

By: Strama

H.B. No. 3532

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a competitive solar schools incentive program.

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

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

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

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

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

(1) "Distributed solar generation" means distributed renewable generation, as defined by Section 39.916, using an energy source derived directly from the sun.

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

1           (3) "Owner of distributed solar generation" includes  
2 a school district who contracts with another person to install or  
3 maintain distributed solar generation on the school district's  
4 side of the meter, regardless of whether the school district takes  
5 ownership of the installed distributed solar generation.

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

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

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

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

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

27           (1) fees imposed under this section and remitted to

1 the comptroller for deposit to the credit of the fund;

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

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

6 (e) The commission by rule shall provide for:

7 (1) the assessment and collection of nonbypassable  
8 fees by electric utilities and transmission and distribution  
9 utilities. An electric utility or transmission and distribution  
10 utility shall remit all fees collected to the comptroller for  
11 deposit to the credit of the solar schools incentive fund. The fees  
12 assessed under this subsection must be in the following amounts:

13 (A) \$0.00028 per kilowatt hour for each  
14 residential or commercial meter which, if applicable, must be  
15 included in nonbypassable delivery charges paid by the customer's  
16 retail electric provider; and

17 (B) \$20 each month for each industrial meter,  
18 except that the total of nonbypassable fees assessed against a  
19 single industrial account may not exceed \$200 in a single month.

20 (2) incentives to defray the cost of installing  
21 distributed solar generation on property owned by school districts  
22 in Texas. These incentives shall be distributed according to the  
23 provisions outlined in (g) of this section. The commission shall  
24 ensure that:

25 (A) the schedule for payment of these incentives  
26 does not obligate payment of incentives in amounts that would cause  
27 the incentive payments to exceed the amount budgeted for incentive

1 payments over the duration of the program; and

2 (B) provides for incentives to be paid directly  
3 to school districts, qualified installers, or third-party owners of  
4 installed solar generation in a simple, uniform, and reliable  
5 administrative manner that:

6 (i) ensures the timely payment of  
7 incentives; and

8 (ii) allows for the assignment of the  
9 incentive to another person at the direction of the qualified  
10 recipient.

11 (f) Unless this program is extended by the Legislature,  
12 electric utilities may not assess the fees authorized by this  
13 section after the fifth anniversary of the date the program  
14 required by this section is established by commission rule. Each  
15 biennium, the commission shall report to the legislature on the  
16 progress of the program. This report may include recommendations  
17 on how the program can be modified to increase the deployment of  
18 distributed solar generation on public schools in Texas. For each  
19 biennium in which the program is scheduled to terminate, the report  
20 shall include a recommendation on whether or not the Legislature  
21 should extend the program.

22 (g) The commission shall distribute the incentives mandated  
23 in (e) by administering quarterly reverse auctions, beginning as  
24 soon as practicable, and continuing for 20 quarters.

25 (1) The total value of the incentives available in  
26 each auction will be determined by the commission based upon  
27 projected funding availability and the number of remaining

1 quarters, allowing for a reasonable margin of error for the  
2 conversion to production based incentives according to Subsection  
3 (i). The commission may set the total quarterly incentive value in  
4 terms of either cost or capacity.

5       (2) Participants in each reverse auction will submit  
6 bids to receive incentives to install distributed solar generation  
7 technology on property owned by school districts in Texas. Each bid  
8 will include a price component, expressed in dollars per installed  
9 watt, and a volume component, expressed in terms of the total  
10 installed capacity of the proposed project measured in rated watts.

11       (3) Only qualified bids will be eligible for  
12 participation in the reverse auction. Bids will be considered  
13 qualified if:

14               (A) they can demonstrate the ability to finance  
15 the remainder of the cost of the distributed solar project. The  
16 commission may establish specific procedures and guidelines for  
17 this requirement;

18               (B) they make a deposit equal to 5 percent of the  
19 total value of the bid. This deposit shall be refunded for bids  
20 that are not accepted. The deposits for bids that are accepted are  
21 non-refundable; and

22               (C) they meet any other requirements that the  
23 commission deems necessary for the successful implementation of  
24 this program.

