

By: Strama

H.B. No. 3532

Substitute the following for H.B. No. 3532:

By: Sheffield

C.S.H.B. No. 3532

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the creation of an incentive program for solar and
3 wind-powered distributed electric generation for public school
4 property.

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

6 SECTION 1. Section 39.002, Utilities Code, is amended to
7 read as follows:

8 Sec. 39.002. APPLICABILITY. This chapter, other than
9 Sections 39.155, 39.157(e), 39.203, 39.903, 39.904, 39.9051,
10 39.9052, ~~[and]~~ 39.914(e), and 39.9156, does not apply to a
11 municipally owned utility or an electric cooperative. Sections
12 39.157(e), 39.203, and 39.904, however, apply only to a municipally
13 owned utility or an electric cooperative that is offering customer
14 choice. If there is a conflict between the specific provisions of
15 this chapter and any other provisions of this title, except for
16 Chapters 40 and 41, the provisions of this chapter control.

17 SECTION 2. Subchapter Z, Chapter 39, Utilities Code, is
18 amended by adding Section 39.9155 to read as follows:

19 Sec. 39.9155. SOLAR SCHOOLS INCENTIVE PROGRAM. (a) In this
20 section:

21 (1) "Distributed renewable generation" has the
22 meaning assigned by Section 39.916.

23 (2) "Distributed solar generation" means distributed
24 renewable generation using an energy source derived directly from

1 the sun.

2 (3) "Low-income electric customer" has the meaning
3 assigned by Section 39.903(1).

4 (4) "Rated watts" means the output of a solar energy
5 device as specified by the manufacturer of the device expressed in
6 watts of direct current.

7 (5) "School district" has the meaning assigned by
8 Section 21.201, Education Code.

9 (b) The program developed under this section applies to an
10 electric utility operating inside or outside of ERCOT.

11 (c) The commission shall develop and implement a program as
12 provided by this section to increase the amount of distributed
13 solar generation installed on property owned by school districts in
14 the state. The program must apply statewide and must be designed to
15 be transparent, cost-effective, and limited in scope. The
16 commission shall act as program administrator to oversee and
17 administer the implementation of the program.

18 (d) The solar schools incentive fund is established as a
19 special trust fund held by the comptroller outside of the state
20 treasury and administered by the program administrator for the
21 payment of the incentives authorized by this section, without the
22 necessity of an appropriation. Money in the fund may be used only
23 for the purposes of the program as provided by this section,
24 including the administrative costs incurred by the commission. The
25 fund consists of:

26 (1) fees imposed under this section and remitted to
27 the comptroller for deposit to the credit of the fund;

1 (2) gifts or grants awarded for the purposes of the
2 program and deposited to the credit of the fund; and

3 (3) interest and other income from investment of the
4 money deposited to the credit of the fund.

5 (e) The commission by rule shall provide for the assessment
6 and collection of nonbypassable fees by electric utilities and
7 transmission and distribution utilities. An electric utility or
8 transmission and distribution utility shall remit all fees
9 collected to the comptroller for deposit to the credit of the solar
10 schools incentive fund. The fees must appear as a separate charge
11 on customers' bills. In an area where customer choice has been
12 introduced, a fee assessed under this subsection must be included
13 in delivery charges assessed by a transmission and distribution
14 utility and collected by the customer's retail electric provider.
15 The fee for each industrial electric service identifier is \$50 each
16 month. The fees for residential and commercial electric service
17 identifiers must be assessed in an amount established as applicable
18 for each billing period that falls during the next six-month
19 period. For a six-month period that follows a six-month period in
20 which the average natural gas futures closing price is less than \$6
21 per million British thermal units, the fee for a residential or
22 commercial electric service identifier is \$0.00028 per kilowatt
23 hour. For a six-month period that follows a six-month period in
24 which the average natural gas futures closing price is \$6 or more
25 per million British thermal units, the fee for a residential or
26 commercial electric service identifier is \$0.00014 per kilowatt
27 hour. Commission rules must provide that the average natural gas

1 futures closing price be evaluated for the purposes of this
2 subsection on a semiannual basis and that the resulting assessment
3 of the fee for a residential or commercial electric service
4 identifier applies only to billing periods that begin at least 30
5 days after the resulting assessment is made.

