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S.B. No. 1002

A BILL TO BE ENTITLED

AN ACT

relating to the operation of public electric vehicle charging stations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 2, Utilities Code, is amended by adding Chapter 42 to read as follows:

CHAPTER 42. PUBLIC CHARGING OF ELECTRIC VEHICLES

Sec. 42.0101. LEGISLATIVE FINDINGS. (a) The legislature finds that it is in the best interests of this state to continue the long-standing policy of supporting private sector investment in infrastructure by establishing a framework designed to encourage competitive private sector investment in the deployment of public electric vehicle charging stations.

(b) The legislature finds that encouraging investment in the deployment of public electric vehicle charging stations is essential to foster the rapid installation and widespread use of public electric vehicle charging stations on property whose owners or tenants desire to install public electric vehicle charging stations.

(c) The legislature finds that electric utilities, transmission and distribution utilities, competitive entities, and the commission have important roles to fill in supporting the installation and use of infrastructure for electric vehicle charging.

1 (d) The legislature finds that it is necessary to:

2 (1) implement competitively neutral policies to
3 encourage competitive private sector investment in public electric
4 vehicle charging station deployment;

5 (2) develop and implement competitively neutral
6 electricity tariffs that are optimized for public electric vehicle
7 charging stations and based on cost causation principles while
8 ensuring transparency in pricing and recognizing changing market
9 needs; and

10 (3) encourage competitive private investment,
11 ownership, and operation of public electric vehicle charging
12 stations, including equipment that allows for fast charging.

13 Sec. 42.0102. DEFINITIONS. In this chapter:

14 (1) "Direct-current fast charging station" means a
15 charging system capable of delivering at least 50 kilowatts of
16 direct-current electrical power to an electric vehicle's
17 rechargeable battery at a voltage of 200 volts or greater.

18 (2) "Electric vehicle" means a vehicle that is
19 propelled by one or more electric motors using energy stored in the
20 form of a rechargeable battery.

21 (3) "Electric vehicle charging provider" means the
22 owner or operator of a public electric vehicle charging station.
23 The term does not include an electric utility or transmission and
24 distribution utility.

25 (4) "Electric vehicle charging service" means sales
26 made from a public electric vehicle charging station to the public.

27 (5) "Level two charging station" means a charging

1 system capable of delivering at least 3 and not more than 19.2
2 kilowatts of alternating-current electrical power to an electric
3 vehicle's rechargeable battery at a voltage of at least 208 volts on
4 a circuit of at least 40 amperes.

5 (6) "Make-ready infrastructure" means the electrical
6 infrastructure required to service a public electric vehicle
7 charging station's electrical load on the electric utility's or
8 transmission and distribution utility's side of the point of
9 delivery. The term:

10 (A) includes all site-specific electrical
11 infrastructure required to accommodate engineering, physical,
12 operational, or other constraints for the public electric vehicle
13 charging station, regardless of whether the infrastructure is on
14 the utility's or customer's side of the point of delivery; and

15 (B) does not include the public electric vehicle
16 charging station or any utility infrastructure on the customer's
17 side of the point of delivery, up to and including the meter.

18 (7) "Public electric vehicle charging station" means
19 any level two charging station or direct-current fast charging
20 station that delivers electricity from a source outside an electric
21 vehicle into an electric vehicle, is separate and distinct from
22 make-ready infrastructure, and is accessible for commercial use by
23 the public, or similar vehicle charging equipment capable of
24 delivering electricity into an electric vehicle faster than a level
25 two charging station. The term does not include vehicle charging
26 equipment that is:

27 (A) used by an electric utility, a transmission

1 and distribution utility, or an affiliate to charge:

2 (i) an electric vehicle owned by the
3 utility or affiliate; or

4 (ii) as an incident of employment, an
5 electric vehicle owned by an employee of the utility or affiliate;
6 or

7 (B) located on the premises of a customer of an
8 electric utility, a transmission and distribution utility, or an
9 affiliate and:

10 (i) used by the customer or the customer's
11 tenants, affiliates, or guests; and

12 (ii) not used commercially for electric
13 vehicle charging service.

