

SENATE AMENDMENTS

2nd Printing

By: Gallego, Farabee, Solomons, Swinford,
Coleman, et al.

H.B. No. 1243

A BILL TO BE ENTITLED

AN ACT

1
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), (m), (n), (o), (p), and (r) to
14 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 distributed renewable generation located at the
4 premises of 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 at a value that is greater than or equal to
22 the avoided cost of the electric utility or electric cooperative,
23 as determined in accordance with commission rules, and, for an
24 electric cooperative, that is at least 4.5 cents per kilowatt hour
25 regardless of the electric cooperative's avoided cost. A
26 distributed generation owner who chooses to sell the owner's
27 surplus electricity in an area in which customer choice has been

1 introduced must sell the owner's surplus electricity at a fair
2 market value, determined in accordance with this section, [~~agreed~~
3 ~~to between the distributed renewable generation owner and the~~
4 ~~provider that serves the owner's load which may include, but is not~~
5 ~~limited to, an agreed value based on the clearing price of energy at~~
6 ~~the time of day that the electricity is made available to the grid]~~
7 or the owner's surplus electricity may be exchanged for [it may be]
8 a credit applied at a fair market value, determined in accordance
9 with this section, to an account during a billing period that may be
10 carried over to subsequent billing periods until the credit has
11 been redeemed. The independent organization identified in Section
12 39.151 shall develop procedures so that the amount of electricity
13 purchased from a distributed renewable generation owner under this
14 section is accounted for in settling the total load served by the
15 provider that serves that owner's load [~~by January 1, 2009~~]. A
16 distributed renewable generation owner requesting [~~net~~] metering
17 services for purposes of this section must have metering devices
18 capable of providing measurements consistent with the independent
19 organization's settlement requirements.

20 (k) In areas in which customer choice has been introduced,
21 the commission by rule shall provide a methodology for determining
22 a fair market value price for surplus electricity generated by
23 distributed renewable generation that provides a monthly or longer
24 periodic proxy for the market clearing price. The methodology must
25 not allow the aggregate fair market value of surplus electricity in
26 any billing period to be less than zero. The commission shall
27 review the methodology periodically. The commission shall post on

1 its Internet website the fair market value prices derived from the
2 methodology provided under this subsection.

3 (l) In an area in which customer choice has been introduced,
4 a retail electric provider shall pay a distributed renewable
5 generation owner for surplus electricity generated by the owner's
6 distributed renewable generation the local market clearing price
7 for energy at the time of day the surplus electricity is made
8 available to the grid or a price that is not less than the fair
9 market value price determined in accordance with the methodology
10 provided under Subsection (k).

11 (m) In areas in which customer choice has been introduced, a
12 distributed renewable generation owner is qualified to be paid for
13 surplus electricity under Subsection (h), (j), (k), or (l) only if:

14 (1) the owner's distributed renewable generation is:

15 (A) rated to produce an amount of electricity
16 that is less than or equal to the amount of electricity the retail
17 electric customer for whom the distributed renewable generation is
18 installed is reasonably expected to consume; and

19 (B) installed on the customer's side of the meter
20 for a residential retail electric customer or a retail electric
21 customer who is a public school or a church; and

22 (2) the generating capacity of the distributed
23 renewable generation does not exceed:

24 (A) 10 kilowatts for a residential retail
25 electric customer;

26 (B) 150 kilowatts for a church retail electric
27 customer; or

1 (C) 250 kilowatts for a public school retail
2 electric customer.

3 (n) A distributed renewable generation owner who does not
4 meet the qualifications prescribed by Subsection (m) will be paid
5 for the owner's surplus electricity or will have the owner's surplus
6 electricity exchanged for a credit to the owner's electric service
7 account at a value to which the owner and the provider that serves
8 the owner's load agree.

9 (o) The commission by rule may establish standards
10 distributed renewable generation must meet to be eligible for
11 compensation under this section, including interconnection
12 standards and standards for the generating equipment. The
13 standards must be designed so that small-scale distributed
14 renewable generation at residential addresses is eligible for
15 compensation.

16 (p) The commission by rule shall require an electric
17 utility, retail electric provider, or electric cooperative that
18 purchases surplus electricity from distributed renewable
19 generation to include on each bill or separate statement to the
20 distributed renewable generation owner line items to inform the
21 owner of:

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

24 (2) the price credited to or the payment made to the
25 owner for each kilowatt hour; and

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

1 (r) Until the commission provides the methodology under
2 Subsection (k) for determining a fair market value price in an area
3 open to competition, a retail electric provider shall pay a price
4 for surplus electricity that is not less than five cents per
5 kilowatt hour for electricity generated by a solar energy
6 technology or not less than four cents per kilowatt hour for
7 electricity generated by another renewable energy technology.

8 SECTION 5. Subchapter Z, Chapter 39, Utilities Code, is
9 amended by adding Section 39.9161 to read as follows:

10 Sec. 39.9161. DISTRIBUTED RENEWABLE GENERATION WITHIN
11 MUNICIPALLY OWNED UTILITIES. (a) In this section "distributed
12 renewable generation," "distributed renewable generation owner,"
13 and "interconnection" have the meanings assigned by Section 39.916.

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

17 (c) A municipally owned utility shall provide its customers
18 access to the interconnection and net metering of distributed
19 renewable generation.

20 (d) The governing body of a municipally owned utility shall
21 provide oversight and adopt rates, rules, and procedures to allow
22 interconnection and provide net metering consistent with the goals
23 of Section 39.916. This section does not prevent the governing body
24 of a municipally owned utility from adopting rates, rules, and
25 procedures for interconnection and net metering that are more
26 favorable to a distributed renewable generation owner than those
27 established by Section 39.916 or rules of the commission.

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

3 (1) has jurisdiction over the municipally owned
4 utility's distributed renewable generation interconnection and net
5 metering; and

6 (2) by rule shall establish minimum standards and
7 procedures for interconnection and net metering by the municipally
8 owned utility.

9 (f) A municipally owned utility that had retail sales of
10 500,000 megawatt hours or greater in 2008 shall file its
11 interconnection and net metering rates, rules, and procedures with
12 the State Energy Conservation Office not later than January 1,
13 2010, and shall make timely updates to the utility's filed rates,
14 rules, and procedures.

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

19 (1) information on the purchase price offered per
20 kilowatt hour for surplus electricity produced by distributed
21 renewable generation; and

22 (2) information instructing customers with
23 distributed renewable generation how to request and obtain the
24 purchase rates offered.

25 (h) The governing body of a municipally owned utility that
26 had retail sales of less than 500,000 megawatt hours in 2008 shall
27 provide oversight and adopt rules and procedures related to

1 interconnection and net metering of distributed renewable
2 generation systems sized with a generating capacity deemed
3 appropriate by the municipally owned utility on or before the 120th
4 day after the date the governing body receives a bona fide request
5 for interconnection.

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

8 Sec. 39.926. INFORMATION ON INTERNET REGARDING PURCHASE OF
9 SURPLUS ELECTRICITY PRODUCED BY DISTRIBUTED RENEWABLE GENERATION.

10 (a) On the Internet website found at <http://www.powertochoose.org>,
11 the commission shall provide for access to easily comparable
12 information regarding retail electric providers' offers to
13 residential distributed renewable generation owners for their
14 surplus electricity, including information regarding their
15 contract terms, for each retail electric provider using that
16 website.

17 (b) On the Internet website found at
18 <http://www.powertochoose.org>, the commission shall provide for
19 access to easily comparable information regarding offers of
20 renewable energy credit marketers to residential distributed
21 renewable generation owners, for each renewable energy credit
22 marketer using that website.

23 (c) The commission by rule shall require electric
24 utilities, electric cooperatives, and retail electric providers to
25 provide on publicly accessible Internet websites information on
26 purchase price offers per kilowatt hour for surplus electricity
27 produced by residential distributed renewable generation and

1 information instructing customers with distributed renewable
2 generation on how to request and obtain the purchase rates offered.

3 SECTION 7. Not later than January 1, 2010, the Public
4 Utility Commission of Texas shall provide the methodology for
5 determining a fair market value price for surplus electricity
6 generated by distributed renewable generation, as required by
7 Section 39.916(k), Utilities Code, as added by this Act.

