BILL ANALYSIS

C.S.H.B. 3532
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Energy Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The rapid expansion of the state's wind industry over the last decade has demonstrated Texas' ability to generate clean, efficient energy from renewable sources. According to interested parties, the economic growth following the deployment of wind turbines in West Texas also demonstrates that Texans are able to use the economic opportunities that clean energy technologies present to revitalize their communities and increase personal wealth.

Texas schools face tremendous funding cuts because of a record budget shortfall, and interested parties assert that schools would benefit from attempts to leverage the economic potential of solar energy to lower utility costs and to create a new revenue stream for Texas schools. The parties note that solar technology is a perfect fit for Texas schools because solar panels generate power in the middle of the day when school is in session and electricity is expensive.

C.S.H.B. 3532 seeks to create a competitive solar schools incentive program administered by the Public Utility Commission of Texas that will provide production-based incentives for schools that install solar panels on their rooftops. Supporters of these efforts assert that this would provide for lower utility bills and reduced maintenance costs for schools and that this could lead to property tax relief for local taxpayers, increase economic development, and create new jobs. It is further asserted that the incentives would allow schools to get a better rate at which to sell excess electricity back to the grid, enabling schools to take advantage of a new revenue stream during hot summer months when school is not in session but the sun is still shining.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTIONS 2, 5, and 6 of this bill.

ANALYSIS

C.S.H.B. 3532 amends the Utilities Code to require the Public Utility Commission of Texas (PUC) to develop and implement a program, applicable to an electric utility operating inside or outside of the Electric Reliability Council of Texas, to increase the amount of distributed solar generation installed on property owned by school districts in the state. The bill requires the program to apply statewide and to be designed to be transparent, cost-effective, and limited in scope. The bill requires the PUC to act as program administrator to oversee and administer the implementation of the program.

C.S.H.B. 3532 establishes the solar schools incentive fund as a special trust fund held by the comptroller of public accounts outside of the state treasury and administered by the program administrator for the payment of the incentives authorized by the bill's provisions, without the necessity of an appropriation, and to be used only for the purposes of the program, including the administrative costs incurred by the PUC. The bill establishes that the fund consists of fees imposed and remitted to the comptroller for deposit to the credit of the fund, gifts or grants awarded for the purposes of the program and deposited to the credit of the fund, and interest and

other income from investment of the money deposited to the credit of the fund.

C.S.H.B. 3532 requires the PUC by rule to provide for the assessment and collection of specified nonbypassable fees, appearing as a separate charge on customers' bills, by electric utilities and transmission and distribution utilities and requires an electric utility or transmission and distribution utility to remit all fees collected to the comptroller for deposit to the credit of the solar schools incentive fund. The bill requires such a fee, in an area where customer choice has been introduced, to be included in delivery charges assessed by a transmission and distribution utility and collected by the customer's retail electric provider. The bill provides that the monthly fee for each industrial electric service identifier is $50 and sets out formulas for calculating the fees for residential and commercial electric service identifiers assessed in an amount established as applicable for each billing period that falls during the next six-month period. The bill requires PUC rules to provide that the average natural gas futures closing price be evaluated for the purposes of these provisions on a semiannual basis and that the resulting assessment of the fee for a residential or commercial electric service identifier applies only to billing periods that begin at least 30 days after the resulting assessment is made.

C.S.H.B. 3532 requires the PUC by rule to provide for incentives to defray the cost of installing distributed solar generation on property owned by school districts and requires the incentives to be distributed according to the bill's provisions. The bill requires the PUC to ensure the following: that the schedule for payment of the incentives does not obligate payment of incentives in amounts that would cause the incentive payments to exceed the amount budgeted for incentive payments over the duration of the program and that incentives are paid directly to school districts, qualified installers, or third-party owners of installed distributed solar generation in a simple, uniform, and reliable administrative manner that ensures the timely payment of incentives and allows for the assignment of the incentive to another person at the direction of the qualified recipient.

C.S.H.B. 3532 prohibits electric utilities from assessing the authorized fees after the fifth anniversary of the date the required program is established by PUC rule. The bill requires the PUC to report to the legislature on the progress of the program each biennium. The bill authorizes the report to include recommendations on how the program can be modified to increase the deployment of distributed solar generation on school district property. The bill requires the report to include a recommendation to the legislature on whether to extend the program for the biennium in which the program is scheduled to end.

