

BILL ANALYSIS

C.S.H.B. 3498
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Urban Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Senate Bill No. 7, of the 76th Legislature, Regular Session, enacted provisions that permit cities to aggregate their residents' load and arrange for electric service on their behalf, thereby providing a mechanism for lower electric rates for citizens through the bulk-buying advantage of aggregation. However, under Senate Bill No. 7, citizens were required to "opt-in" to citizen aggregation programs.

As a practical matter, cities cannot aggregate citizens' loads utilizing an "opt-in" citizen aggregation program, because citizens want to know their expected savings prior to joining the program, and retail electric providers cannot quote cities a price for electricity when the number of participating citizens is unknown. As a result, no Texas city has implemented a citizen aggregation program as envisioned in Senate Bill No 7.

The proposed complete committee substitute for House Bill No. 3498 proposes an "opt-out" citizen aggregation program that better reflects the realities of today's electric market and is compatible with the dynamics between buyers and sellers of energy in Texas. The substitute for House Bill No. 3498 is targeted at small-town and rural customers who have been overlooked in favor of more lucrative, large markets. Under this substitute, citizens would be able to choose to not participate in the aggregation program (i.e. "opt out"), and existing contracts between a citizen and a competitive retail electric provider would not be abrogated or otherwise affected.

RULEMAKING AUTHORITY

It is the opinion of the committee that this bill does not expressly delegate any additional rulemaking authority to a State officer, department, agency, or institution.

SECTION-BY-SECTION ANALYSIS

SECTION 1. Would amend Local Government Code Section 304.001(d) to specifically allow political subdivision corporations incorporated by member political subdivisions to negotiate for the purchase of electricity, make contracts for the purchase of electricity, and purchase electricity, not only on behalf of member political subdivisions, but also on behalf of and for use by the citizens of municipalities that are member political subdivisions that create aggregation programs. Re-letters a portion of existing Subsection (d) as Subsection (d-1).

SECTION 2. Amends Local Government Code Section 304.002(a) and adds Subsections (b-1), (b-2), (b-3), (d), (e), and (f). Section 304.002(a) is amended to permit a political subdivision aggregator to not only negotiate for the purchase of electricity and energy services, but also to contract for the purchase of, purchase, and take any other action necessary to purchase electricity or energy services on behalf of the citizens of the political subdivision or subdivisions. Additionally, this subsection removes language requiring citizens to affirmatively request inclusion in aggregation services.

Subsection (b-1) is added to allow only a municipality with a population of less than 50,000 located in a county with a population of less than 200,000, after a public hearing for which legal notice is given, to adopt an ordinance or resolution providing for the automatic enrollment of citizens of the municipality in the aggregation services and enrollment on request of citizens residing in unincorporated areas within 20 miles of the boundaries of the municipality.

C.S.H.B. 3498 80(R)

Subsection (b-2) is added to require a municipality that adopts an ordinance or resolution described in Subsection (b-1) to order an election on the question of whether citizens of the municipality will be automatically enrolled in aggregation services. It prohibits implementation of automatic enrollment of citizens in aggregation services unless a majority of the voters of the municipality approve of automatic enrollment and proper notice is provided to citizens of the municipality.

Subsection (b-3) is added to require, if automatic enrollment is approved by the voters, the municipality to provide written notice to each citizen at least 60 days before the automatic enrollment takes effect. The notice must be mailed to each citizen and state that the citizen will be automatically enrolled unless the citizen requests to be excluded. A citizen residing in an unincorporated area within 20 miles of the boundaries of the municipality must affirmatively request the municipality to include the citizen in aggregation services.

Subsection (d) is added to require retail electric providers and transmission and distribution utilities to provide a municipality with any information necessary to solicit or administer a citizen aggregation program. Requested information may include the name, address, electric service identifier, and monthly usage of each residential customer residing in the municipality. Under this subsection, the provider or utility cannot require customer consent before providing the requested information to the municipality. The municipality may then provide the information to a third party aggregator only for use in bidding on, implementing, or administering an aggregation program.

Subsection (e) is added to prevent abrogation of existing contracts between a citizen of a municipality and a competitive retail electric provider. The subsection requires that the initial customer base for a citizen aggregation program consist only of customers who remained on price to beat rates established under Section 39.202, Utilities Code, as of December 31, 2006 and who continue to receive service from an affiliated retail electric provider on the date the resolution or ordinance authorizing the aggregation program was passed. This subsection also prohibits a citizen from joining the aggregation program prior to expiration of an existing contract.

Subsection (f) is added to provide that the savings attributable to the citizen aggregation program will accrue to citizen participants, except that a municipality may recover its actual administrative costs.

SECTION 3. Provides that the Act takes effect upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

EFFECTIVE DATE

Immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The committee substitute conforms the language of the original bill to Legislative Council format and style, adding appropriate references, and makes a variety of changes.

References to “political subdivision” and “political subdivisions” are changed to “municipality” and “municipalities” and conforming changes are made as necessary throughout the committee substitute to clarify that citizen aggregation programs may only be created by municipalities for the benefit of the citizens of the municipality and surrounding areas.

In the portion of Section 2 of the committee substitute that amends Section 304.002(a), Local Government Code, the substitute clarifies that a political subdivision’s new authority to contract for the purchase of, purchase, and take any other action necessary applies to both electricity and energy services. In the original bill, this new authority applied only to electricity services.

In Section 2 of the bill, Section 304.002(b-1), Local Government Code, as contained in the original bill is divided into Subsections (b-1) and (b-3) and modified in the committee substitute, and a new Subsection (b-2) is added. The original bill allowed the governing body of a political subdivision with a population of less than 50,000 that is a member of a political subdivision corporation as of 9/1/07 to adopt an ordinance or resolution providing for automatic enrollment in aggregation services.

The committee substitute allows only municipalities with a population of less than 50,000 located in a county with a population of less than 200,000 to adopt an ordinance providing for automatic enrollment in aggregation services. The committee substitute adds a requirement for a public hearing to be held before a municipality can adopt an ordinance or resolution providing for automatic enrollment in aggregation services and a requirement for an election to be ordered on the question of whether citizens of the municipality will be automatically enrolled. The committee substitute also adds a prohibition against implementing automatic enrollment unless a majority of the voters approve and the municipality provides required notice.

Except for the requirement for voter approval in the committee substitute, the 60-day notice procedures in the committee substitute before citizens can be automatically enrolled are substantially the same as the 60-day notice procedures in the original bill.