

BILL ANALYSIS

Senate Research Center

C.S.S.B. 545
By: Fraser, Van de Putte
Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas has been successful in establishing clean, efficient energy from renewable resources. This success is due in part to the implementation of the Renewable Portfolio Standard and the Renewable Energy Credit program, which Texas expanded in 2005. However, a much bigger driver was the relative size of the subsidies, including the federal production tax credit, which made our most abundant renewable resource, wind power, much more competitive with traditional resources. While these federal and state subsidies have facilitated the development of relatively less expensive wind power resources, and small amounts of landfill gas, municipal solid waste, and biomass energy, other forms of renewable energy have been unable to gain a foothold in the energy market. The lack of development of other renewable resources is mainly due to the extreme costs associated with other forms of renewable energy, such as solar energy.

C.S.S.B. 545 provides for the establishment of a distributed solar generation incentive program by the Public Utility Commission of Texas (PUC), provides for the establishment of solar generation incentive programs, and requires the state energy conservation office of the comptroller's office to establish a pilot revolving loan program for solar energy for school buildings.

C.S.S.B. 545 increases non-bypassable fees; provides that the rebates can be for distribution or for utility scale solar projects; allows PUC to direct the development of utility scale solar projects in West Texas along Competitive Renewable Energy Zone lines; allows PUC to direct funds to energy storage; provides language for municipalities and cooperatives to have funding similar to that for other utilities; adds a provision for additional rebate dollars for solar energy products manufactured in Texas and allows for an additional five-year extension of the program; incorporates a provision that prohibits homeowners associations from preventing homeowners from installing solar energy devices; provides net metering policies requiring customers to receive real time market price for exported energy and allows them to obtain other offers from renewable energy producers and clarifies that customers can have third parties install solar energy devices on their home and lease the system; requires that home builders of new subdivisions with more than 50 homes offer the installation of solar energy devices as an option for new home buyers; and authorizes the State Energy Conservation Office to establish a revolving loan program to help schools install solar energy systems.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 1 (Section 39.9155, Utilities Code) of this bill.

Rulemaking authority is expressly granted to the state energy conservation office of the comptroller's office in SECTION 7 (Section 2305.0321, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter Z, Chapter 39, Utilities Code, by adding Section 39.9155, as follows:

Sec. 39.9155. DISTRIBUTED SOLAR GENERATION INCENTIVE PROGRAM. (a) Provides that it is the goal of the legislature that electric utilities administer incentive programs for residential and commercial customers to increase the amount of distributed

solar generation, utility scale solar generation, and energy storage installed within the state in a cost-effective, market-neutral, and nondiscriminatory manner.

(b) Requires the Public Utility Commission of Texas (PUC) by rule to establish a distributed solar generation incentive program to be implemented by electric utilities, oversee the implementation of the program required by this subsection, and establish procedures to achieve the goal described by Subsection (a).

(c) Requires that the rules adopted under Subsection (b) include provisions for:

(1) a distributed solar generation cost recovery factor to ensure timely and reasonable cost recovery for electric utility expenditures under this section;

(2) recovery of the cost of electric utility programs authorized by this section through nonbypassable fees which may not exceed 20 cents per month for residential customers, \$2 per month for commercial customers, and \$20 per month for industrial customers;

(3) rebates to customers to defray the cost of installing distributed solar generation as provided by Subsection (e);

(4) a requirement that customers within the Electric Reliability Council of Texas (council) who install distributed solar generation will have the option to be equipped with an advanced meter and appropriate procedures such that the customers have the option to be settled on their real-time energy usage instead of a load profile and receive the real-time energy price for net energy exported to the grid by the customer;

(5) a requirement that retail electric providers provide the option of a real-time energy price to customers who install distributed solar generation and receive the real-time energy price for net energy exported to the grid by the customer, until PUC determines that the market is adequately providing that option for customers;

(6) appropriate net metering policies and retail rate options for customers served by electric utilities outside the council; and

(7) the utility scale solar and energy storage program provided by Subsection (f).

(d) Prohibits electric utilities from assessing the fees authorized by this section after the fifth anniversary of the date the program required by this section is established by PUC rule, except as provided by Subsection (k). Requires PUC to ensure that all fees collected under this section are used for the programs authorized by this section, except that utilities are prohibited from using more than 2.5 percent of the funds collected for administrative expenses related to this section, as approved by PUC.

