

By: Gallego, Farabee, Solomons, Swinford,  
Coleman

H.B. No. 1243

Substitute the following for H.B. No. 1243:

By: Solomons

C.S.H.B. No. 1243

A BILL TO BE ENTITLED

1 AN ACT

2 relating to net metering for retail electric service customers and  
3 compensation for excess electricity generated by a retail electric  
4 customer's on-site generator.

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

6 SECTION 1. Section 31.002(6), Utilities Code, is amended to  
7 read as follows:

8 (6) "Electric utility" means a person or river  
9 authority that owns or operates for compensation in this state  
10 equipment or facilities to produce, generate, transmit,  
11 distribute, sell, or furnish electricity in this state. The term  
12 includes a lessee, trustee, or receiver of an electric utility and a  
13 recreational vehicle park owner who does not comply with Subchapter  
14 C, Chapter 184, with regard to the metered sale of electricity at  
15 the recreational vehicle park. The term does not include:

16 (A) a municipal corporation;

17 (B) a qualifying facility;

18 (C) a power generation company;

19 (D) an exempt wholesale generator;

20 (E) a power marketer;

21 (F) a corporation described by Section 32.053 to  
22 the extent the corporation sells electricity exclusively at  
23 wholesale and not to the ultimate consumer;

24 (G) an electric cooperative;

- 1 (H) a retail electric provider;
- 2 (I) this state or an agency of this state; ~~[or]~~
- 3 (J) a person not otherwise an electric utility

4 who:

5 (i) furnishes an electric service or  
6 commodity only to itself, its employees, or its tenants as an  
7 incident of employment or tenancy, if that service or commodity is  
8 not resold to or used by others;

9 (ii) owns or operates in this state  
10 equipment or facilities to produce, generate, transmit,  
11 distribute, sell, or furnish electric energy to an electric  
12 utility, if the equipment or facilities are used primarily to  
13 produce and generate electric energy for consumption by that  
14 person; or

15 (iii) owns or operates in this state a  
16 recreational vehicle park that provides metered electric service in  
17 accordance with Subchapter C, Chapter 184; or

18 (K) a distributed renewable generation owner, as  
19 defined by Section 39.916.

20 SECTION 2. Section 39.002, Utilities Code, is amended to  
21 read as follows:

22 Sec. 39.002. APPLICABILITY. Except as provided by this  
23 section, this ~~[This]~~ chapter, other than Sections 39.155,  
24 39.157(e), 39.203, 39.903, 39.904, 39.9051, 39.9052, and  
25 39.914(e), does not apply to a municipally owned utility or to an  
26 electric cooperative. Sections 39.157(e), 39.203, and 39.904~~[~~  
27 ~~however,~~] apply only to a municipally owned utility or an electric

1 cooperative that is offering customer choice. Section 39.916  
2 applies to an electric cooperative. Section 39.9161 applies to a  
3 municipally owned utility. If there is a conflict between the  
4 specific provisions of this chapter and any other provisions of  
5 this title, except for Chapters 40 and 41, the provisions of this  
6 chapter control.

7 SECTION 3. The heading to Section 39.916, Utilities Code,  
8 is amended to read as follows:

9 Sec. 39.916. [~~INTERCONNECTION OF~~] DISTRIBUTED RENEWABLE  
10 GENERATION.

11 SECTION 4. Section 39.916, Utilities Code, is amended by  
12 amending Subsections (a), (b), (c), (e), (f), (h), and (j) and  
13 adding Subsections (d-1), (k), (l), (l-1), (l-2), (m), (n), (o),  
14 and (p) to read as follows:

15 (a) In this section:

16 (1) "Distributed renewable generation" means electric  
17 generation with a capacity of not more than 2,000 kilowatts  
18 provided by a renewable energy technology, as defined by Section  
19 39.904, that is installed on a retail electric customer's side of  
20 the meter.

21 (2) "Distributed renewable generation owner" means:

22 (A) the owner of distributed renewable  
23 generation;

24 (B) a retail electric customer who contracts with  
25 another person to finance, install, or maintain distributed  
26 renewable generation on the customer's side of the meter,  
27 regardless of whether the customer takes ownership of the installed

1 distributed renewable generation; or

2 (C) a person who by contract is assigned  
3 ownership rights to renewable resources located at the premises of  
4 a customer on the customer's side of the meter.