C.S.H.B. 3532 requires the PUC to distribute the incentives provided by rules adopted under the bill's provisions by administering reverse auctions quarterly. The bill requires the total of incentives available in each quarter's auction to be determined by the PUC based on the projected amount of available funding and on the number of quarters remaining in the program, allowing for a reasonable margin of error for the conversion to production-based incentives. The bill authorizes the PUC to establish the total of incentives available for a quarter in terms of cost or in terms of capacity.

C.S.H.B. 3532 requires a participant in a reverse auction for an incentive to install distributed solar generation on school district property to submit a bid that must include a price component, expressed in dollars per installed watt of capacity, and a volume component, expressed in terms of the proposed total capacity, measured in rated watts, to be installed by the proposed project. The bill requires such a participant in a reverse auction to submit a deposit in an amount equal to five percent of the total value of the bid and requires the PUC to retain the deposit for an accepted bid and to refund the deposit for a bid that is not accepted. The bill specifies that at a reverse auction a bid is not qualified unless the bidder demonstrates, in accordance with any procedure and guideline the PUC may adopt for that purpose, the bidder's ability to finance the costs of the project if the incentive were awarded and unless the bidder meets all other requirements adopted by the PUC to ensure successful implementation of the program.

C.S.H.B. 3532 prohibits the PUC from accepting a bid for a quarter's reverse auction if the bid exceeds the quarter's bid price limit. The bill specifies that the bid price limit for a quarter is the lesser of $1.50 per rated watt of capacity, the bid limit from the previous quarter's reverse auction, or the quarterly incentive clearing price established for the previous quarter in the manner provided, unless that price was established by a bid for a wind-powered electric generation project. The bill requires the PUC, on receiving bids in such a reverse auction, to order the qualified bids from the lowest bid to the highest bid according to the price component of the qualified bids. The bill requires the PUC to accept qualified bids from the bid stack in that order, from lowest to highest, until the limit on the total of incentives available is reached. The bill specifies that the price component of the highest bid accepted is the quarterly incentive clearing price for that quarter and requires the PUC to award the incentives to each bidder for each accepted bid according to the quarter's incentive clearing price.

C.S.H.B. 3532 requires the PUC to make available to applicants on a first-come, first-served basis, in the form of nonparticipating incentives, incentives set at a dollar-per-watt value of 90 percent of that quarter's incentive clearing price if, following the awarding of incentives through a quarterly reverse auction, funding remains available. The bill requires the PUC to carry forward any quarterly funding remaining after the incentives are awarded, with the remaining funding divided equally among the quarters remaining in the program. The bill authorizes the PUC, if funding is carried forward in two consecutive quarters, to implement specified measures that the PUC determines may increase the installation of distributed solar generation on school district property and sets out those measures.

C.S.H.B. 3532 requires the awarded incentives to be in the form of a production-based incentive disbursed by 12 quarterly payments over a term of three years with the amount paid determined by the units of electricity produced by the installed distributed solar generation during the previous quarter. The bill requires the PUC to establish the amount of the payment per unit of electricity produced by the installed distributed solar generation by converting the quarterly incentive clearing price or the nonparticipating incentive price from a capacity incentive price to a production-based incentive price and requires the PUC, in making this conversion, to consider a reasonable production factor, including an appropriate discount rate, that would result in the quarterly incentive clearing price or the nonparticipating incentive price being fully paid with the final quarterly payment of the three-year payment period, were the distributed solar generation system to produce at the production factor's assumed rate.

C.S.H.B. 3532 requires quarterly payments of such an incentive to begin not later than the fourth quarter following the acceptance of bids for a quarter. The bill authorizes payment of an incentive to begin earlier than the fourth quarter on the filing of a claim with the PUC by the person awarded the incentive.

C.S.H.B. 3532 requires a person awarded an incentive to have the distributed solar generation interconnected not later than the end of the fourth quarter following the quarter in which the bid was accepted. The bill specifies that if the person has not interconnected the distributed solar generation by the end of the period prescribed, the person's claim to the incentive is rescinded and the capacity and funding returns to the program and available program funding, except that the PUC is authorized to grant one extension of the period for interconnection, not to exceed two additional quarters, if the PUC finds based on evidence provided in the person's application for extension that substantial construction work has been completed by the date of the application for extension. The bill authorizes quarterly payments to resume if the distributed solar generation is interconnected during the fifth or sixth quarter, but prohibits the person awarded the incentive from recovering a quarterly payment lost because of a failure to interconnect.