25       (4) The commission will create a bid stack by ordering  
26 the bids from lowest to highest according to the dollar per watt  
27 price component of each bid. The commission will accept bids from

1 the bid stack, from lowest to highest, until the limit determined  
2 in (1) has been reached. The price component of the highest bid  
3 accepted will set the quarterly incentive clearing price for that  
4 quarter, and the bidders of all accepted bids shall receive the  
5 quarterly incentive clearing price for the full volume of their  
6 accepted bid.

7 (5) No bid will be accepted by the commission that  
8 exceeds the bid price cap for that quarter. The bid price cap for  
9 each quarter will be set according to the lesser of:

10 (A) \$1.50 per rated watt; or,

11 (B) the quarterly incentive clearing price from  
12 the previous quarter.

13 (6) Any funding that is still available according to  
14 (1) after the quarterly reverse auction shall be made available in  
15 the form of nonparticipating incentives on a first come first serve  
16 basis. Any entity that is eligible to participate in the quarterly  
17 reverse auctions may apply for a nonparticipating incentive. The  
18 dollar per watt value of nonparticipating incentives for each  
19 quarter will be set at 90% of the quarterly incentive clearing price  
20 for that quarter.

21 (7) Any funding that is still available at the end of  
22 each quarter shall be rolled forward, divided evenly between the  
23 remaining quarters.

24 (h) If program funds are rolled forward at the end of  
25 consecutive quarters, the commission may consider the following  
26 measures. The commission should implement one or more of these  
27 measures if the commission determines that it will increase the

1 deployment of distributed solar generation technology on property  
2 owned by school districts in Texas:

3 (1) Expanding program eligibility to include  
4 community colleges located in Texas;

5 (2) diverting program dollars to outreach programs  
6 intended to increase program participation;

7 (3) conducting or commissioning a study on the  
8 available capacity and optimal locations for the installation of  
9 distributed solar generation technology on educational facilities  
10 in the state of Texas; and

11 (4) increasing the bid price cap. The commission  
12 should only consider increasing the bid price cap if 25% or more of  
13 the funds allotted to each quarter go unused for two or more  
14 consecutive quarters.

15 (i) The incentives provided in (e) will take the form of a  
16 production-based incentive.

17 (1) Incentives will be disbursed in quarterly payments  
18 over a three year term based upon a payment per unit of electricity  
19 produced.

20 (2) The commission will establish the payment per unit  
21 of solar electricity produced by converting the quarterly incentive  
22 clearing price and the nonparticipating incentive price from a  
23 capacity incentive price to a production incentive price. In  
24 making this conversion the commission should consider a reasonable  
25 production factor that, if a system produced at exactly that rate,  
26 the market clearing price for that system's auction would be  
27 reached at the conclusion of the three year term, accounting for an

1 appropriate discount rate.

2 (3) Winning bidders must interconnect within 6  
3 quarters of the quarter in which their bid was accepted. If the  
4 project fails to interconnect within this time, the incentive claim  
5 is rescinded, and that capacity returns to the program fund, unless  
6 the winning bidder opts for a one-time extension of their bid at the  
7 nonparticipating incentive level.

8 (4) The 12 quarters during which a winning project may  
9 claim its incentives can begin as soon as the project owner files to  
10 claim their incentives, but in no case shall the first of those 12  
11 quarters be later than the 4th quarter after the acceptance of  
12 their bid or their one time extension. Projects that connect during  
13 the 5th or 6th quarter may still claim their remaining incentives in  
14 subsequent quarters, but the incentives for lost quarters cannot be  
15 recovered.

16 (j) Notwithstanding any other provision of this title, a  
17 retail electric provider or any other person may own distributed  
18 renewable generation and enter into a contract with the school  
19 district on whose property the generation is located to lease the  
20 generation or sell the output to a retail customer or to a  
21 customer's retail electric provider. The owner of the generation  
22 is not an electric utility and is not required to register with the  
23 commission as a power generation company or self generator unless  
24 the commission determines that such registration is necessary to  
25 maintain the reliability of the distribution grid. The commission  
26 may establish appropriate reporting requirements for trading  
27 renewable energy credits. An area of this state in which a



1 distributed renewable generation owner sells output as provided by  
2 this subsection is not considered an area in which customer choice  
3 has been introduced.