6 (f) The commission by rule shall provide for incentives to
7 defray the cost of installing distributed solar generation on
8 property owned by school districts and for the incentives to be
9 distributed as provided by this section. The commission shall
10 ensure that:

11 (1) the schedule for payment of the incentives does
12 not obligate payment of incentives in amounts that would cause the
13 incentive payments to exceed the amount budgeted for incentive
14 payments over the duration of the program; and

15 (2) incentives are paid directly to school districts,
16 qualified installers, or third-party owners of installed
17 distributed solar generation in a simple, uniform, and reliable
18 administrative manner that:

19 (A) ensures the timely payment of incentives; and
20 (B) allows for the assignment of the incentive to
21 another person at the direction of the qualified recipient.

22 (g) Electric utilities may not assess the fees authorized by
23 this section after the fifth anniversary of the date the program
24 required by this section is established by commission rule. Each
25 biennium, the commission shall report to the legislature on the
26 progress of the program. The report may include recommendations on
27 how the program can be modified to increase the deployment of

1 distributed solar generation on school district property. For the
2 biennium in which the program is scheduled to end, the report must
3 include a recommendation to the legislature on whether to extend
4 the program.

5 (h) The commission must distribute the incentives provided
6 by rules adopted under Subsection (f) by administering reverse
7 auctions quarterly. The total of incentives available in each
8 quarter's auction must be determined by the commission based on the
9 projected amount of available funding and on the number of quarters
10 remaining in the program, allowing for a reasonable margin of error
11 for the conversion to production-based incentives in accordance
12 with Subsection (n). The commission may establish the total of
13 incentives available for a quarter in terms of cost or in terms of
14 capacity.

15 (i) A participant in a reverse auction for an incentive to
16 install distributed solar generation on school district property
17 must submit a bid and a deposit as provided by this subsection.
18 Each bid must include a price component, expressed in dollars per
19 installed watt of capacity, and a volume component, expressed in
20 terms of the proposed total capacity, measured in rated watts, to be
21 installed by the proposed project. The deposit must be in an amount
22 equal to five percent of the total value of the bid. The commission
23 shall retain the deposit for an accepted bid and shall refund the
24 deposit for a bid that is not accepted.

25 (j) At a reverse auction, a bid is not qualified unless the
26 bidder:

27 (1) demonstrates, in accordance with any procedure and

1 guideline the commission may adopt for that purpose, the bidder's
2 ability to finance the costs of the project if the incentive were
3 awarded; and

4 (2) meets all other requirements adopted by the
5 commission to ensure successful implementation of the program.

6 (k) The commission may not accept a bid for a quarter's
7 reverse auction if the bid exceeds the quarter's bid price limit.
8 The bid price limit for a quarter is the lesser of:

9 (1) \$1.50 per rated watt of capacity;

10 (2) the bid limit from the previous quarter's reverse
11 auction; or

12 (3) the quarterly incentive clearing price
13 established for the previous quarter in the manner provided by
14 Subsection (1), unless that price was established by a bid for a
15 wind-powered electric generation project.

16 (l) On receiving bids in a reverse auction under this
17 section, the commission shall order the qualified bids from the
18 lowest bid to the highest bid according to the price component of
19 the qualified bids. The commission shall accept qualified bids
20 from the bid stack in that order, from lowest to highest, until the
21 limit on the total of incentives available, as determined under
22 Subsection (h), is reached. The price component of the highest bid
23 accepted is the quarterly incentive clearing price for that
24 quarter, and the commission shall award the incentives to each
25 bidder for each accepted bid according to the quarter's incentive
26 clearing price.

27 (m) If, following the awarding of incentives through a

1 quarterly reverse auction, funding remains available, the
2 commission shall make available to applicants on a first-come,
3 first-served basis, in the form of nonparticipating incentives,
4 incentives set at a dollar-per-watt value of 90 percent of that
5 quarter's incentive clearing price. The commission shall carry
6 forward any quarterly funding remaining after the incentives are
7 awarded under this subsection, with the remaining funding divided
8 equally among the quarters remaining in the program. If funding is
9 carried forward under this subsection in two consecutive quarters,
10 the commission may implement any of the following measures that the
11 commission determines may increase the installation of distributed
12 solar generation on school district property:

13 (1) making distributed solar generation projects for
14 community college property in this state eligible for program
15 incentives;

16 (2) using available program funding for outreach
17 programs that may increase program participation;

18 (3) conducting or commissioning a study on the
19 available capacity and optimal locations for installation of
20 distributed solar generation on the property of school districts or
21 community colleges; or

22 (4) only if 25 percent or more of quarterly funding is
23 carried forward in two consecutive quarters, increasing the bid
24 price limit.