8 SECTION 8. (a) Section 39.916, Utilities Code, as amended
9 by this Act, expires September 2, 2011.

10 (b) The Public Utility Commission of Texas shall conduct a
11 study to determine the effect of the pricing methodology the
12 commission provides under Section 39.916(k), Utilities Code, as
13 added by this Act, and shall report its findings and
14 recommendations to the 82nd Legislature not later than January 15,
15 2011. The study must include assessments of:

16 (1) the development of the market in ERCOT for the sale
17 of surplus electricity, including the prices that retail electric
18 providers and electric utilities, municipal electric utilities,
19 and electric cooperatives in areas in which customer choice has not
20 been introduced pay for surplus electricity, and the amount of
21 surplus electricity such entities have purchased;

22 (2) the rate of adoption by customers in this state of
23 distributed renewable generation, including generation by solar
24 and other on-site renewable technologies, including a comparison of
25 adoption rates in this state compared to the adoption rates in other
26 states, the extent to which adoption rates vary by retail market
27 structure, the amount of direct installation incentives, the

1 pricing for purchasing of surplus electricity, and the extent to
2 which adoption rates are affected by the cost of other electric
3 supplies;

4 (3) a comparison of the default fair market value
5 price for surplus electricity to:

6 (A) the local market clearing prices of energy at
7 the time of day surplus electricity has been made available to the
8 grid; and

9 (B) the avoided costs of electric utilities as
10 determined in accordance with commission rules; and

11 (4) the extent to which electric service customers
12 with distributed renewable generation help avoid transmission and
13 distribution upgrades and reduce pollution, including an
14 estimation of the value of those benefits regionally.

15 (c) The study report must include any recommendations for
16 improvements in policies necessary to appropriately encourage the
17 development of distributed renewable generation technologies on
18 customer premises.

19 SECTION 9. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect September 1, 2009.

ADOPTED

MAY 27 2009

Atty. Gen. Spaw
Secretary of the Senate

By: Gallego/Fraser

H.B. No. 1243

Substitute the following for ___B. No. _____:

By: Fraser

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[~~7~~
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), (m), (n), (o), (p), and (r) to
14 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 distributed renewable generation located at the
4 premises of 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 at a value that is greater than or equal to
22 the avoided cost of the electric utility or electric cooperative,
23 as determined in accordance with commission rules. A distributed
24 generation owner who chooses to sell the owner's surplus
25 electricity in an area in which customer choice has been introduced
26 must sell the owner's surplus electricity at a fair market value,
27 determined in accordance with this section, [~~agreed to between the~~

1 ~~distributed renewable generation owner and the provider that serves~~
2 ~~the owner's load which may include, but is not limited to, an agreed~~
3 ~~value based on the clearing price of energy at the time of day that~~
4 ~~the electricity is made available to the grid] or the owner's~~
5 surplus electricity may be exchanged for [it may be] a credit
6 applied at a fair market value, determined in accordance with this
7 section, to an account during a billing period that may be carried
8 over to subsequent billing periods until the credit has been
9 redeemed. The independent organization identified in Section
10 39.151 shall develop procedures so that the amount of electricity
11 purchased from a distributed renewable generation owner under this
12 section is accounted for in settling the total load served by the
13 provider that serves that owner's load [~~by January 1, 2009~~]. A
14 distributed renewable generation owner requesting [~~net~~] metering
15 services for purposes of this section must have metering devices
16 capable of providing measurements consistent with the independent
17 organization's settlement requirements.

18 (k) In areas in which customer choice has been introduced,
19 the commission by rule shall provide a methodology for determining
20 a fair market value price for surplus electricity generated by
21 distributed renewable generation that provides a proxy for the
22 market clearing price. The commission shall review the methodology
23 periodically. The commission shall post on its Internet website
24 the fair market value prices derived from the methodology provided
25 under this subsection.

26 (l) In an area in which customer choice has been introduced,
27 a retail electric provider shall pay a distributed renewable

1 generation owner for surplus electricity generated by the owner's
2 distributed renewable generation the local market clearing price
3 for energy at the time of day the surplus electricity is made
4 available to the grid or a price that is not less than the fair
5 market value price determined in accordance with the methodology
6 provided under Subsection (k).

7 (m) In areas in which customer choice has been introduced, a
8 distributed renewable generation owner is qualified to be paid for
9 surplus electricity under Subsection (h), (j), (k), or (l) only if:

10 (1) the owner's distributed renewable generation is:

11 (A) rated to produce an amount of electricity
12 that is less than or equal to the amount of electricity the retail
13 electric customer for whom the distributed renewable generation is
14 installed is reasonably expected to consume; and

15 (B) installed on the customer's side of the meter
16 for a residential retail electric customer or a retail electric
17 customer who is a public school or a church; and

18 (2) the generating capacity of the distributed
19 renewable generation does not exceed:

20 (A) 10 kilowatts for a residential retail
21 electric customer;

22 (B) 150 kilowatts for a church retail electric
23 customer; or

24 (C) 250 kilowatts for a public school retail
25 electric customer.

26 (n) A distributed renewable generation owner who does not
27 meet the qualifications prescribed by Subsection (m) will be paid

1 for the owner's surplus electricity or will have the owner's surplus
2 electricity exchanged for a credit to the owner's electric service
3 account at a value to which the owner and the provider that serves
4 the owner's load agree.

5 (o) The commission by rule may establish standards
6 distributed renewable generation must meet to be eligible for
7 compensation under this section, including interconnection
8 standards and standards for the generating equipment. The
9 standards must be designed so that small-scale distributed
10 renewable generation at residential addresses is eligible for
11 compensation.

12 (p) The commission by rule shall require an electric
13 utility, retail electric provider, or electric cooperative that
14 purchases surplus electricity from distributed renewable
15 generation to include on each bill or separate statement to the
16 distributed renewable generation owner line items to inform the
17 owner of:

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

20 (2) the price credited to or the payment made to the
21 owner for each kilowatt hour; and

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

24 (r) Until the commission provides the methodology under
25 Subsection (k) for determining a fair market value price in an area
26 open to competition, a retail electric provider shall pay a price
27 for surplus electricity that is not less than five cents per

1 kilowatt hour for electricity generated by a solar energy
2 technology or not less than four cents per kilowatt hour for
3 electricity generated by another renewable energy technology.

4 SECTION 5. Subchapter Z, Chapter 39, Utilities Code, is
5 amended by adding Section 39.9161 to read as follows:

6 Sec. 39.9161. DISTRIBUTED RENEWABLE GENERATION WITHIN
7 MUNICIPALLY OWNED UTILITIES. (a) In this section "distributed
8 renewable generation," "distributed renewable generation owner,"
9 and "interconnection" have the meanings assigned by Section 39.916.

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

13 (c) A municipally owned utility shall provide its customers
14 access to the interconnection and net metering of distributed
15 renewable generation.

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

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

26 (1) has jurisdiction over the municipally owned
27 utility's distributed renewable generation interconnection and net

1 metering; and

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

5 (f) A municipally owned utility that had retail sales of
6 500,000 megawatt hours or greater in 2008 shall file its
7 interconnection and net metering rates, rules, and procedures with
8 the State Energy Conservation Office not later than January 1,
9 2010, and shall make timely updates to the utility's filed rates,
10 rules, and procedures.

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

15 (1) information on the purchase price offered per
16 kilowatt hour for surplus electricity produced by distributed
17 renewable generation; and

18 (2) information instructing customers with
19 distributed renewable generation how to request and obtain the
20 purchase rates offered.

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

1 for interconnection.

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

4 Sec. 39.926. INFORMATION ON INTERNET REGARDING PURCHASE OF
5 SURPLUS ELECTRICITY PRODUCED BY DISTRIBUTED RENEWABLE GENERATION.

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

13 (b) On the Internet website found at
14 <http://www.powertochoose.org>, the commission shall provide for
15 access to easily comparable information regarding offers of
16 renewable energy credit marketers to residential distributed
17 renewable generation owners, for each renewable energy credit
18 marketer using that website.

