Local Government Energy Reporting Requirements in Texas:

Effectiveness and Transparency of Energy Reporting Requirements for Local Governments in Texas

Background

As the largest energy consumer in the United States, Texas' demand for power is growing faster than any other state and continues to rise as population grows exponentially[1]. According to Bloomberg News, Texas consumer energy demand reached a high of 74,351 megawatts in August 2019 as temperatures surpassed 100 degrees Fahrenheit[2]. Texas' demand for power continues to grow faster than any other state in the U.S. To mitigate potential emissions impacts and demand on the grid, Texas has passed legislation targeting local governments to reduce their energy consumption. However, even with legislation in place, local governments are not meeting their reporting obligations.

Over the past two decades, the Texas Legislature has passed bills that continue to amend §388.005 of the Texas Health and Safety Code (THSC §388.005)[3]. This section outlines energy efficiency measures and requirements that <u>institutes of higher education, state agencies and political subdivisions in nonattainment or near nonattainment counties</u> are subject to complying with. Table 1 lists the associated bills that have amended THSC §388.005 with the legislative session in which they were passed, the date they came in effect, and the number of years entities must report to the State Energy Conservation Office (SECO).

This document is current as of October 2019.

Senate Bill (SB)	*Legislative Session*	*Effective Date*	*Years Required to Report*
SB 5	77th Regular Session	1/1/2002	5 years
SB 12	80th Regular Session	9/1/2007	6 years
SB 898	82nd Regular Session	9/1/2011	10 years
SB 241	86th Regular Session	9/1/2019	7 years

Exhibit 1. History of Texas Energy Efficiency Legislation

In 2001, SB 5 (77R) initially established THSC §388.005 to require entities to establish a five percent annual energy reduction goal and to report on this goal to SECO. However, THSC §388.005 is not the only mandated energy reporting requirement in Texas. As delineated within a legislative matrix in Attachment A, various statutes require different entities to track or report their energy consumption in numerous ways. Impacted entities include state agencies, institutes of higher education, local governments, municipally owned utilities or electric cooperatives, and independent school districts. While some requirements are distinct, several statutes overlap, requiring some entities to abide by multiple requirements depending on their location or entity type.

As part of a grant agreement with the State Energy Conservation Office (SECO), the North Central Texas Council of Governments (NCTCOG) was awarded funding to work with local governments to increase awareness of the reporting requirements and as a result, raise the rate of reporting to SECO. Over the course of this project, NCTCOG identified several challenges that may be inhibiting the rate of report submittal. This paper identifies changes that may improve the transparency and compliance with energy reporting requirements by highlighting issues that may contribute to lack of reporting by entities who are subject to reporting requirements. The proposed solutions aim to streamline the reporting process, reduce confusion, clarify applicability, and increase the number of reporting entities. Of the proposed recommendations, several could be accomplished by SECO while others may require a legislative action.

Challenge 1: Duplicative Reporting Requirements

A variety of legislative mandates in Texas are geared towards reducing overall energy consumption from entities across the state. While legislative energy reporting requirements have been in place since 2002, duplicative requirements are likely playing a role in causing confusion amongst entities. As previously mentioned, institutes of higher education, state agencies, and political subdivisions in nonattainment or near nonattainment counties must submit an annual report to SECO, known as the "Senate Bill 898 (82R) Reporting Form", which tracks their five percent annual energy reduction goal. Two separate requirements, one mandated by 34 Texas Administrative Code §19.14, requires all Texas state agencies and institutes of higher education to annually submit an energy and water management plan (EWMP) while the other, 4 Texas Government Code §447.009 (c) and (e), requires the submittal of their energy consumption data to SECO. ENERGY STAR Building Portfolio Manager has been chosen by SECO as the online tool for state agencies and institutes of higher education to report their water, electricity and natural gas usage. The intent of an EWMP is to identify, implement, and measure the effectiveness of utility cost reduction measures and must include utility conservation goals as well as a strategy to achieve those goals. SECO provides an EWMP template to

[1] U.S. Energy Information Administration, "Texas State Profile Analysis," Modified February 21, 2019. **Retrieved from** https://www.eia.gov/state/analysis.php?sid=TX#16

[2] Bloomberg, "Power Blows Past $9,000 Cap in Texas as Heat Triggers Emergency," August 13,2019. **Retrieved from** https://www.bloomberg.com/news/articles/2019-08-13/texas-power-prices-briefly-surpass-9-000-amid-searing-heat

[3] Tex. Hea. & Saf. § 388.005. **Retrieved from** https://statutes.capitol.texas.gov/Docs/HS/htm/HS.388.htm#388.005

to state agencies and institutes of higher education to help guide their energy and water management policy. Compared to the "Senate Bill 898 (82R) Reporting Form", the EWMP is more comprehensive and includes the entity's' utility conservation goals, strategies to achieve said goals, an implementation schedule, a finance strategy, employee awareness plan, and gasoline consumption. As part of the EWMP, SECO requests that state agencies and institutes of higher education establish a percent annual reduction goal to reduce the "agency's or institution's use of water, electricity, gasoline and natural gas"[4]. However, state agencies and institutes of higher education within nonattainment or near nonattainment counties, are concordantly required by §388.005 to achieve a five percent annual energy reduction goal that is separate from the reduction goals established in their EWMP.