14 Sec. 42.0103. PUBLIC CHARGING OF ELECTRIC VEHICLES OUTSIDE
15 OF ERCOT. (a) This section applies only to an electric utility
16 that operates solely outside of ERCOT.

17 (b) An electric utility:

18 (1) may not provide electric vehicle charging service
19 directly to a customer except as provided by this section;

20 (2) may be affiliated with an entity that provides
21 electric vehicle charging service from a public electric vehicle
22 charging station if the affiliate:

23 (A) is not subject to regulation by the
24 commission; and

25 (B) is subject to prohibitions on market power
26 abuse, cross-subsidizations, co-branding, and preferential
27 treatment between regulated and competitive activities described

1 by Section 39.157(d); and

2 (3) consistent with the requirements of Subchapter B,
3 Chapter 38, and Section 39.157(d)(3), shall offer the same
4 nondiscriminatory rates, terms, and conditions offered to an
5 affiliate described by Subdivision (2) to other electric vehicle
6 charging providers in the utility's service area for the operation
7 of public electric vehicle charging stations.

8 (c) An affiliate of an electric utility that provides
9 electric vehicle charging service and is not subject to regulation
10 by the commission is subject to the same tariffs of the electric
11 utility that apply to any other entity receiving from the utility
12 electric service that is used to provide electric vehicle charging
13 service.

14 (d) This section does not prohibit an electric utility from
15 subsidizing the costs of make-ready infrastructure through rates or
16 charges for services provided by the electric utility's regulated
17 services.

18 (e) An electric utility may provide electric vehicle
19 charging service directly to a customer only if:

20 (1) the public electric vehicle charging station used
21 to provide electric vehicle charging service is constructed in
22 compliance with the requirements of this section; and

23 (2) the rates charged by the utility for electric
24 vehicle charging service are set by the commission under Subsection
25 (m).

26 (f) An electric utility seeking to provide electric vehicle
27 charging service directly to a customer shall:

1 (1) file with the commission a proposal identifying
2 the specific location at which the utility seeks to provide
3 electric vehicle charging service and a general description of the
4 public electric vehicle charging station the utility proposes to
5 construct at the location; and

6 (2) provide notice of the filing made under
7 Subdivision (1):

8 (A) on the utility's Internet website; and

9 (B) to each dealer to which Chapter 2310,
10 Occupations Code, applies who offers for retail sale motor fuel at a
11 site that is located not more than 15 miles from the proposed
12 location of the public electric vehicle charging station.

13 (g) A notice provided under Subsection (f)(2) must include:

14 (1) the date the electric utility filed a proposal to
15 provide electric vehicle charging service under Subsection (f)(1);
16 and

17 (2) the date by which a person may file a proposal to
18 provide reasonably comparable electric vehicle charging service
19 under Subsection (h).

20 (h) The commission shall determine whether the provision of
21 electric vehicle charging service under a proposal submitted under
22 Subsection (f)(1) is in the public interest because the service is
23 adequate for the needs of the area. Not later than the 90th day
24 after the date the commission determines that the provision of the
25 proposed electric vehicle charging service is in the public
26 interest, a person other than the electric utility may notify the
27 commission that:

1 (1) the person:

2 (A) intends to provide electric vehicle charging
3 service that is adequate for the needs of the area in reasonable
4 proximity to the proposed location of the public electric vehicle
5 charging station and request the necessary make-ready
6 infrastructure from the electric utility; and

7 (B) is firmly committed to placing into service
8 equipment necessary to provide the electric vehicle charging
9 service before the later of:

10 (i) 18 months after the date the person
11 submits the notice to the commission; or

12 (ii) the date of completion of the
13 installation of the necessary make-ready infrastructure to provide
14 the electric vehicle charging service; and

15 (2) the person is capable of:

16 (A) acquiring the right to use the property at
17 which the electric vehicle charging service will be provided; and

18 (B) financing the cost of the equipment described
19 by Subdivision (1)(B).