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

26 SECTION 7. Not later than January 1, 2010, the Public
27 Utility Commission of Texas shall provide the methodology for

1 determining a fair market value price for surplus electricity
2 generated by distributed renewable generation, as required by
3 Section 39.916(k), Utilities Code, as added by this Act.

4 SECTION 8. Section 39.916, Utilities Code, as amended by
5 this Act, expires September 2, 2011.

6 SECTION 9. Section 39.914, Utilities Code, is repealed.

7 SECTION 10. This Act takes effect immediately if it
8 receives a vote of two-thirds of all the members elected to each
9 house, as provided by Section 39, Article III, Texas Constitution.
10 If this Act does not receive the vote necessary for immediate
11 effect, this Act takes effect September 1, 2009.

FLOOR AMENDMENT NO. 1

BY: Froese

- 1 Amend C.S.H.B. 1243 (committee printing version) on page 4,
- 2 lines 44-50, by striking new Subsection (r).

ADOPTED

MAY 27 2009

Atay Spaw
Secretary of the Senate

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ADOPTED

FLOOR AMENDMENT NO. 2

MAY 27 2009

BY: FRASER

Astley Spaw
Secretary of the Senate

1 Amend C.S.H.B. 1243 (committee printing version) on page
2 __, line __ insert the following new appropriately numbered
3 sections and renumber subsequent sections accordingly:

4 " SECTION __. Section 161.002, Utilities Code, is amended
5 by adding Subdivision (2-a) to read as follows:

6 (2-a) "Board meeting" means a deliberation between a
7 quorum of the voting board, or between a quorum of the voting
8 board and another person, during which electric cooperative
9 business or policy over which the board has responsibility is
10 discussed or considered, or during which the board takes formal
11 action. The term does not include the gathering of a quorum of
12 the board at a social function unrelated to the business of the
13 cooperative, or the attendance by a quorum of the board at a
14 regional, state, or national convention or workshop, ceremonial
15 event, or press conference, if formal action is not taken and
16 any discussion of cooperative business is incidental to the
17 social function, convention, workshop, ceremonial event, or
18 press conference.

19 SECTION __. Subchapter A, Chapter 161, Utilities Code, is
20 amended by adding Section 161.006 to read as follows:

21 Sec. 161.006. NONAPPLICABILITY. The following sections of
22 this chapter do not apply to an electric cooperative that
23 engages exclusively or primarily in the wholesale sale or
24 transmission of electricity and does not have a certificated
25 service area for the retail sale of electricity:

26 (1) Sections 161.072(d) through (m);

27 (2) Sections 161.075(a), (d), (e), (f), (g), (h),
28 (i), (j), and (k);

29 (3) Section 161.0751;

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1 (4) Section 161.077(d);

2 (5) Section 161.080;

3 (6) Section 161.081;

4 (7) Section 161.082;

5 (8) Section 161.126; and

6 (9) Section 161.127.

7 SECTION __. Subsection (b), Section 161.064, Utilities
8 Code, is amended to read as follows:

9 (b) The bylaws may contain any provision for the
10 regulation and management of the affairs of the electric
11 cooperative that is consistent with the articles of
12 incorporation and this chapter.

13 SECTION __. Section 161.072, Utilities Code, is amended by
14 adding Subsections (c) through (m) to read as follows:

15 (c) Director elections shall be conducted in a manner that
16 is fair and open to all members of the electric cooperative.

17 (d) A board committee of a cooperative with more than
18 170,000 members may not cast a member's proxy vote in a director
19 election.

20 (e) A director who is standing for reelection to the board
21 of a cooperative with not more than 170,000 members may not
22 serve on a committee established under the bylaws for the
23 purpose of casting, or being authorized to cast, the proxy vote
24 of a member in a director election.

25 (f) A member's proxy vote may be cast by a committee
26 established under the bylaws in a director election only if:

27 (1) a proxy form is sent by regular mail to each
28 member of record not later than the 30th day before the date of
29 the meeting at which proxy votes are counted;

30 (2) the proxy form designates each candidate who is
31 an incumbent director;

1 (3) an exact copy of the proxy form is posted on the
2 cooperative's Internet website, if the cooperative maintains a
3 website;

4 (4) the proxy form includes information describing
5 the process by which proxy votes are authorized and cast,
6 including:

7 (A) the name of each member of the committee, if
8 any, established under the bylaws for the purpose of casting
9 proxy votes in a director election;

10 (B) the process prescribed in the bylaws for
11 selecting members to serve on the committee; and

12 (C) the districts represented by each committee
13 member, if applicable; and

14 (5) the proxy form contains the following statements,
15 in bold type:

16 (A) "If you grant the committee your proxy, you
17 are giving the committee full authority to vote your proxy for
18 the candidates you selected, or, if you did not select any
19 candidates, to vote your proxy for candidates the committee
20 selects";

21 (B) "You may rescind your proxy at any time
22 before votes are cast at the meeting to elect directors"; and

23 (C) "State law prohibits any person from using
24 incentives or other enticements to encourage you to provide your
25 proxy in any board election."

26 (g) Subsections (d) and (f) may not be construed as
27 limiting the right of an individual member to collect or cast
28 the proxy votes of another member in a director election, if
29 allowed by the bylaws.

30 (h) This section may not be construed as limiting the use
31 of a proxy as provided by Section 161.069 to establish a quorum

1 to transact business other than the election of a director.

2 (i) A person may not use an incentive or other enticement
3 to encourage a member to authorize another person to cast the
4 member's proxy vote in a director election.

5 (j) A cooperative with more than 170,000 members may elect
6 directors only by district. A member may vote for a director to
7 represent a district only if the member resides in that
8 district.

9 (k) A cooperative with more than 170,000 members may
10 nominate qualified members as candidates in a director election
11 only through a written petition by members. The bylaws must:

12 (1) specify the number of printed names and dated
13 signatures a petition nominating a candidate must contain;

14 (2) specify a period within which a petition
15 nominating a candidate must be submitted to the cooperative; and

16 (3) specify that only members residing in a district
17 may sign a petition for the nomination of a candidate to
18 represent that district.

19 (l) If the bylaws of a cooperative with not more than
20 170,000 members allow a committee of members to nominate
21 qualified members as candidates in a director election, the
22 bylaws must also:

23 (1) allow nominations to be made through one or more
24 written petitions by members;

25 (2) specify the number of printed names and dated
26 signatures a petition nominating a candidate must contain; and

27 (3) specify a period within which a petition
28 nominating a candidate must be submitted to the cooperative.

29 (m) A petition submitted under Subsection (l) must provide
30 on the petition the name and address of the member seeking
31 nomination and, if the cooperative nominates or elects directors

1 by district, the district the member seeks to represent.

2 SECTION __. Section 161.075, Utilities Code, is amended to
3 read as follows:

4 Sec. 161.075. BOARD MEETINGS. (a) The board shall hold a
5 regular or special board meeting at the place and time specified
6 in ~~on~~ the notice required by Section 161.0751 and ~~prescribed~~
7 by] the bylaws.

8 (b) The attendance of a director at a board meeting
9 constitutes a waiver of notice to the director of the meeting
10 unless the director attends the meeting for the express purpose
11 of objecting to the transaction of business at the meeting
12 because the meeting is not lawfully called or convened.

13 (c) A notice or waiver of notice of a board meeting given
14 to a director is not required to specify the business to be
15 transacted at the meeting or the purpose of the meeting.

16 (d) Except as provided by this section, each member of the
17 electric cooperative is entitled to attend a regular or special
18 board meeting. A person who is not a member of the cooperative
19 is not entitled to attend a regular or special board meeting.

20 (e) At the board's discretion, the board may convene an
21 executive session to which the members do not have access to
22 deliberate and take action on sensitive matters, such as matters
23 involving confidential personnel information, contracts,
24 lawsuits, real estate transactions, competitively sensitive
25 information, information related to the security of the
26 electrical system or the cooperative, or other privileged,
27 confidential, or proprietary information.

28 (f) The board shall reconvene the open session of the
29 regular or special board meeting to announce the final action
30 taken on a matter discussed in executive session, except matters
31 involving confidential personnel information, real estate

1 transactions, competitively sensitive information, or security
2 information.