C.S.H.B. 3532 requires the PUC by rule to provide a method by a which a retail electric provider and a transmission and distribution utility are required to use money collected through nonbypassable fees imposed in accordance with adopted rules to credit the electric service bill of a low-income electric customer for an amount equal to the customer's share of the fee, based on

the customer's electric energy consumption during the billing period. The bill requires the PUC by rule to provide for making incentives under the program available to projects to install on property owned by school districts distributed renewable generation that uses wind-driven turbines, subject to all requirements for a distributed solar generation incentive. The bill authorizes such eligibility under the rules to extend only to projects for wind turbine distributed renewal technology projects with a combined capacity of not more than 150 kilowatts at any one school district property location.

C.S.H.B. 3532 authorizes any person, including a retail electric provider, to own distributed renewable generation installed under the program and enter into a contract with a school district on the property of which the distributed renewable generation is installed to lease the generation or sell the surplus electricity generated by the distributed renewable generation to a retail customer or the district's retail electric provider. The bill establishes that the owner of the distributed renewable generation installed under the program is not, as a result of that ownership, an electric utility and is not required, as a result of that ownership, to register with the PUC as a power generation company or self-generator unless the PUC determines that requiring such registration is necessary to maintain the reliability of the electric distribution grid. The bill authorizes the PUC to establish appropriate reporting requirements for trading renewable energy credits gained by the installation of distributed renewable generation under the program and establishes that an area of Texas in which distributed renewable generation is installed is not, for reason of that installation, considered an area in which customer choice has been introduced. The bill, for purposes of the solar schools incentive program, defines "distributed solar generation" and "rated watts," provides for the meanings of "distributed renewable generation" and "low-income electric customer" by reference, and provides for the meaning of "school district" by reference to the Education Code.

C.S.H.B. 3532 sets out legislative goals relating to solar schools programs administered by electric cooperative and municipally owned utilities and makes the provisions relating to these programs applicable only to an electric cooperative or municipally owned utility with retail sales of more than 500,000 megawatt hours in 2007. The bill requires such an electric cooperative or municipally owned utility, beginning not later than September 1, 2014, to report annually to the State Energy Conservation Office, in a form and manner determined by the office, information regarding the efforts of the municipally owned utility or electric cooperative related to solar schools programs. The bill establishes that those provisions do not prevent the governing body of such an electric cooperative or municipally owned utility from adopting rules, programs, or incentives to encourage or provide for the installation of more solar generation capacity than the legislative goal establishing that electric cooperatives and municipally owned utilities spend money to increase the amount of distributed solar generation at a total funding level consistent with the requirements for electric utilities in Texas. The bill authorizes an applicable electric cooperative or municipally owned utility to recover the required costs through a nonbypassable fee consistent with that authorized by the PUC for electric utilities under the bill or another cost recovery mechanism as determined by the governing body of the electric cooperatives or municipally owned utility. The bill requires the PUC to credit toward compliance with these provisions relating to solar schools programs administered by electric cooperative and municipally owned utilities funding for distributed solar generation provided after May 1, 2009.

C.S.H.B. 3532 requires an electric utility or retail electric provider to offer service to and contract with an independent school district so that surplus electricity produced by distributed renewable generation on school district property is made available for sale to the electric transmission grid and distribution system and so that the value of that surplus electricity is credited to the school district at a price that is at least the fair market price, rather than requiring such a provider to provide for net metering and to contract with such a district so that surplus electricity produced by a school building's solar electric generation panels is made available for sale to the electric transmission grid and distribution system so that the net value of such electricity is credited to the district. The bill requires the PUC by rule to require, for areas of Texas in which customer choice has not been introduced, that credits for electricity produced by

distributed renewable generation on school district property, rather than electricity produced by a school building's solar electric generation panels, reflect the value of the surplus electricity. The bill removes provisions specifying that such electricity is electricity made available for sale to the electric utility in accordance with federal regulations. The bill requires, for independent school districts in areas in which customer choice has been introduced, the retail electric provider that serves the school district's load to provide a credit to the school district for the surplus electricity produced by a distributed renewable generation on school district property at a fair market value, rather than require the district to sell the school buildings' surplus electricity produced to the provider that serves the district's load at the value agreed to between the district and the provider that serves the district's load. The bill requires such a provider to allow any unused credits to be carried forward to a subsequent billing cycle until used. The bill, for purposes of these provisions, provides for the meaning of "distributed renewable generation" by reference and makes nonsubstantive changes clarifying that a district is a school district.

C.S.H.B. 3532 requires the Public Utility Commission of Texas to adopt rules establishing the solar schools incentive program required by the bill's provisions as soon as practicable.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3532 contains a provision not included in the original defining "distributed renewable generation" and omits a provision included in the original defining "owner of distributed solar generation."