While state agencies and institutes of higher education are mandated by several separate legislative statutes to individually report on set energy reduction goals, these goals do not build upon each other. In other words, THSC §388.005 does not require state agencies and institutes of higher education to achieve an additional five percent reduction in energy consumption on top of their EWMP reduction goals. Because the different energy reporting mandates accomplish the similar overarching goals and obtain the same energy data, there may be minimal value added for both state agencies and institutes of higher education within nonattainment areas to comply with both reporting requirements.

In practice, SECO has recognized the redundancy between energy reporting mandates for state agencies and institutes of higher education and as a result, created a reporting caveat to accept a submitted EWMP or ENERGY STAR Portfolio Manager Data in place of their "Senate Bill 898 (82R) Reporting Form". This caveat alleviates some of the reporting burden, however, since not written in statute, the exemption is not clear.

Potential Solution A

A possible solution to alleviate duplicative reporting would be to amend §388.005 to remove state agencies and institutes of higher education from the legislation. Mandated by Texas Government Code §447.009 (d), SECO must submit a biennial report, the "Utility Management Report", to the governor and the Legislative Budget Board on how effective state agencies and institutes of higher education are in achieving their utility management and conservation efforts (submitted via their EWMPs). By removing state agencies and institutes of higher education within nonattainment or near nonattainment areas from the reporting requirements of THSC §388.005, SECO avoids having to manage the submittal of the same energy consumption data which is already obtained, tracked, and measured via the Utility Management Report[5]. By removing them from this mandate, state agencies and institutes of higher education can devote their time and resources on establishing and creating their percent reduction goals, which includes electricity consumption, required per their EWMPs.

Potential Solution B

Rather than completely removing state agencies and institutes of higher education in nonattainment or near nonattainment counties from the §388.005 reporting requirements, another solution would be to amend THSC §388.005 to clearly state that SECO

[4] State Energy Conservation Office, "Energy and Water Management Plan (EWMP) Template,". Retrieved from https://comptroller.texas.gov/programs/seco/reporting/agency.php
[5] State Energy Conservation Office, "State Agencies and Higher Education Energy and Water Reporting,". Retrieved from https://comptroller.texas.gov/programs/seco/reporting/agency.php

will accept the submittal of the institution's EWMP in place of the "Senate Bill 898 (82R) Reporting Form. This exemption might already exist -- there is already an exception for state agencies and institutes of higher defined in THSC §388.005 (f), but it is vague and references a "plan for conserving energy" that was adopted prior to September 1, 2007. It is unclear whether this exemption is in reference to the EWMP required by 34 Tex. Admin. Code §19.14. Thus, to provide clarity, amending THSC §388.005 may increase the likelihood that entities adhere to the reporting requirements by reducing uncertainty over what SECO can and cannot accept for energy reporting fulfilments. Revisions to THSC §388.005 (f) could read as follows:

(f) This section does not apply to a state agency or an institution of higher education that the State Energy Conservation Office determines, before September 1, 2007, adopted a plan for conserving energy under which the agency or institution established a percentage goal for reducing the consumption of electricity, or that has submitted a current, comprehensive energy and water management plan to the State Energy Conservation Office in accordance with Texas Government Code Section 447.009. The exemption provided by this section applies only while the agency or institution has an energy conservation plan or energy and water management plan in effect and only if the agency or institution submits reports on the conservation plan or energy and water management plan each year to the governor, the Legislative Budget Board, and the State Energy Conservation Office.

Challenge 2: Reporting Nomenclature

The "Senate Bill 898 (82R) Reporting Form" is the annual reporting form mandated to be submitted to SECO as part of the Local Government Energy Reporting Program. As illustrated by Exhibit 1, the reporting requirements set in THSC §388.005 have been modified by several bills over time. Thus, it is a misnomer to name the annual report after one specific bill when it has been impacted by several pieces of legislation. It can also cause confusion as entities investigate the requirements of SB 898, not realizing that the affected statute has been updated since the passage of SB 898.