3 (g) The board secretary or person designated by the
4 secretary shall make and keep written minutes of each regular or
5 special board meeting.

6 (h) The board shall adopt and comply with procedures for
7 providing a member with access to the entirety of a regular or
8 special board meeting, other than an executive session.

9 (i) The board secretary or person designated by the
10 secretary shall make and keep a written or audio record of each
11 executive session. The secretary shall preserve the record for
12 at least two years after the session. The record must include:

13 (1) a statement of the subject matter of each
14 deliberation;

15 (2) a record of any further action taken; and

16 (3) an announcement by the presiding director at the
17 beginning and end of the session indicating the date and time.

18 (j) Subsections (d), (e), (f), (g), (h), and (i) apply to
19 an electric cooperative with more than 170,000 members.

20 (k) Each electric cooperative with not more than 170,000
21 members shall hold an election every five years at the electric
22 cooperative's annual meeting on the question of whether to make
23 Subsections (d), (e), (f), (g), (h), and (i) applicable to the
24 electric cooperative.

25 SECTION __. Subchapter B, Chapter 161, Utilities Code, is
26 amended by adding Section 161.0751 to read as follows:

27 Sec. 161.0751. NOTICE OF BOARD MEETINGS. (a) The board
28 shall give members notice of the date, hour, place, and planned
29 agenda of a regular or special board meeting. Notice of a board
30 meeting must be given at least three days before the scheduled
31 time of the meeting by:

1 (1) posting a notice on a bulletin board in a place
2 convenient to members at the electric cooperative's main office
3 and at each district office;

4 (2) posting a notice on the cooperative's Internet
5 website, if the cooperative maintains a website; and

6 (3) providing a copy of the notice to a member on a
7 request by the member.

8 (b) In the event of an emergency or urgent matter, notice
9 may be given in the manner prescribed by Subsection (a) at any
10 time before a regular or special board meeting is convened. An
11 action taken by the board at a meeting for which notice is given
12 under this subsection must be ratified by the board at the next
13 meeting for which notice is given under Subsection (a)

14 (c) On approval of the Legislative Audit Committee, the
15 state auditor at the cooperative's expense may audit the
16 financial transactions and operations of an electric cooperative
17 with more than 170,000 members if:

18 (1) a former or current member of the cooperative's
19 board of directors or senior management is the subject of an
20 ongoing criminal investigation by the office of the attorney
21 general on May 1, 2009; and

22 (2) the cooperative has been the subject of a court-
23 ordered independent investigation:

24 (A) performed by an independent consulting
25 entity; and

26 (B) reviewed by the state auditor.

27 (d) This subsection and Subsection (c) expire September 1,
28 2013.

29 SECTION __. Section 161.077, Utilities Code, is amended by
30 adding Subsection (d) to read as follows:

31 (d) The provisions of this chapter that apply to the board

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1 also apply to the executive committee.

2 SECTION __. Subchapter B, Chapter 161, Utilities Code, is
3 amended by adding Sections 161.080, 161.081, and 161.082 to read
4 as follows:

5 Sec. 161.080. MEMBER'S RIGHT OF ACCESS TO RECORDS. (a)

6 (a) Except as provided by Subsection (c), a member of an
7 electric cooperative may, at any reasonable time and on written
8 request that states a proper purpose for the request, inspect
9 and copy the books and records of the cooperative relevant to
10 that purpose.

11 (b) An electric cooperative may charge a member for the
12 cost of providing information under Subsection (a).

13 (c) An electric cooperative may limit or deny a member's
14 request to inspect its books and records if the member:

15 (1) does not meet the requirements of Subsection (a);

16 (2) seeks information the release of which would
17 unduly infringe on or invade the privacy of a person;

18 (3) seeks information related to a trade secret;

19 (4) seeks personnel information the disclosure of
20 which would violate the law or constitute a clearly unwarranted
21 invasion of personal privacy;

22 (5) seeks information related to:

23 (A) pending or reasonably anticipated
24 litigation;

25 (B) a real estate transaction for a project that
26 has not been formally announced or for which contracts have not
27 been formally awarded;

28 (C) the cooperative's competitive activity,
29 including commercial information and utility-related matters
30 that would, if disclosed, give an advantage to a competitor or
31 prospective competitor; or

1 (D) the security of the cooperative's electrical
2 system; or

3 (6) seeks information that is confidential,
4 privileged, or proprietary.

5 Sec. 161.081. POLICIES AND AUDIT. (a) The board shall
6 adopt written policies relating to:

7 (1) travel expenditures for board members, officers,
8 and employees;

9 (2) reimbursement of expenses for board members,
10 officers, and employees;

11 (3) conflicts of interest for board members,
12 officers, and employees;

13 (4) whistleblower protections;

14 (5) criteria and procedures for the selection,
15 monitoring, review, and evaluation of outside vendors or
16 contracted professional services;

17 (6) budgets for use in planning and controlling
18 costs; and

19 (7) the creation of a committee that audits the
20 actions of the board.

21 (b) An electric cooperative shall provide for an
22 independent financial audit, to be performed annually by an
23 unaffiliated entity that is professionally qualified to perform
24 such an audit.

25 Sec. 161.082. COMPLAINTS BY MEMBERS. (a) A member may
26 file a written complaint with the general manager of the
27 electric cooperative if the member is aggrieved by an action of
28 the board or by an employee of the board or of the cooperative
29 that the member alleges infringes on a right of the member under
30 Sections 161.072, 161.075, 161.0751, 161.080, 161.081, and
31 161.126.

1 (b) Not later than the 20th day after the date the general
2 manager receives a complaint under Subsection (a), the general
3 manager shall take corrective action regarding the complaint, if
4 the general manager determines that the action complained of
5 infringed on the member's rights under Sections 161.072,
6 161.075, 161.0751, 161.080, 161.081, and 161.126.

7 (c) If the general manager determines that the action
8 complained of did not infringe on the member's rights under
9 Sections 161.072, 161.075, 161.0751, 161.080, 161.081, or
10 161.126, or if the general manager otherwise fails to resolve
11 the member's complaint to the member's satisfaction before the
12 21st day after the general manager receives the member's
13 complaint, the member may file a written complaint with the
14 attorney general's consumer protection division. A complaint
15 filed with the attorney general under this subsection must:

16 (1) identify the electric cooperative by name and
17 address;

18 (2) describe in detail the nature of the member's
19 complaint; and

20 (3) include copies of documents relevant to the
21 member's complaint, including:

22 (A) any relevant written request made by the
23 member to the cooperative;

24 (B) the written complaint made by the member to
25 the general manager under Subsection (a); and

26 (C) any relevant response from the cooperative
27 regarding a request or complaint.

28 (d) In reviewing a member's complaint under this section,
29 the consumer protection division may request that the
30 cooperative provide to the division any information relevant to
31 the complaint. The division must give a cooperative a

1 reasonable opportunity to inspect and copy the requested
2 information before providing the information to the division.
3 The division shall designate an employee of the division to be
4 the person responsible for receiving, inspecting, or copying
5 information received under this subsection.

6 (e) An electric cooperative shall cooperate with a request
7 for information under Subsection (d) and promptly provide the
8 requested information to the consumer protection division's
9 designated employee. The division may not disclose to any
10 person information provided by a cooperative in response to the
11 request unless:

12 (1) the division is required by a court to provide
13 the information to the person;

14 (2) the person is an authorized employee of the
15 division; or

16 (3) the cooperative that provided the information
17 consents to the disclosure.

18 (f) The consumer protection division shall return to a
19 cooperative any information provided under this section that is
20 confidential or sensitive to the cooperative.

21 SECTION __. Subchapter C, Chapter 161, Utilities Code, is
22 amended by adding Sections 161.126 and 161.127 to read as
23 follows:

24 Sec. 161.126. PROHIBITION ON ACQUISITION OF GENERATOR
25 CAPACITY BY CERTAIN ELECTRIC COOPERATIVES. An electric
26 cooperative with more than 170,000 members that provides retail
27 electric service may not acquire equipment capable of generating
28 electricity for sale other than equipment that uses an
29 alternative energy resource unless the Public Utility Commission
30 of Texas first approves of the acquisition. The commission by
31 rule shall establish the standards and procedures by which it

1 will approve an electric cooperative's acquisition of electric
2 generation capacity.

