amended by deleting the section in its entirety.

SECTION 28. Tennessee Code Annotated, Section 68-120-101(b), is amended by adding the following language as subdivision (3) and renumbering the subsequent subdivisions appropriately:

(3) If a local jurisdiction chooses to adopt and enforce codes for only one-family and two-family dwellings or for all buildings other than one-family and two-family dwellings that would be subject to the codes adopted by the state fire marshal pursuant to subdivision (a)(1), the state fire marshal shall enforce the statewide codes with regard to those buildings for which the local jurisdiction has not adopted and is not enforcing codes.

SECTION 29. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 30. The provisions of this act shall be subject to sunset review pursuant to Title 4, Chapter 5, in 2014.

SECTION 31. For purposes of rulemaking this act shall take effect upon becoming a law, the public welfare requiring it. Sections 18 through 25 and Section 28 shall take effect July 1, 2010, the public welfare requiring it. Sections 26 and 27 of this act shall take effect upon becoming a law, the public welfare requiring it. All remaining sections of this act shall take effect July 1, 2009, the public welfare requiring it.

PASSED: June 12, 2009



RON RAMSEY
SPEAKER OF THE SENATE



KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 25th day of June 2009



PHIL BREDESEN, GOVERNOR