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

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

13 Sec. 39.9156. SOLAR SCHOOLS PROGRAMS; MUNICIPALLY OWNED  
14 UTILITIES AND COOPERATIVES. (a) It is the goal of the legislature  
15 that:

16 (1) electric cooperatives and municipally owned  
17 utilities administer incentive programs that increase the amount of  
18 distributed solar generation installed on property owned by school  
19 districts in this state in a cost-effective, market-neutral, and  
20 nondiscriminatory manner;

21 (2) customers of electric cooperatives and  
22 municipally owned utilities have access to incentives for the  
23 installation of distributed solar generation on property owned by  
24 school districts; and

25 (3) electric cooperatives and municipally owned  
26 utilities spend money to increase the amount of distributed solar  
27 generation at a total funding level consistent with the

1 requirements for electric utilities in this state under Sections  
2 39.9155(e)(1).

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

6 (c) Beginning not later than September 1, 2014, a  
7 municipally owned utility or electric cooperative must report  
8 annually to the state energy conservation office, in a form and  
9 manner determined by the office, information regarding the efforts  
10 of the municipally owned utility or electric cooperative related to  
11 this section.

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

17 (e) An electric cooperative or municipally owned utility  
18 may recover the costs required by this section through a  
19 nonbypassable fee consistent with that authorized by the commission  
20 for electric utilities under Section 39.9155(e)(1) or another cost  
21 recovery mechanism as determined by the governing body of the  
22 electric cooperative or municipally owned utility.

23 (f) An electric cooperative or municipally owned utility  
24 may waive the requirements of this section by opting into the solar  
25 schools incentive program in Section 39.9155. Any electric  
26 cooperative or municipally owned utility that chooses to opt in to  
27 the incentive program in 39.9155 may propose an alternate revenue

1 structure to that outlined in 39.9155(e)(1). The commission will  
2 accept any proposed revenue structures which it determines will  
3 likely provide an equal or greater level of revenues that would  
4 have been provided by the structure outlined in 39.9155(e)(1). Any  
5 electric cooperative or municipally owned utility that chooses to  
6 opt in to the statewide incentive program in 39.9155 will not, as a  
7 result, be entered into the deregulated electricity market, nor  
8 will the commission gain any additional powers with regard to the  
9 electric cooperative or municipally owned utility other than those  
10 required to administer this program. Any additional powers assumed  
11 by the commission in this regard will be construed narrowly, and  
12 will dissolve at the end of the program or upon the withdrawal of  
13 the electric cooperative or the municipally owned utility from the  
14 program. The commission will determine an equitable method for  
15 withdrawal from the program by an electric cooperative or  
16 municipally owned utility that has opted in, but in no  
17 circumstances will the withdrawal affect the incentives of winning  
18 bidders, whether those bidders have interconnected or not.

19 SECTION 4. Section 39.914, Utilities Code, is repealed and  
20 replaced with the following:

21 Sec. 39.914. CREDIT FOR SURPLUS ~~SOLAR~~ DISTRIBUTED RENEWABLE  
22 GENERATION BY PUBLIC SCHOOLS.

23 (a) The commission shall require that:

24 (1) a retail electric provider offer service to a  
25 school district that has distributed renewable generation  
26 equipment installed on the district's property; and

27 (2) a retail electric provider that provides service

1 to a school district that has distributed renewable generation  
2 equipment installed on the district's property:

3 (A) purchase from the school district the surplus  
4 electricity generated by distributed renewable generation  
5 installed on the district's property at a price equal to or greater  
6 than a fair market price; or

7 (B) credit the school district's electric  
8 services bill for the billing cycle in which the surplus  
9 electricity is generated by distributed renewable generation  
10 installed on the district's property at a price equal to or greater  
11 than the equivalent of a fair market price determined in accordance  
12 with this section and allow any unused credit on the school  
13 district's bill to be carried forward to subsequent billing cycles  
14 for the district; and

15 (b) The commission shall develop appropriate net metering  
16 policies and retail rate options for school districts served by  
17 electric utilities outside the Electric Reliability Council of  
18 Texas.

19 SECTION 5. The Public Utility Commission of Texas shall  
20 adopt rules establishing the programs required under Sections  
21 39.914, 39.9155 and 39.9156, Utilities Code, as added by this Act,  
22 as soon as practicable.

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