3 Sec. 161.127. NOTIFICATION OF CERTAIN INVESTMENTS. Not
4 later than the 30th day following the completion of a
5 transaction that results in an electric cooperative or an
6 affiliate of the cooperative creating or acquiring an interest
7 in an entity that does not generate, transmit, or distribute
8 electricity, the cooperative shall provide a notice to members
9 that contains:

10 (1) the name of the entity;

11 (2) a description of the entity;

12 (3) the reasons for the decision to enter into the
13 transaction;

14 (4) a description of the costs associated with the
15 transaction, and the method of financing for those costs; and

16 (5) a description of the anticipated effect the
17 transaction will have on the cooperative's electric energy rates
18 or prices.

19 SECTION __. (a) The changes in law made by Section
20 161.072, Utilities Code, as amended by this Act, apply only to a
21 director election held on or after the effective date of this
22 Act. A director election held before the effective date of this
23 Act is subject to the law in effect on the date the election is
24 held, and that law is continued in effect for that purpose.

25 (b) The changes in law made by Section 161.075, Utilities
26 Code, as amended by this Act, and by Section 161.0751, Utilities
27 Code, as added by this Act, apply only to a meeting convened on
28 or after the effective date of this Act. A meeting convened
29 before the effective date of this Act is subject to the law in
30 effect on the date the meeting is held, and that law is
31 continued in effect for that purpose.

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1 (c) The changes in law made by Sections 161.080 and
2 161.082, Utilities Code, as added by this Act, apply only to a
3 request to inspect records submitted on or after the effective
4 date of this Act. A request submitted before the effective date
5 of this Act is subject to the law in effect on the date of the
6 request, and that law is continued in effect for that purpose.

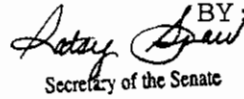
7 (d) The changes in law made by Section 161.127, Utilities
8 Code, as added by this Act, apply only to a transaction that is
9 completed on or after the effective date of this Act. A
10 transaction that is completed before the effective date of this
11 Act is subject to the law in effect on the date the transaction
12 is completed, and that law is continued in effect for that
13 purpose.

14 SECTION __. Not later than December 31, 2010, each
15 electric cooperative with not more than 170,000 members shall
16 hold an election as required by Section 161.075(k), as added by
17 this Act."

ADOPTED

MAY 27 2009

FLOOR AMENDMENT NO. 3

BY: 
Secretary of the Senate

1 Amend C.S.H.B 1243 (committee printing version) by
2 inserting the following new SECTIONS and renumbering subsequent
3 SECTIONS accordingly:

4 " SECTION __. Subchapter Z, Chapter 39, Utilities Code, is
5 amended by adding Section 39.9155 to read as follows:

6 Sec. 39.9155. DISTRIBUTED SOLAR GENERATION INCENTIVE
7 PROGRAM. (a) It is the goal of the legislature that electric
8 utilities administer incentive programs for residential and
9 commercial customers to increase the amount of distributed solar
10 generation, utility scale solar generation, and energy storage
11 installed within the state in a cost-effective, market-neutral,
12 and nondiscriminatory manner.

13 (b) The commission by rule shall:

14 (1) establish a distributed solar generation
15 incentive program, to be implemented by electric utilities;

16 (2) oversee the implementation of the program
17 required by Subdivision (1); and

18 (3) establish procedures to achieve the goal
19 described by Subsection (a).

20 (c) The rules adopted under Subsection (b) must include
21 provisions for:

22 (1) recovery of the cost of electric utility programs
23 authorized by this section through nonbypassable fees, which may
24 not exceed:

25 (A) 20 cents per month for residential
26 customers;

27 (B) \$2 per month for commercial customers; and

28 (C) \$20 per month for industrial customers;

29 (2) rebates to customers to defray the cost of

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1 installing distributed solar generation as provided by
2 Subsection (e); and

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

5 (d) Electric utilities may not assess the fees authorized
6 by this section after the fifth anniversary of the date the
7 program required by this section is established by commission
8 rule, except as provided by Subsection (k). The commission
9 shall ensure that all fees collected under this section are used
10 for the programs authorized by this section, except that
11 utilities may not use more than 2.5 percent of the funds
12 collected for administrative expenses related to this section,
13 as approved by the commission.

14 (e) The commission shall set a rebate amount for the
15 installation of solar generation. The commission shall
16 periodically adjust the rebate amount such that the quantity of
17 solar generation installed under this section is maximized, but
18 shall reduce rebate amounts by not less than five percent per
19 year. The commission may set a higher rebate amount for solar
20 generation manufactured wholly or substantially in this state,
21 provided that the higher amount is not more than 20 percent
22 higher than the rebate applicable to all other solar generation.
23 The commission may provide for rebates to be provided directly
24 to customers or to qualified installers of solar generation.
25 Unless otherwise adjusted by the commission, the initial rebates
26 shall be:

27 (1) \$2.40 per watt for installations on residential
28 buildings;

29 (2) \$1.50 per watt for installations on commercial
30 buildings; and

31 (3) \$1 per watt for installations at industrial

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1 facilities.

2 (f) The commission may direct not more than 70 percent of
3 the funds collected by the fees authorized by this section to
4 utility scale solar generation and energy storage projects if
5 the commission determines such projects are more cost-effective
6 than distributed solar generation or will provide a greater
7 benefit to the reliability of the electric grid. The commission
8 may establish rebate amounts not to exceed \$1 per watt for such
9 projects or may consider other methods to award funds in order
10 to maximize the quantity of generation installed under this
11 section. If the demand for funds under this section exceeds the
12 available funds, the commission shall consider the following in
13 determining which projects receive subsidies:

14 (1) projects that require the lowest amount of
15 subsidy to be commercially viable;

16 (2) projects that use the transmission capacity built
17 under Section 39.904(g) and require minimal additional
18 transmission facilities;

19 (3) projects that enhance the reliability of the
20 transmission and distribution grid or defer the need for
21 additional transmission and distribution infrastructure;

22 (4) projects that provide maximum output during
23 periods when electricity demand is highest in this state; and

24 (5) projects that can provide ancillary services to
25 the electric grid.

26 (g) The commission shall develop a "Made in Texas"
27 certification program for energy products that include
28 distributed solar generation. The commission shall post a list
29 of energy products that are wholly or substantially produced in
30 Texas and shall conduct education efforts to inform customers of
31 the availability of Texas-manufactured energy products. The

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1 commission may partner or contract with third parties or
2 nonprofit organizations to achieve this goal.

3 (h) The commission, in consultation with the Electric
4 Reliability Council of Texas, shall prepare and make available a
5 study indicating geographic areas where utility scale non-wind
6 renewable energy can be located with minimal additional
7 transmission facilities.

8 (i) Selection of projects by the commission under
9 Subsection (f) is not required to be conducted as a contested
10 case proceeding. The commission may appoint an advisory
11 committee to assist the commission in evaluating proposals made
12 under Subsection (f), provided, however, that members of the
13 committee may not have a financial interest in any of the
14 proposals. After conclusion of a process authorized by
15 Subsection (f), the commission shall release a complete record
16 of the proposals and the evaluation of the factors required to
17 be considered under Subsection (f).

18 (j) The commission may extend the fees and program
19 authorized by this section for an additional five years if the
20 commission finds that a substantial amount of manufacturing of
21 solar generation products has located in Texas after the initial
22 five-year program and that the extension of the fees does not
23 present an undue burden to customers.

24 SECTION __. Subchapter Z, Chapter 39, Utilities Code, is
25 amended by adding Section 39.9156 to read as follows:

26 Sec. 39.9156. SOLAR GENERATION INCENTIVE PROGRAMS.

27 (a) It is the goal of the legislature that:

28 (1) electric cooperatives and municipally owned
29 utilities administer incentive programs that increase the amount
30 of solar generation installed within the state in a cost-
31 effective, market-neutral, and nondiscriminatory manner;

45

1 (2) customers of electric cooperatives and
2 municipally owned utilities will have a choice of and access to
3 incentives for the installation of distributed solar generation;
4 and

5 (3) electric cooperatives and municipally owned
6 utilities with retail sales of more than 500,000 megawatt hours
7 in 2007 expend funds to increase the amount of solar generation
8 and other renewable energy and energy storage projects
9 consistent with the requirements for electric utilities in this
10 state.