(e) Requires PUC to set a rebate amount for the installation of solar generation. Requires PUC to periodically adjust the rebate amount such that the quantity of solar generation installed under this section is maximized, but is required to reduce rebate amounts by not less than five percent per year. Authorizes PUC to set a higher rebate amount for solar generation manufactured wholly or substantially in this state, provided that the higher amount is not more than 20 percent higher than the rebate applicable to all other solar generation. Authorizes PUC to provide for rebates to be provided directly to customers or to qualified installers of solar generation. Requires the initial rebates, unless otherwise adjusted by PUC, to be \$2.40 per watt for installations on residential buildings; \$1.50 per watt for installations on commercial buildings; and \$1 per watt for installations at industrial facilities.

(f) Authorizes PUC to direct not more than 70 percent of the funds collected by the fees authorized by this section to utility scale solar generation and energy storage projects if PUC determines such projects are more cost-effective than distributed solar generation or will provide a greater benefit to the reliability of the electric grid. Authorizes PUC to establish rebate amounts not to exceed \$1 per watt for such projects or consider other methods to award funds in order to maximize the quantity of generation installed under this section. Requires PUC, if the demand for funds under this section exceeds the available funds, to consider certain projects in determining which projects receive subsidies.

(g) Requires PUC to develop a "Made in Texas" certification program for energy products that include distributed solar generation. Requires PUC to post a list of energy products that are wholly or substantially produced in Texas and requires PUC to conduct education efforts to inform customers of the availability of Texas-manufactured energy products. Authorizes PUC to partner or contract with third parties or nonprofit organizations to achieve this goal.

(h) Authorizes a retail electric provider or any other person, notwithstanding any other provision of this title, to own distributed generation and enter into a contract with the retail customer on whose property the generation is located to lease the generation or sell the output to the retail customer or to the customer's retail electric provider. Provides that the owner of the generation is not an electric utility and is not required to register with PUC as a power generation company or self generator unless PUC determines that such registration is necessary to maintain the reliability of the distribution grid. Authorizes PUC to establish appropriate reporting and other requirements for distributed generation owners to be eligible to earn renewable energy credits.

(i) Requires PUC, in consultation with the council to prepare and make available a study indicating geographic areas where utility scale non-wind renewable energy can be located with minimal additional transmission facilities.

(j) Provides that selection of projects by PUC under Subsection (f) is not required to be conducted as a contested case proceeding. Authorizes PUC to appoint an advisory committee to assist PUC in evaluating proposals made under Subsection (f), provided, however, that members of the committee are prohibited from having a financial interest in any of the proposals. Requires PUC, after conclusion of a process authorized by Subsection (f), to release a complete record of the proposals and the evaluation of the factors required to be considered under Subsection (f).

(k) Authorizes PUC to extend the fees and program authorized by this section for an additional five years if PUC finds that a substantial amount of manufacturing of solar generation products has located in Texas after the initial five-year program and that the extension of the fees does not present an undue burden to customers.

SECTION 2. Amends Subchapter Z, Chapter 39, Utilities Code, by adding Section 39.9156, as follows:

Sec. 39.9156. SOLAR GENERATION INCENTIVE PROGRAMS. (a) Provides that it is the goal of the legislature that electric cooperatives and municipally owned utilities administer incentive programs that increase the amount of solar generation installed within the state in a cost-effective, market-neutral, and nondiscriminatory manner; customers of electric cooperatives and municipally owned utilities will have a choice of and access to incentives for the installation of distributed solar generation; and electric cooperatives and municipally owned utilities with retail sales of more than 500,000 megawatt hours in 2007 expend funds to increase the amount of solar generation and other renewable energy and energy storage projects consistent with the requirements for electric utilities in this state.

(b) Requires a municipally owned utility or electric cooperative with retail sales of more than 500,000 megawatt hours in 2007, not later than September 1, 2015, to report to the state energy conservation office of the comptroller's office (energy office), in a form and manner determined by the energy office, information regarding the efforts of the municipally owned utility or electric cooperative related to this section.

SECTION 3. Amends Chapter 202, Property Code, by adding Section 202.010, as follows:

Sec. 202.010. REGULATION OF SOLAR ENERGY DEVICES. (a) Defines "solar energy device."