5 (3) "Interconnection" means the right of a distributed  
6 renewable generation owner to physically connect distributed  
7 renewable generation to an electricity distribution system, and the  
8 technical requirements, rules, or processes for the connection.

9 (b) A transmission and distribution utility, electric  
10 cooperative, or electric utility shall allow interconnection if:

11 (1) the distributed renewable generation to be  
12 interconnected has a five-year warranty against breakdown or undue  
13 degradation; and

14 (2) the rated capacity of the distributed renewable  
15 generation does not exceed the transmission and distribution  
16 utility, electric cooperative, or electric utility service  
17 capacity.

18 (c) A customer may request interconnection by filing an  
19 application for interconnection with the transmission and  
20 distribution utility, electric cooperative, or electric  
21 utility. Procedures of a transmission and distribution utility,  
22 electric cooperative, or electric utility for the submission and  
23 processing of a customer's application for interconnection shall be  
24 consistent with rules adopted by the commission regarding  
25 interconnection.

26 (d-1) If, at the time distributed renewable generation is  
27 installed on a retail electric customer's side of the meter, the

1 estimated annual amount of electric energy to be produced by the  
2 distributed renewable generation is less than or equal to the  
3 customer's estimated annual electric energy consumption, the  
4 commission may not consider the distributed renewable generation  
5 owner to be a power generation company or require the distributed  
6 renewable generation owner to register as a power generation  
7 company.

8 (e) A transmission and distribution utility, electric  
9 cooperative, electric utility, or retail electric provider may not  
10 require a distributed renewable generation owner whose distributed  
11 renewable generation meets the standards established by rule under  
12 Subsection (d) to purchase an amount, type, or classification of  
13 liability insurance the distributed renewable generation owner  
14 would not have in the absence of the distributed renewable  
15 generation.

16 (f) A transmission and distribution utility, electric  
17 cooperative, or electric utility shall make available to a  
18 distributed renewable generation owner for purposes of this section  
19 metering required for services provided under this section,  
20 including separate meters that measure the load and generator  
21 output or a single meter capable of measuring in-flow and out-flow  
22 at the point of common coupling meter point. The distributed  
23 renewable generation owner must pay the differential cost of the  
24 metering unless the meters are provided at no additional cost.  
25 Except as provided by this section, Section 39.107 applies to  
26 metering under this section.

27 (h) On the request of a distributed renewable generation

1 owner and in accordance with this section, an [~~An~~] electric  
2 utility, electric cooperative, or retail electric provider shall  
3 ~~may~~ contract with a distributed renewable generation owner so  
4 that:

5 (1) surplus electricity produced by distributed  
6 renewable generation is made available for sale to the transmission  
7 grid and distribution system; and

8 (2) the fair market [~~net~~] value of that surplus  
9 electricity is credited to the distributed renewable generation  
10 owner.

11 (j) For a distributed renewable generation owner who  
12 chooses to sell the owner's surplus electricity in an area [~~owners~~  
13 ~~in areas~~] in which customer choice has been introduced, the  
14 distributed renewable generation owner must sell the owner's  
15 surplus electricity produced to the retail electric provider that  
16 serves the [~~distributed renewable generation~~] owner's load. For a  
17 distributed renewable generation owner who chooses to sell the  
18 owner's surplus electricity in an area in which customer choice has  
19 not been introduced, the owner must sell the owner's surplus  
20 electricity to the electric utility or electric cooperative that  
21 serves the owner's load. A distributed renewable generation owner  
22 must sell the owner's surplus electricity at a fair market value,  
23 determined in accordance with this section, [~~agreed to between the~~  
24 ~~distributed renewable generation owner and the provider that serves~~  
25 ~~the owner's load which may include, but is not limited to, an agreed~~  
26 ~~value based on the clearing price of energy at the time of day that~~  
27 ~~the electricity is made available to the grid] or the owner's~~