20 (i) The commission shall issue a determination regarding
21 each notice received under Subsection (h) of whether:

22 (1) the proposed electric vehicle charging service is
23 adequate for the needs of the area; and

24 (2) the person has made the commitment and has the
25 capabilities described by that subsection.

26 (j) The commission by rule may establish a distance that
27 constitutes reasonable proximity to a type of location for the

1 purposes of Subsection (h). The commission may also issue an order
2 establishing a distance other than one authorized by rule that
3 constitutes reasonable proximity to a location for purposes of
4 Subsection (h) for a specific electric utility. In establishing
5 distances that constitute reasonable proximity to a location, the
6 commission shall:

7 (1) consider population density and site access;

8 (2) establish the reasonable proximity between two
9 locations on an interstate highway for the purposes of Subsection
10 (h) as not more than 10 miles; and

11 (3) consider the Texas Department of Transportation's
12 designation by category of nearby roads other than interstate
13 highways when establishing the reasonable proximity between two
14 locations at which electric vehicle charging service will be
15 provided on roads other than interstate highways.

16 (k) An electric utility that files a proposal under
17 Subsection (f) may proceed with construction of the public electric
18 vehicle charging station and the provision of electric vehicle
19 charging service unless the commission determines, based on the
20 information submitted under Subsection (h), that:

21 (1) the electric vehicle charging service proposed
22 under Subsection (h) in response to the utility's proposal is
23 adequate for the needs of the area and that the person who submitted
24 the notice under Subsection (h) has made the commitment and has the
25 capabilities described by that subsection; or

26 (2) the electric vehicle charging service proposed
27 under Subsection (f) by the utility unreasonably duplicates:

1 (A) electric vehicle charging service provided
2 by another person; or

3 (B) a facility under construction that another
4 person will use to provide electric vehicle charging service.

5 (l) An electric utility authorized to proceed with the
6 construction of a public electric vehicle charging station under
7 Subsection (k) shall notify the commission that the utility intends
8 to proceed with the construction and may construct and operate the
9 proposed public electric vehicle charging station after the 120th
10 day after the date the utility files the notice of intent under this
11 subsection.

12 (m) On application by an electric utility, the commission
13 shall set in a manner authorized under Chapter 36 the rates the
14 utility may charge for electric vehicle charging service. The
15 rates must be reasonable and ensure that competition is not
16 impaired. The commission may set rates differently for different
17 locations and times of day and for different types of electric
18 vehicle charging service.

19 (n) The commission shall permit an electric utility
20 authorized to construct and operate a public electric vehicle
21 charging station under this section to recover, using the rate of
22 return on investment established in the commission's final order in
23 the utility's most recent base rate proceeding, reasonable and
24 necessary costs incurred for the construction, financing,
25 operation, and maintenance of that public electric vehicle charging
26 station.

27 (o) This section does not prohibit a person who is not an

1 electric utility or an affiliate of an electric utility from
2 entering into an agreement with an electric utility for the utility
3 to own or operate a public electric vehicle charging station on the
4 person's property if:

5 (1) the utility does not:

6 (A) provide electric vehicle charging service
7 using the public electric vehicle charging station; or

8 (B) brand or market the public electric vehicle
9 charging station as owned or operated by the utility, including by
10 presenting the utility's name, logo, or any other distinguishing
11 mark to indicate that the utility owns or operates the public
12 electric vehicle charging station;

13 (2) the person solely determines:

14 (A) physical access to and use of the public
15 electric vehicle charging station necessary to carry out
16 responsibilities associated with ownership and operation of the
17 public electric vehicle charging station; and

18 (B) prices for the electric vehicle charging
19 service; and

20 (3) the person pays for all electric utility-related
21 costs under a tariff approved by the commission that provides for
22 full recovery of the costs of the public electric vehicle charging
23 station from the person, including incremental revenues paid by the
24 person to the utility associated with the electric vehicle charging
25 service.

26 (p) The commission shall:

27 (1) require each electric utility for which the

1 commission has approved a tariff under Subsection (o) to offer
2 service under the terms of the tariff to other persons seeking
3 agreements in the utility's service area on a nondiscriminatory
4 basis; and

5 (2) ensure that revenue collected by an electric
6 utility under an agreement under Subsection (o) allows the utility
7 to recover the costs of owning, constructing, financing, operating,
8 and maintaining the public electric vehicle charging station from
9 the person and not the utility's other customers.