Potential Solution

A solution could be to rename the report from "Senate Bill 898 (82R) Reporting Form" to the "Local Government Energy Report". Disassociating the bill number from the required reporting document will prevent entities from misinterpreting legislation and from referencing any outdated amendments during the reporting process. In addition, the bill containing the most recent energy reporting amendments should be cited or otherwise referenced within the form or document. Thus, each time §388.005 is amended, the reporting form should be updated to reference the most recently passed legislation, but the title of the report can remain the same. Removing the name of the bill from any reporting document will reduce the potential for confusion as preceding bills are passed over

[5] State Energy Conservation Office, "State Agencies and Higher Education Energy and Water Reporting,". Retrieved from https://comptroller.texas.gov/programs/seco/reporting/agency.php

Challenge 3: Confusion over Local Government Energy Reporting Exemptions

THSC §388.005 (d) acknowledges that entities may fall short of the five percent electricity reduction goal and provides recourse for them to provide justification in their report. The section continues that if an entity submits their required report (currently the "Senate Bill 898 (82R) Reporting Form") indicating they have reviewed options, determined no additional measures were cost-effective, and implemented all cost-effective measures, then the entity may be exempt from annually reporting if the "subsequent report would indicate no change in status". However, the statute indicates that the exempt entity may still be required to provide a notice of exemption to the state. Thus, every entity subject to the reporting requirement, exempt or not, is expected to submit either (1) the "Senate Bill 898 (82R) Reporting Form", which either demonstrates achievement of the 5 percent reduction or must include justification of why the goal was not achieved, or (2) some other notification regarding exemption to SECO each year.

Many entities in North Texas, particularly the more progressive cities who were early adopters of efficiency strategies, have claimed that all cost-effective measures were accomplished years ago, and thus they interpret that they are exempt from any additional report submittals. However, data received from SECO does not include a list of "exempt entities", and SECO's desire to increase the proportion of reporting entities seems to be at odds with the opportunity for local governments to claim an exemption. Moreover, as technology advances, prices fall, and incentives become available, measures that are not cost effective one year may be cost-effective the next. A good example would be lighting – the cost of light-emitting diode technology has dropped dramatically in recent years, and availability has greatly increased. Thus, a city who had exhausted all cost-effective measures in 2013 may have determined that they were exempt from reporting moving forward, when in reality the current state of technology likely would suggest that additional lighting retrofits would be cost-effective.

Potential Solution

Therefore, it is likely most effective to remove the exemption and require all entities subject to THSC §388.005 to submit annual reports as long as the statute is effective because the data encompassed within the reports is valuable to SECO, and the reporting requirement will increase the likelihood that entities stay abreast of technological changes and developments that could help them reach the energy efficiency goals. It also prompts reporting entities to analyze the obstacles inhibiting them from reaching their goal, and also makes these obstacles more transparent to SECO. A proposed revision to THSC §388.005 (d) could read as follows:

```
(d) A political subdivision,
institution of higher education, or
state agency that does not attain the
goals established under Subsection (c)
must include in the report required by
Subsection (e) justification that the
entity has already implemented all
available cost-effective measures.
```

Additional Issues to Explore:
Several other challenges arose during this project that warrant further evaluation to improve reporting effectiveness. NCTCOG wishes to investigate the following issues in greater depth, and in consultation with a stakeholder group:

- Electric vehicles (EV) are projected to encompass 30 percent of the entire fleet of vehicles by 2040[6]. EVs are a consistent component in overarching sustainability metrics, including emissions, climate action, and cumulative energy reduction goals. As the amount of EVs continue to increase, so does the amount of charging infrastructure needed to power these vehicles. Different than their conventional gasoline counterparts, fueling infrastructure for EVs has a direct impact on the total energy use of a facility, as the charging stations for these vehicles often utilize electricity from the same meter as the building itself. Depending on the speed, quantity, and use of these charging stations, they could result in a spike in building electricity consumption. As is, THSC §388.005 requires a five percent annual reduction in energy consumption tracked by kilowatt hours (kWh) of electricity used. Because of this, entities may be deterred from investing in EV infrastructure for fear it would increase their energy load and, in turn, make them fail their energy consumption reduction goals.

- Several local governments have expressed difficulty in achieving a five percent annual reduction in electricity consumption. Many find this percent reduction in electricity consumption to be unattainable with resources and measures available to them. Furthermore, there is concern that submitting the annual report is "self-incriminating" because the local government is going on the record publicly with data that shows a failure to achieve an established goal. This is a deterrent to the report submittal itself. Many local governments have suggested that a broader energy conservation goal be considered, one that includes more than just electricity consumption, would be more feasible.

[6] Bloomberg NEF Electric Vehicle Outlook 2019, https://about.bnef.com/electric-vehicle-outlook/

This whitepaper was prepared with funding support by the Texas State Energy Conservation Office.