1 surplus electricity may be exchanged for ~~[it may be]~~ a credit  
2 applied at a fair market value, determined in accordance with this  
3 section, to an account during a billing period that may be carried  
4 over to subsequent billing periods until the credit has been  
5 redeemed. The independent organization identified in Section  
6 39.151 shall develop procedures so that the amount of electricity  
7 purchased from a distributed renewable generation owner under this  
8 section is accounted for in settling the total load served by the  
9 provider that serves that owner's load ~~[by January 1, 2009]~~. A  
10 distributed renewable generation owner requesting ~~[net]~~ metering  
11 services for purposes of this section must have metering devices  
12 capable of providing measurements consistent with the independent  
13 organization's settlement requirements.

14 (k) The commission by rule shall provide a methodology for  
15 determining a fair market value price for surplus electricity  
16 generated by distributed renewable generation. The fair market  
17 value may not be less than an amount equal to 80 percent of the  
18 customer's applicable retail rate minus any nonbypassable charges.  
19 The commission shall post on its Internet website the fair market  
20 value prices derived from the methodology provided under this  
21 subsection.

22 (l) In an area in which customer choice has been introduced,  
23 a retail electric provider shall pay a distributed renewable  
24 generation owner for surplus electricity generated by the owner's  
25 distributed renewable generation the local market clearing price  
26 for energy at the time of day the surplus electricity is made  
27 available to the grid or a price that is not less than the fair

1 market value price determined in accordance with the methodology  
2 provided under Subsection (k).

3 (l-1) A distributed renewable generation owner is qualified  
4 to be paid for surplus electricity under Subsection (h), (j), (k),  
5 or (l) only if the owner's distributed renewable generation:

6 (1) is installed on a residential retail electric  
7 customer's side of the meter;

8 (2) has a generating capacity of not greater than 10  
9 kilowatts; and

10 (3) is rated to produce an amount of electricity less  
11 than or equal to the amount of electricity the residential retail  
12 electric customer for whom the distributed renewable generation is  
13 installed is reasonably expected to consume.

14 (l-2) A distributed renewable generation owner who does not  
15 meet the qualifications prescribed by Subsection (l-1) must sell  
16 the owner's surplus electricity produced to the provider that  
17 serves the owner's load, or exchange the surplus electricity for a  
18 credit to the owner's account, at a value agreed to between the  
19 owner and that provider.

20 (m) The commission by rule may establish standards  
21 distributed renewable generation must meet to be eligible for  
22 compensation under this section, including interconnection  
23 standards and standards for the generating equipment. The  
24 standards must be designed so that small-scale distributed  
25 renewable generation at residential addresses is eligible for  
26 compensation.

27 (n) The commission by rule shall require an electric



1 utility, retail electric provider, or electric cooperative that  
2 purchases surplus electricity from distributed renewable  
3 generation to include on each bill of the distributed renewable  
4 generation owner line items to inform the owner of:

5 (1) the amount of surplus electricity from the  
6 distributed renewable generation, in terms of kilowatt hours;

7 (2) the price credited to the owner for each kilowatt  
8 hour; and

9 (3) the amount of any credit for surplus electricity  
10 applied or carried forward from the previous billing period.

11 (o) An electric utility, retail electric provider, or  
12 electric cooperative may charge an administrative fee to a  
13 distributed renewable generation owner on a monthly or annual  
14 basis.

15 (p) Until the commission provides the methodology under  
16 Subsection (k) for determining a fair market value price:

17 (1) in an area open to competition, a retail electric  
18 provider shall pay a price for surplus electricity that is not less  
19 than five cents per kilowatt hour for electricity generated by a  
20 solar energy technology or not less than four cents per kilowatt  
21 hour for electricity generated by another renewable energy  
22 technology; and

23 (2) in an area not open to competition, an electric  
24 utility or electric cooperative shall pay a price for surplus  
25 electricity that is not less than the avoided cost to the electric  
26 utility or electric cooperative.