11 (b) Not later than September 1, 2015, a municipally owned
12 utility or electric cooperative with retail sales of more than
13 500,000 megawatt hours in 2007 must report to the state energy
14 conservation office, in a form and manner determined by the
15 office, information regarding the efforts of the municipally
16 owned utility or electric cooperative related to this section.

17 SECTION __. Chapter 202, Property Code, is amended by
18 adding Section 202.010 to read as follows:

19 Sec. 202.010. REGULATION OF SOLAR ENERGY DEVICES. (a) In
20 this section, "solar energy device" has the meaning assigned by
21 Section 171.107, Tax Code.

22 (b) Except as otherwise provided by this section, a
23 property owners' association may not include or enforce a
24 provision in a dedicatory instrument that prohibits or restricts
25 a property owner from installing a solar energy device.

26 (c) A provision that violates Subsection (b) is void.

27 (d) This section does not prohibit the inclusion or
28 enforcement of a provision in a dedicatory instrument that
29 prohibits a solar energy device that:

30 (1) threatens the public health or safety;

31 (2) violates a law;

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1 (3) is located on property owned or maintained by the
2 property owners' association;

3 (4) is located on property owned in common by the
4 members of the property owners' association;

5 (5) is located in an area on the property owner's
6 property other than:

7 (A) on the roof of the home; or

8 (B) in a fenced yard or patio maintained by the
9 property owner; or

10 (6) is mounted on a device that is taller or more
11 visually obtrusive than is necessary for the solar energy device
12 to operate at not less than 90 percent of its rated efficiency.

13 SECTION __. The heading to Subtitle F, Title 16, Property
14 Code, is amended to read as follows:

15 SUBTITLE F. REGULATION [~~INSPECTION~~] OF [~~NEW~~] RESIDENTIAL
16 CONSTRUCTION GENERALLY

17 SECTION __. The heading to Chapter 446, Property Code, is
18 amended to read as follows:

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

22 SECTION __. Subtitle F, Title 16, Property Code, is
23 amended by adding Chapter 447 to read as follows:

24 CHAPTER 447. REQUIREMENTS FOR NEW CONSTRUCTION CONTRACTS

25 Sec. 447.001. SOLAR PANEL OPTION REQUIRED IN CERTAIN
26 SUBDIVISIONS. (a) In this section, "solar energy device" means
27 a system or series of mechanisms designed primarily to provide
28 heating or cooling or to produce electrical or mechanical power
29 by collecting and transferring solar-generated energy. The term
30 includes a mechanical or chemical device that has the ability to
31 store solar-generated energy for use in heating or cooling or in

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1 the production of power.

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

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

10 SECTION __. Subchapter D, Chapter 2305, Government Code,
11 is amended by adding Section 2305.0321 to read as follows:

12 Sec. 2305.0321. PILOT REVOLVING LOAN PROGRAM FOR SOLAR
13 ENERGY FOR SCHOOL BUILDINGS. (a) The energy office shall
14 establish a pilot program under the loanstar revolving loan
15 program to provide loans to pay the cost of installing
16 photovoltaic solar panels on public school buildings and the
17 cost of associated energy efficiency improvements to the
18 buildings. The energy office shall allocate to the pilot
19 program at least \$4 million from the funds available to the
20 loanstar revolving loan program.

21 (b) The energy office by rule shall establish the terms
22 under which a loan may be made under the pilot program,
23 including the interest rate for repayment of pilot program
24 loans.

25 (c) Through the pilot program, the energy office shall
26 offer to each school district the opportunity to apply for a
27 loan to pay the cost of installing photovoltaic solar panels on
28 at least one school building of the school district's choice and
29 the cost of associated energy efficiency improvements to that
30 building. The energy office by rule shall establish a procedure
31 for determining which school districts qualify for a loan under

1 the pilot program, including rules for selecting the school
2 districts that will receive a loan if there is not sufficient
3 money set aside for pilot program improvements at all school
4 districts.

5 (d) Each school district that receives a loan shall pay
6 for the principal of and interest on the loan for each school
7 building improvement primarily from the amount budgeted for the
8 energy costs of the school at which the solar panels are
9 installed. The school district may make additional payments of
10 the principal of or interest on a loan from money rebated to it
11 as compensation for electric energy generated by the solar
12 panels or money received as a gift or grant for the purpose of
13 paying the loan.

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

17 SECTION __. The Public Utility Commission of Texas shall
18 adopt rules establishing the programs required under Section
19 39.9155, Utilities Code, as added by this Act, as soon as
20 practicable.

21 SECTION __. Section 202.010, Property Code, as added by
22 this Act, applies to a deed restriction enacted before, on, or
23 after the effective date of this Act

24 SECTION __. Chapter 447, Property Code, as added by this
25 Act, applies only to a contract for new home construction
26 entered into on or after the effective date of this Act. A
27 contract entered into before the effective date of this Act is
28 governed by the law in effect immediately before the effective
29 date of this Act, and that law is continued in effect for that
30 purpose.

31 SECTION __. The state energy conservation office shall

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1 establish a program under Section 2305.0321, Government Code, as
2 added by this Act, not later than January 1, 2010."

ADOPTED

Steph E. Ogden
BY: _____

MAY 27 2009

FLOOR AMENDMENT NO. 4

Antony Spaw
Secretary of the Senate

1 Amend H.B. No. 1243 (senate committee printing) by adding
2 the following appropriately numbered SECTIONS and renumbering
3 subsequent SECTIONS accordingly:

4 SECTION __. Section 31.002, Utilities Code, is amended by
5 adding Subdivision (4-a) and amending Subdivision (10) to read
6 as follows:

7 (4-a) "Distributed natural gas generation facility"
8 means a facility installed on the customer's side of the meter
9 that is used for the generation of not more than 2,000 kilowatts
10 of electricity.

11 (10) "Power generation company" means a person,
12 including a person who owns or operates a distributed natural
13 gas generation facility, that:

14 (A) generates electricity that is intended to be
15 sold at wholesale;

16 (B) does not own a transmission or distribution
17 facility in this state other than an essential interconnecting
18 facility, a facility not dedicated to public use, or a facility
19 otherwise excluded from the definition of "electric utility"
20 under this section; and

21 (C) does not have a certificated service area,
22 although its affiliated electric utility or transmission and
23 distribution utility may have a certificated service area.

24 SECTION __. The heading to Subchapter B, Chapter 35,
25 Utilities Code, is amended to read as follows:

26 SUBCHAPTER B. EXEMPT WHOLESALE GENERATORS, DISTRIBUTED NATURAL
27 GAS GENERATION FACILITIES, AND POWER MARKETERS

28 SECTION __. Subchapter B, Chapter 35, Utilities Code, is
29 amended by adding Section 35.036 to read as follows:

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1 Sec. 35.036. DISTRIBUTED NATURAL GAS GENERATION

2 FACILITIES. (a) (1) A person who owns or operates a distributed
3 natural gas generation facility may sell electric power
4 generated by the facility.

5 (2) The electric utility, electric cooperative, or
6 retail electric provider that provides retail electricity
7 service to the facility may purchase electric power tendered to
8 it by the owner or operator of the facility at a value agreed to
9 by the electric utility, electric cooperative, or retail
10 electric provider and the owner or operator of the facility,
11 which may include a value based on the clearing price of energy
12 at the time of day and location that the electricity is made
13 available to the electric grid.

14 (3) At the request of the owner or operator of the
15 facility, the electric utility or electric cooperative shall
16 allow the owner or operator of the facility to use the
17 transmission and distribution facilities to transmit the
18 electric power to another entity that is acceptable to the owner
19 or operator in accordance with commission rules or a tariff
20 approved by the Federal Energy Regulatory Commission.