(b) Prohibits a property owners' association, except as otherwise provided by this section, from including or enforcing a provision in a dedicatory instrument that prohibits or restricts a property owner from installing a solar energy device.

(c) Provides that a provision that violates Subsection (b) is void.

(d) Provides that this section does not prohibit the inclusion or enforcement of a provision in a dedicatory instrument that prohibits a solar energy device that threatens the public health or safety; violates a law; is located on property owned or maintained by the property owners' association; is located on property owned in common by the members of the property owners' association; is located in an area on the property owner's property other than on the roof of the home or in a fenced yard or patio maintained by the property owner; or is mounted on a device that is taller or more visually obtrusive than is necessary for the solar energy device to operate at not less than 90 percent of its rated efficiency.

SECTION 4. Amends the heading to Subtitle F, Title 16, Property Code, to read as follows:

SUBTITLE F. REGULATION OF RESIDENTIAL
CONSTRUCTION GENERALLY

SECTION 5. Amends the heading to Chapter 446, Property Code, to read as follows:

CHAPTER 446. INSPECTION OF RESIDENTIAL CONSTRUCTION IN
UNINCORPORATED AREAS AND OTHER AREAS NOT SUBJECT TO MUNICIPAL
INSPECTIONS

SECTION 6. Amends Subtitle F, Title 16, Property Code, by adding Chapter 447, as follows:

CHAPTER 447. REQUIREMENTS FOR NEW CONSTRUCTION CONTRACTS

Sec. 447.001. SOLAR PANEL OPTION REQUIRED IN CERTAIN SUBDIVISIONS.
(a) Defines "solar energy device."

(b) Provides that this chapter applies only to a contract for construction of a new home in a subdivision that contains more than 50 lots on which the builder has built or is offering to build new homes.

(c) Requires a builder who enters into a contract to which this chapter applies to offer the homebuyer an option to install a solar energy device on the home for heating or cooling or for the production of power.

SECTION 7. Amends Subchapter D, Chapter 2305, Government Code, by adding Section 2305.0321, as follows:

Sec. 2305.0321. PILOT REVOLVING LOAN PROGRAM FOR SOLAR ENERGY FOR SCHOOL BUILDINGS. (a) Requires the state energy conservation office of the comptroller's office (energy office) to establish a pilot program under the loanstar revolving loan program to provide loans to pay the cost of installing photovoltaic solar

panels on public school buildings and the cost of associated energy efficiency improvements to the buildings. Requires the energy office to allocate to the pilot program at least \$4 million from the funds available to the loanstar revolving loan program.

(b) Requires the energy office by rule to establish the terms under which a loan is authorized to be made under the pilot program, including the interest rate for repayment of the pilot program loans.

(c) Requires the energy office, through the pilot program, to offer to each school district the opportunity to apply for a loan to pay the cost of installing photovoltaic solar panels on at least one school building of the school district's choice and the cost of associated energy efficiency improvements to that building. Requires the energy office by rule to establish a procedure for determining which school districts qualify for a loan under the pilot program, including rules for selecting the school districts that will receive a loan if there is not sufficient money set aside for pilot program improvements at all school districts.

(d) Requires that each school district that receives a loan to pay for the principal of and interest on the loan for each school building improvement primarily from the amount budgeted for the energy costs of the school at which the solar panels are installed. Authorizes the school district to make additional payments of the principal of or interest on a loan from money rebated to it as compensation for electric energy generated by the solar panels or money received as a gift or grant for the purpose of paying the loan.

(e) Provides that this section expires September 1, 2011, and the pilot program established under this section is abolished on that date.

SECTION 8. Requires PUC to adopt rules establishing the programs required under Section 39.9155, Utilities Code, as added by this Act, as soon as practicable.

SECTION 9. Provides that Section 202.010, Property Code, as added by this Act, applies to a deed restriction enacted before, on, or after the effective date of this Act.

SECTION 10. Makes application of Chapter 447, Property Code, as added by this Act, prospective.

SECTION 11. Requires the energy office to establish a program under Section 2305.0321, Government Code, as added by this Act, not later than January 1, 2010.

SECTION 12. Effective date: upon passage or September 1, 2009.