27 SECTION 5. Subchapter Z, Chapter 39, Utilities Code, is

1 amended by adding Section 39.9161 to read as follows:

2 Sec. 39.9161. DISTRIBUTED RENEWABLE GENERATION WITHIN  
3 MUNICIPALLY OWNED UTILITIES. (a) In this section "distributed  
4 renewable generation," "distributed renewable generation owner,"  
5 and "interconnection" have the meanings assigned by Section 39.916.

6 (b) It is the goal of the legislature that municipally owned  
7 utilities shall allow interconnection and net metering by  
8 distributed renewable generation owners.

9 (c) A municipally owned utility shall provide its customers  
10 access to the interconnection and net metering of distributed  
11 renewable generation.

12 (d) The governing body of a municipally owned utility shall  
13 provide oversight and adopt rates, rules, and procedures to allow  
14 interconnection and provide net metering consistent with the goals  
15 of Section 39.916. This section does not prevent the governing body  
16 of a municipally owned utility from adopting rates, rules, and  
17 procedures for interconnection and net metering that are more  
18 favorable to a distributed renewable generation owner than those  
19 established by Section 39.916 or rules of the commission.

20 (e) If a municipally owned utility implements customer  
21 choice under Chapter 40, the commission:

22 (1) has jurisdiction over the municipally owned  
23 utility's distributed renewable generation interconnection and net  
24 metering; and

25 (2) by rule shall establish minimum standards and  
26 procedures for interconnection and net metering by the municipally  
27 owned utility.

1       (f) A municipally owned utility that had retail sales of  
2 500,000 megawatt hours or greater in 2008 shall file its  
3 interconnection and net metering rates, rules, and procedures with  
4 the State Energy Conservation Office not later than January 1,  
5 2010, and shall make timely updates to the utility's filed rates,  
6 rules, and procedures.

7       (g) A municipally owned utility that has adopted rules and  
8 procedures related to interconnection and net metering shall make  
9 available, on a publicly accessible Internet website or at the  
10 customary location for publicly posted notices:

11           (1) information on the purchase price offered per  
12 kilowatt hour for surplus electricity produced by distributed  
13 renewable generation; and

14           (2) information instructing customers with  
15 distributed renewable generation how to request and obtain the  
16 purchase rates offered.

17       (h) The governing body of a municipally owned utility that  
18 had retail sales of less than 500,000 megawatt hours in 2008 shall  
19 provide oversight and adopt rules and procedures related to  
20 interconnection and net metering of distributed renewable  
21 generation systems sized with a generating capacity deemed  
22 appropriate by the municipally owned utility on or before the 120th  
23 day after the date the governing body receives a bona fide request  
24 for interconnection.

25       SECTION 6. Subchapter Z, Chapter 39, Utilities Code, is  
26 amended by adding Section 39.926 to read as follows:

27       Sec. 39.926. INFORMATION ON INTERNET REGARDING PURCHASE OF

1 SURPLUS ELECTRICITY PRODUCED BY DISTRIBUTED RENEWABLE GENERATION.

2 (a) On the Internet website found at <http://www.powertochoose.org>,  
3 the commission shall provide for access to easily comparable  
4 information regarding retail electric providers' offers to  
5 distributed renewable generation owners for their surplus  
6 electricity, including information regarding their contract terms,  
7 for each retail electric provider using that website.

8 (b) On the Internet website found at  
9 <http://www.powertochoose.org>, the commission shall provide for  
10 access to easily comparable information regarding offers of  
11 renewable energy credit marketers to distributed renewable  
12 generation owners, for each renewable energy credit marketer using  
13 that website.

14 (c) The commission by rule shall require electric  
15 utilities, electric cooperatives, and retail electric providers to  
16 provide on publicly accessible Internet websites information on  
17 purchase price offers per kilowatt hour for surplus electricity  
18 produced by distributed renewable generation and information  
19 instructing customers with distributed renewable generation on how  
20 to request and obtain the purchase rates offered.

21 SECTION 7. This Act takes effect immediately if it receives  
22 a vote of two-thirds of all the members elected to each house, as  
23 provided by Section 39, Article III, Texas Constitution. If this  
24 Act does not receive the vote necessary for immediate effect, this  
25 Act takes effect September 1, 2009.