21 (b) If the owner or operator of a distributed natural gas
22 generation facility requests to be interconnected to an electric
23 utility or electric cooperative that does not have a
24 transmission tariff approved by the Federal Energy Regulatory
25 Commission, the electric utility or electric cooperative may
26 recover from the owner or operator of the facility the
27 reasonable costs of interconnecting the facility with the
28 electric utility or electric cooperative that are necessary for
29 and directly attributable to the interconnection of the
30 facility. If the rated capacity of the distributed natural gas
31 generation exceeds the capacity of the electric utility or

1 electric cooperative and the owner or operator of the facility
2 requests that such an electric utility or electric cooperative
3 make upgrades to accommodate the distributed natural generation
4 capacity, the electric utility or electric cooperative may
5 recover from the owner or operator of the facility the
6 reasonable cost of electric facility upgrades and improvements
7 that are necessary for and directly attributable to the
8 requested accommodation of the distributed natural gas
9 generation capacity.

10 (c) In order to recover costs under Subsection (b), an
11 electric utility or electric cooperative must have provided a
12 good-faith cost estimate in writing to the owner or operator of
13 the distributed natural gas generation facility and the owner or
14 operator must have, prior to the incurring of any cost by the
15 electric utility or electric cooperative, agreed in writing to
16 pay the reasonable and necessary cost of interconnection or
17 capacity accommodation requested by the owner or operator and
18 described in the cost estimate. If an electric utility or
19 electric cooperative seeks to recover from the owner or operator
20 of the facility an amount that exceeds the good-faith estimate
21 by more than five percent and the owner or operator of the
22 facility disputes the amount that exceeds the good-faith
23 estimate, the commission shall resolve the dispute at the
24 request of the owner or operator of the facility.

25 (d) A distributed natural gas generation facility must
26 comply with emissions limitations established by the Texas
27 Commission on Environmental Quality for a standard emissions
28 permit for an electric generation facility unit installed after
29 January 1, 1995.

30 SECTION __. Subsection (c), Section 39.351, Utilities
31 Code, is amended to read as follows:

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1 (c) The commission may establish simplified filing
2 requirements for distributed natural gas generation facilities
3 [~~A power generation company may register any time after~~
4 ~~September 1, 2000~~].

AS4

FLOOR AMENDMENT NO. 5

BY: 

1 Amend C.S.H.B. 1243 (senate committee printing), in SECTION
2 4 of the bill, in amended Section 39.916(j), Utilities Code
3 (page 3, line 31), between the period and "A distributed", by
4 inserting "An electric cooperative may calculate avoided cost in
5 accordance with commission rules or, at the option of the
6 electric cooperative, as the sum of the average wholesale fuel
7 and energy costs, expressed in cents per kilowatt hour, on the
8 wholesale power bill for the applicable billing period."

ADOPTED

MAY 27 2009


Secretary of the Senate

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LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 28, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1243 by Gallego (Relating to net metering for retail electric service customers and compensation for excess electricity generated by a retail electric customer's on-site generator.), **As Passed 2nd House**

Since the fee on electric customers for the Distributed Solar Generation Incentive Program would be established by Public Utility Commission rule under the provisions of the bill which has not been issued, there would be an indeterminate revenue gain to the state. Similarly, there would also be an indeterminate fiscal impact to the state from the amount of interest generated by the LoneSTAR loan program because the terms and amount of the loans that would be distributed are unknown. It is assumed the other provisions of the bill could be implemented without significant fiscal impact to the Public Utility Commission or other affected agencies.

The bill would amend various provisions regarding distributed renewable generation and interconnection with electricity utilities, including a requirement for electric utilities to pay a distributed renewable generation owner in an area that has introduced customer choice a fair market value for excess energy. The bill would require that a distributed renewable generation owner in an area in which customer choice has not been introduced, who chooses to sell surplus electricity, must sell it at a value that is greater than or equal to the avoided cost of the electric utility or electric cooperative, as determined in accordance with Commission rules. The bill would require the Public Utility Commission (PUC) to adopt rules to establish interconnection and equipment standards that a distributed renewable generation must meet to qualify for compensation. The bill would require the PUC to establish a methodology for determining the fair market value of surplus energy. The bill would authorize the PUC to require electric utilities, electric cooperatives, and retail electric providers to disclose on a customer's bill the amount of surplus energy, the value of any credit for surplus energy, and the value of any credit for surplus energy that is carried over from a prior month.

The bill would establish provisions for the interconnection of distributed renewable energy generation to facilities of a municipal utility and would require the governing body of the municipal utility to adopt rates, rules, and procedures. The PUC would only administer this section in the case of a municipal utility that has introduced retail choice in its service area through establishing by rule interconnection and net metering standards.

The bill would require the PUC to post on its Power-to-Choose website information on a retail electric provider's offers for purchase of surplus energy and information on offers for the purchase of renewable energy credits. The bill would also direct the PUC to require electric cooperatives, retail electric providers, and electric utilities to provide information on their internet websites regarding purchase price offers for surplus distributed renewable generation. The bill would repeal Section 39.914, Utilities Code.

The bill would amend various provisions of Chapter 161 of the Utilities Code regarding board meetings, member elections, casting of proxy votes and board procedures of electric cooperatives. The bill would authorize a cooperative member who believes the board or a cooperative employee has infringed on the member's rights to file a complaint with the cooperative general manager. If the manager does not agree with the complaint or fails to take corrective action within 20 days, the bill

would authorize the member to file a complaint with the Consumer Protection Division of the Attorney General's Office. The bill would authorize an audit of the financial transactions and operations of an electric cooperative on approval of the Legislative Audit Committee. The bill would require the Public Utility Commission (PUC) to adopt rules to establish standards and procedures for evaluating and approving a request by an electric cooperative to acquire equipment capable of generating electricity for sale, other than equipment that uses an alternative energy source. Based on the analysis of the PUC and the Office of the Attorney General, these duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

The bill would require the PUC to establish a distributed solar generation incentive program to be implemented by electric utilities. The bill would require that the PUC adopt rules that include provisions for cost recovery for the distributed solar generation program through a nonbypassable fee. The PUC would be required to ensure that all fees collected for this purpose are used for the program, with the exception that utilities would be authorized to retain 2.5 percent of the revenue for administering the program. The bill would direct the PUC to set the amount of the rebate for solar systems and to adjust that amount periodically to maximize the solar generation installation. The bill would also require the PUC to establish a "Made in Texas" certification program for energy products. Absent of any specifications in the bill, it is assumed that revenues collected would be deposited to the credit of the General Revenue Fund.

The bill would require the PUC, in conjunction with the Electric Reliability Council of Texas (ERCOT), to prepare and make available a study that identifies areas where utility-scale, non-wind generation may be installed with minimal transmission upgrades. The bill would authorize the PUC to establish an advisory committee to assist the Commission in selecting utility-scale solar and energy storage projects and permits. The bill would authorize the PUC to extend the program for an additional five years.

The bill would establish goals for a Solar Generation Incentive Program, to be administered by electric cooperatives and municipal utilities to increase the amount of solar generation installed in the state in a cost-effective, market-neutral and nondiscriminatory manner. The bill would require these entities to report their efforts to the State Energy Conservation Office (SECO) no later than September 1, 2015.

The bill would amend the Property Code to prohibit a property owners' association from restricting a property owner from installing a solar energy device, with the exception of certain instances included in the bill.

The bill would establish a pilot revolving loan fund to be managed by SECO under the LoanSTAR program, to be used by school districts to install solar panels on school buildings. The bill would require SECO to allocate at least \$4 million of the funds available to the LoanSTAR revolving loan program. The bill would direct each school district that receives a program loan to pay for the principal of and interest on the loan primarily from the amount budgeted for the energy costs of the school at which the improvements are installed. The bill would require the program loan be paid over a 15-year term.

Based on information provided by the PUC, it is assumed that it could absorb the costs associated with implementing the distributed solar generation incentive program required by the bill within its current resources. According to the analysis of the Comptroller, revenues for the distributed solar generation program and interest on the revolving loan program for solar energy improvements cannot be determined because rules and terms for these programs have not been established.