10 (q) A public electric vehicle charging station operated
11 under an agreement under Subsection (o) is not subject to the
12 requirements of Subsections (f)-(l).

13 (r) Notwithstanding any other provision of this section, a
14 municipality that is a customer of an electric utility may enter
15 into an agreement with the utility under which:

16 (1) the utility owns and operates a public electric
17 vehicle charging station and provides electric vehicle charging
18 service on the municipality's property; and

19 (2) none of the costs of constructing, financing,
20 operating, or maintaining the public electric vehicle charging
21 station described by Subdivision (1) are recovered from the other
22 customers of the utility.

23 Sec. 42.0104. PUBLIC CHARGING OF ELECTRIC VEHICLES INSIDE
24 ERCOT. (a) A transmission and distribution utility:

25 (1) may not directly own, operate, or provide electric
26 vehicle charging service from a public electric vehicle charging
27 station;

1 (2) may not include costs of a public electric vehicle
2 charging station for recovery through rates approved by the
3 commission;

4 (3) may be affiliated with a competitive affiliate
5 that provides electric vehicle charging service from a public
6 electric vehicle charging station through a separate entity or
7 third party only if:

8 (A) the affiliate:

9 (i) is not subject to regulation by the
10 commission; and

11 (ii) is subject to prohibitions on market
12 power abuse, cross-subsidizations, co-branding, and preferential
13 treatment between regulated and competitive activities described
14 by Section 39.157(d); and

15 (B) the alternative fuels data center map
16 maintained by the United States Department of Energy does not show
17 that a public electric vehicle charging station owned or operated
18 by an electric vehicle charging provider and used to provide
19 electric vehicle charging service is located less than 50 miles
20 from the location where the affiliate proposes to provide electric
21 vehicle charging service; and

22 (4) consistent with the requirements of Subchapter B,
23 Chapter 38, and Section 39.157(d)(3), shall offer the same
24 nondiscriminatory rates, terms, and conditions offered to the
25 affiliate described by Subdivision (3) to other electric vehicle
26 charging providers in the transmission and distribution utility's
27 service area for the operation of public electric vehicle charging

1 stations.

2 (b) An affiliate described by Subsection (a)(3) shall
3 maintain for at least two years documentation of the alternative
4 fuels data center map that is available on the date on which the
5 installation of the public electric vehicle charging station
6 begins.

7 (c) An affiliate of a transmission and distribution utility
8 that provides, owns, operates, or maintains public electric vehicle
9 charging stations and is not subject to regulation by the
10 commission may not be subsidized by any rate or charge for any
11 regulated services provided by the transmission and distribution
12 utility.

13 (d) This section does not prohibit a transmission and
14 distribution utility from constructing, owning, or operating
15 make-ready infrastructure on the transmission and distribution
16 utility's side of the point of delivery that is funded through rates
17 or charges for services under the transmission and distribution
18 utility's tariffs.

19 (e) Notwithstanding Subsection (a), a transmission and
20 distribution utility may own, operate, lease, install, or otherwise
21 procure service from a public electric vehicle charging station on
22 the utility's premises for the sole purpose of serving the utility's
23 vehicles.

24 (f) The commission shall permit a transmission and
25 distribution utility to recover, using the rate of return on
26 investment established in the commission's final order in the
27 utility's most recent base rate proceeding, reasonable and

1 necessary costs incurred for the construction or installation of
2 make-ready infrastructure on the utility's side of the point of
3 delivery.

4 SECTION 2. (a) Sections 42.0104(a)(3)(B) and 42.0104(b),
5 Utilities Code, as added by this Act, apply only to electric vehicle
6 charging service provided on or after January 1, 2026.

7 (b) Section 42.0104(c), Utilities Code, as added by this
8 Act, applies only to a rate or charge imposed after January 1, 2024.

9 SECTION 3. This Act takes effect September 1, 2023.