25 (n) Incentives awarded under this section must be in the
26 form of a production-based incentive and must be disbursed by 12
27 quarterly payments over a term of three years with the amount paid

1 determined by the units of electricity produced by the installed
2 distributed solar generation during the previous quarter. The
3 commission shall establish the amount of the payment per unit of
4 electricity produced by the installed distributed solar generation
5 by converting the quarterly incentive clearing price or the
6 nonparticipating incentive price from a capacity incentive price to
7 a production-based incentive price. In making this conversion, the
8 commission must consider a reasonable production factor, including
9 an appropriate discount rate, that would result in the quarterly
10 incentive clearing price or the nonparticipating incentive price
11 being fully paid with the final quarterly payment of the three-year
12 payment period, were the distributed solar generation system to
13 produce at the production factor's assumed rate.

14 (o) Quarterly payments of an incentive awarded under this
15 section must begin not later than the fourth quarter following the
16 acceptance of bids for a quarter. Payment of an incentive may begin
17 earlier than the fourth quarter on the filing of a claim with the
18 commission by the person awarded the incentive.

19 (p) A person awarded an incentive under this section must
20 have the distributed solar generation interconnected not later than
21 the end of the fourth quarter following the quarter in which the bid
22 was accepted. If the person has not interconnected the distributed
23 solar generation by the end of the period prescribed by this
24 subsection, the person's claim to the incentive is rescinded and
25 the capacity and funding returns to the program and available
26 program funding, except that the commission may grant one extension
27 of the period for interconnection, not to exceed two additional

1 quarters, if the commission finds based on evidence provided in the
2 person's application for extension that substantial construction
3 work has been completed by the date of the application for
4 extension. Quarterly payments may resume if the distributed solar
5 generation is interconnected during the fifth or sixth quarter, but
6 the person awarded the incentive may not recover a quarterly
7 payment lost because of a failure to interconnect.

8 (q) The commission by rule shall provide a method by which a
9 retail electric provider and a transmission and distribution
10 utility shall use money collected through nonbypassable fees
11 imposed in accordance with rules adopted under Subsection (e) to
12 credit the electric service bill of a low-income electric customer
13 for an amount equal to the customer's share of the fee, based on the
14 customer's electric energy consumption during the billing period.

15 (r) The commission by rule shall provide for making
16 incentives under the program available to projects to install on
17 property owned by school districts distributed renewable
18 generation that uses wind-driven turbines, subject to all
19 requirements for a distributed solar generation incentive. The
20 eligibility under the rules may extend only to projects for wind
21 turbine distributed renewable technology projects with a combined
22 capacity of not more than 150 kilowatts at any one school district
23 property location.

24 (s) Notwithstanding any provision of this title:

25 (1) any person, including a retail electric provider,
26 may own distributed renewable generation installed under the
27 program and enter into a contract with a school district on the

1 property of which the distributed renewable generation is installed
2 to lease the generation or to sell the surplus electricity
3 generated by the distributed renewable generation to a retail
4 customer or the district's retail electric provider;

5 (2) the owner of distributed renewable generation
6 installed under the program is not, as a result of that ownership,
7 an electric utility and is not required, as a result of that
8 ownership, to register with the commission as a power generation
9 company or self-generator unless the commission determines that
10 requiring registration is necessary to maintain the reliability of
11 the electric distribution grid;

12 (3) the commission may establish appropriate
13 reporting requirements to provide for trading renewable energy
14 credits gained by the installation of distributed renewable
15 generation under the program; and

16 (4) an area of this state in which distributed
17 renewable generation is installed under the program is not, for
18 reason of that installation, considered an area in which customer
19 choice has been introduced.

20 SECTION 3. Subchapter Z, Chapter 39, Utilities Code, is
21 amended by adding Section 39.9156 to read as follows:

22 Sec. 39.9156. SOLAR SCHOOLS PROGRAMS; MUNICIPALLY OWNED
23 UTILITIES AND COOPERATIVES. (a) It is the goal of the legislature
24 that:

25 (1) electric cooperatives and municipally owned
26 utilities administer incentive programs that increase the amount of
27 distributed solar generation installed on property owned by school

1 districts in this state in a cost-effective, market-neutral, and
2 nondiscriminatory manner;

3 (2) customers of electric cooperatives and
4 municipally owned utilities have access to incentives for the
5 installation of distributed solar generation on property owned by
6 school districts; and

7 (3) electric cooperatives and municipally owned
8 utilities spend money to increase the amount of distributed solar
9 generation at a total funding level consistent with the
10 requirements for electric utilities in this state under Section
11 39.9155(e).