C.S.H.B. 3532 differs from the original by including administrative costs incurred by the Public Utility Commission of Texas (PUC) as a purpose for which money in the fund may be used.

C.S.H.B. 3532 differs from the original by establishing a monthly fee of $50 for each industrial electric service identifier and by setting out provisions for calculating the fees for residential and commercial electric service identifiers assessed in an amount established as applicable for each billing period that falls during the next six-month period, whereas the original requires the assessed fees to be a specified amount per kilowatt hour for each residential or commercial meter under certain conditions and a specified monthly amount of $20 for each industrial meter, subject to a cap of $200 on total fees in a single month.

C.S.H.B. 3532 differs from the original by prohibiting assessment of certain fees after the fifth anniversary of the date a solar schools incentive program is established, whereas the original creates an exception to the prohibition for a program that is extended by the legislature.

C.S.H.B. 3532 differs from the original by requiring the PUC to distribute the incentives by administering reverse auctions quarterly, whereas the original specifies that these auctions are required to begin as soon as practicable and continue for 20 quarters.

C.S.H.B. 3532 differs from the original by providing that the bid price limit for a quarter is the lesser of $1.50 per rated watt of capacity, the bid limit from the previous quarter's reverse auction, or the quarterly incentive clearing price established for the previous quarter in a certain manner unless that price was established by a bid for a wind-powered electric generation project, whereas the original sets the bid price cap at the lesser of $1.50 per rated watt or the quarterly incentive clearing price from the previous quarter.

C.S.H.B. 3532 differs from the original by requiring the PUC to establish the amount of the payment per unit of electricity produced by the installed distributed solar generation by converting the quarterly incentive clearing price or the nonparticipating incentive price from a

capacity incentive price to a production-based incentive price, whereas the original requires the PUC to establish the payment per unit of solar electricity produced by converting the quarterly incentive clearing price and the nonparticipating incentive price from a capacity incentive price to a production incentive price.

C.S.H.B. 3532 differs from the original by requiring the PUC, in making the conversion, to consider a reasonable production factor, including an appropriate discount rate, that would result in the quarterly incentive clearing price or the nonparticipating incentive price being fully paid with the final quarterly payment of the three-year payment period, were the distributed solar generation system to produce at the production factor's assume rate, whereas the original provides that the PUC, in making the conversion, should consider a reasonable production factor that, if a system produced at exactly that rate, the market clearing price for that system's auction would be reached at the conclusion of the three year term, accounting for an appropriate discount rate.

C.S.H.B. 3532 contains a provision not included in the original requiring quarterly payments of an incentive to begin by a certain date and authorizes payments to begin earlier than that date.

C.S.H.B. 3532 differs from the original by requiring a person awarded an incentive to have achieved interconnection not later than the end of the fourth quarter following the quarter in which the bid was accepted and by providing for the disposition of the funding should such interconnection not be achieved, whereas the original requires winning bidders to interconnect within six quarters of the quarter in which the bid was accepted.

C.S.H.B. 3532 differs from the original by authorizing the PUC to grant one extension of the period for interconnection not to exceed two additional quarters under certain conditions, whereas the original provides for a one-time extension.

C.S.H.B. 3532 contains a provision not included in the original authorizing quarterly payments to resume if the distributed solar generation is interconnected during the fifth or sixth quarter.

C.S.H.B. 3532 omits provisions including in the original relating to the period during which a winning project may claim its incentives.

C.S.H.B. 3532 contains a provision not included in the original requiring the PUC by rule to provide for making incentives available to certain wind-driven turbine projects subject to the requirements for a distributed solar generation incentive.

C.S.H.B. 3532 contains a provision not included in the original requiring the PUC to credit toward compliance with solar schools programs administered by municipally owned utilities and cooperatives funding provided after May 1, 2009.

C.S.H.B. 3532 omits provisions included in the original setting out provisions relating to the authority of an electric cooperative or municipally owned utility to waive certain reporting requirements by opting into the solar schools incentive program.

C.S.H.B. 3532 differs from the original, in provisions of law relating to the credit for surplus generation on school district property, by updating these provisions to reflect the addition of electricity produced by distributed renewable generation, whereas the original repeals those provisions of law and replaces them with provisions relating to requirements for credit for surplus distributed renewable generation by public schools as required by the PUC. The substitute differs from the original in nonsubstantive ways reflective of certain bill drafting conventions.