The bill would establish a definition of a distributed natural gas generation facility and would authorize distributed natural gas generation facility owners to sell power. The bill would require electric utilities, electric cooperatives or retail electric providers either to purchase power at an agreed upon price or to allow the owner or operator of the facility to use the transmission and distribution facilities to transmit the electric power to another market, in accordance with commission rules. The bill would authorize an electric utility or electric cooperative to recover from the owner or operator of a distributed natural gas generation facility the reasonable costs of interconnecting the facility and/or any upgrades to accommodate the distributed natural generation capacity. The bill would require the

distributed natural gas generation facility to comply with emissions limitations established by the Texas Commission on Environmental Quality (TCEQ) for a standard emissions permit. The bill would authorize the Public Utility Commission (PUC) to adopt rules to establish simplified filing requirements for distributed natural gas generation facilities. The PUC would be required to conduct a rulemaking to conform existing rules to the provisions of the bill. Based on the analysis of the PUC and TCEQ, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would take effect immediately upon receiving a two-thirds vote of members elected to each house. Otherwise, the bill would take effect September 1, 2009.

Local Government Impact

This analysis assumes that there would be no significant fiscal impact to school districts because the bill would require the school to pay for the principal and interest of the loan within existing resources. No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 473 Public Utility Commission of Texas

LBB Staff: JOB, ES, SZ, MW, SD, JRO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 23, 2009

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1243 by Gallego (Relating to net metering for retail electric service customers and compensation for excess electricity generated by a retail electric customer's on-site generator.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend various provisions regarding distributed renewable generation and interconnection with electricity utilities, including a requirement for electric utilities to pay a distributed renewable generation owner in an area that has introduced customer choice a fair market value for excess energy. The bill would require that a distributed renewable generation owner in an area in which customer choice has not been introduced, who chooses to sell surplus electricity, must sell it at a value that is greater than or equal to the avoided cost of the electric utility or electric cooperative, as determined in accordance with Commission rules. The bill would require the Public Utility Commission (PUC) to adopt rules to establish interconnection and equipment standards that a distributed renewable generation must meet to qualify for compensation. The bill would require the PUC to establish a methodology for determining the fair market value of surplus energy. The bill would authorize the PUC to require electric utilities, electric cooperatives, and retail electric providers to disclose on a customer's bill the amount of surplus energy, the value of any credit for surplus energy, and the value of any credit for surplus energy that is carried over from a prior month.

The bill would establish provisions for the interconnection of distributed renewable energy generation to facilities of a municipal utility and would require the governing body of the municipal utility to adopt rates, rules, and procedures. The PUC would only administer this section in the case of a municipal utility that has introduced retail choice in its service area through establishing by rule interconnection and net metering standards.

The bill would require the PUC to post on its Power-to-Choose website information on a retail electric provider's offers for purchase of surplus energy and information on offers for the purchase of renewable energy credits. The bill would also direct the PUC to require electric cooperatives, retail electric providers, and electric utilities to provide information on their internet websites regarding purchase price offers for surplus distributed renewable generation.

The bill would repeal Section 39.914, Utilities Code.

The PUC indicates it would need to conduct a rulemaking to incorporate the provisions of the bill within existing rules. The PUC anticipates any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

Local Government Impact

The bill could have an impact on municipalities that own electric utilities, but the impact cannot be determined due to the unknown number of owners of distributed renewable generation facilities that would connect to municipal utilities and request compensation.



Source Agencies: 473 Public Utility Commission of Texas

LBB Staff: JOB, ES, JRO, MW

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 21, 2009

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB1243** by Gallego (Relating to net metering for retail electric service customers and compensation for excess electricity generated by a retail electric customer's on-site generator.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1243, As Engrossed: a negative impact of (\$200,000) through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	(\$200,000)
2011	\$0
2012	\$0
2013	\$0
2014	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1
2010	(\$200,000)
2011	\$0
2012	\$0
2013	\$0
2014	\$0

Fiscal Analysis

The bill would amend various provisions regarding distributed renewable generation and interconnection with electricity utilities, including a requirement for electric utilities to pay a distributed renewable generation owner in an area that has introduced customer choice a fair market value for excess energy. The bill would require that a distributed renewable generation owner in an area in which customer choice has not been introduced, who chooses to sell surplus electricity, must sell it at a value that is greater than or equal to the avoided cost of the electric utility or electric cooperative, as determined in accordance with Commission rules. The bill would require the Public Utility Commission (PUC) to adopt rules to establish interconnection and equipment standards that a distributed renewable generation must meet to qualify for compensation. The bill would require the

PUC to establish a methodology for determining the fair market value of surplus energy. The bill would authorize the PUC to require electric utilities, electric cooperatives, and retail electric providers to disclose on a customer's bill the amount of surplus energy, the value of any credit for surplus energy, and the value of any credit for surplus energy that is carried over from a prior month.

The bill would establish provisions for the interconnection of distributed renewable energy generation to facilities of a municipal utility and would require the governing body of the municipal utility to adopt rates, rules, and procedures. The PUC would only administer this section in the case of a municipal utility that has introduced retail choice in its service area through establishing by rule interconnection and net metering standards.

The bill would require the PUC to post on its Power-to-Choose website information on a retail electric provider's offers for purchase of surplus energy and information on offers for the purchase of renewable energy credits. The bill would also direct the PUC to require electric cooperatives, retail electric providers, and electric utilities to provide information on their internet websites regarding purchase price offers for surplus distributed renewable generation.

The bill would require the PUC to conduct a study to determine the effect of pricing methodology and to report its findings to the legislature no later than January 15, 2011. The bill would require the report to include recommendations for improvements in policies to encourage the development of distributed renewable generation technologies.

The bill would take effect immediately if it receives a vote of two-thirds of all the members elected to each house. If not, the bill would take effect September 1, 2009.

Methodology

The PUC anticipates contracting with a third party to complete the study required by the bill. Based on the analysis of the PUC, it is assumed the estimated cost of contracting the required study would be \$200,000 in Fiscal Year 2010.

Based on the analysis of the PUC, the rulemakings required to incorporate the provisions of the bill could be accomplished by utilizing existing agency resources.

Local Government Impact

The bill could have an impact on municipalities that own electric utilities, but the impact cannot be determined due to the unknown number of owners of distributed renewable generation facilities that would connect to municipal utilities and request compensation.

Source Agencies: 473 Public Utility Commission of Texas

LBB Staff: JOB, JRO, MW, ES

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 24, 2009

TO: Honorable Burt R. Solomons, Chair, House Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB1243** by Gallego (Relating to net metering for retail electric service customers and compensation for excess electricity generated by a retail electric customer's on-site generator.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend various provisions regarding distributed renewable generation and interconnection with electricity utilities, including a requirement for electric utilities to pay a distributed renewable generation owner a fair market value for excess energy. The bill would require the Public Utility Commission (PUC) to adopt rules to establish interconnection and equipment standards that a distributed renewable generation must meet to qualify for compensation. The bill would require the PUC to establish a methodology for determining the fair market value of surplus energy. The bill would authorize the PUC to require electric utilities, electric cooperatives, and retail electric providers to disclose on a customer's bill the amount of surplus energy, the value of any credit for surplus energy, and the value of any credit for surplus energy that is carried over from a prior month.

The bill would require the PUC to post on its Power-to-Choose website information on a retail electric provider's offers for purchase of surplus energy and information on offers for the purchase of renewable energy credits.

Based on the analysis of the PUC, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 473 Public Utility Commission of Texas

LBB Staff: JOB, ES, KJG

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 19, 2009

TO: Honorable Burt R. Solomons, Chair, House Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1243 by Gallego (Relating to net metering for retail electric service customers and compensation for excess electricity generated by a retail electric customer's on-site generator.), **As Introduced**

No significant fiscal implication to the State is anticipated.

This bill would require the Public Utility Commission (PUC) to adopt rules that require electric utilities, retail electric providers, municipally owned utilities and electric cooperatives to offer net metering services and compensation to owners of on-site generation for the sale of electricity at fair market value. The PUC would also be required to adopt rules establishing standards for compensation eligibility of on-site generating facilities.

Based on the analysis of the PUC, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 473 Public Utility Commission of Texas

LBB Staff: JOB, KJG, ES