12 (b) This section applies only to an electric cooperative or
13 municipally owned utility with retail sales of more than 500,000
14 megawatt hours in 2007.

15 (c) Beginning not later than September 1, 2014, a
16 municipally owned utility or electric cooperative must report
17 annually to the State Energy Conservation Office, in a form and
18 manner determined by the office, information regarding the efforts
19 of the municipally owned utility or electric cooperative related to
20 this section.

21 (d) This section does not prevent the governing body of an
22 electric cooperative or municipally owned utility from adopting
23 rules, programs, or incentives to encourage or provide for the
24 installation of more solar generation capacity than the goal
25 established by Subsection (a)(3).

26 (e) An electric cooperative or municipally owned utility
27 may recover the costs required by this section through a

1 nonbypassable fee consistent with that authorized by the commission
2 for electric utilities under Section 39.9155(e) or another cost
3 recovery mechanism as determined by the governing body of the
4 electric cooperative or municipally owned utility.

5 (f) The commission shall credit toward compliance with this
6 section funding for distributed solar generation provided after May
7 1, 2009.

8 SECTION 4. The heading to Section 39.914, Utilities Code,
9 is amended to read as follows:

10 Sec. 39.914. CREDIT FOR SURPLUS DISTRIBUTED RENEWABLE
11 [SOLAR] GENERATION BY PUBLIC SCHOOLS.

12 SECTION 5. Section 39.914, Utilities Code, is amended by
13 amending Subsections (a), (b), and (c) and adding Subsection (a-1)
14 to read as follows:

15 (a) In this section, "distributed renewable generation" has
16 the meaning assigned by Section 39.916.

17 (a-1) An electric utility or retail electric provider shall
18 offer service to [~~provide for net metering~~] and contract with an
19 independent school district so that:

20 (1) surplus electricity produced by distributed
21 renewable generation on school district property [~~a school~~
22 ~~building's solar electric generation panels~~] is made available for
23 sale to the electric transmission grid and distribution system; and

24 (2) the [~~net~~] value of that surplus electricity is
25 credited to the school district at a price that is at least the fair
26 market price.

27 (b) For areas of this state in which customer choice has not

1 been introduced, the commission by rule shall require that credits
2 for electricity produced by distributed renewable generation on
3 school district property [~~a school building's solar electric~~
4 ~~generation panels~~] reflect the value of the surplus electricity
5 [~~that is made available for sale to the electric utility in~~
6 ~~accordance with federal regulations~~].

7 (c) For independent school districts in areas in which
8 customer choice has been introduced, the [~~district must sell the~~
9 ~~school buildings' surplus electricity produced to the~~] retail
10 electric provider that serves the school district's load shall
11 provide a credit to the school district for the surplus electricity
12 produced by distributed renewable generation on school district
13 property at a fair market value [~~agreed to between the district and~~
14 ~~the provider that serves the district's load. The agreed value may~~
15 ~~be~~] based on the clearing price of energy at the time of day that the
16 electricity is made available to the grid and shall allow any unused
17 credits to be carried forward to a subsequent billing cycle until
18 used. The independent organization identified in Section 39.151
19 shall develop procedures so that the amount of electricity
20 purchased from a school district under this section is accounted
21 for in settling the total load served by the provider that serves
22 the school district's load. A school district requesting [~~net~~]
23 metering services for purposes of this section must have metering
24 devices capable of providing measurements consistent with the
25 independent organization's settlement requirements.

26 SECTION 6. The Public Utility Commission of Texas shall
27 adopt rules establishing the program required under Section

1 39.9155, Utilities Code, as added by this Act, as soon as
2 practicable.

3 SECTION 7. This Act takes effect immediately if it receives
4 a vote of two-thirds of all the members elected to each house, as
5 provided by section 39, Article III, Texas Constitution. If this
6 Act does not receive the vote necessary for immediate effect, this
7 Act takes effect September 1, 2011.