

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Huberty, Menendez

H.B. No. 2049

A BILL TO BE ENTITLED

AN ACT

relating to a qualifying cogeneration facility's ability to sell electric energy to multiple purchasers.

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

SECTION 1. Section 31.002(13), Utilities Code, is amended to read as follows:

(13) "Qualifying cogenerator" and "qualifying small power producer" have the meanings assigned those terms by 16 U.S.C. Sections 796(18)(C) and 796(17)(D). A qualifying cogenerator that provides electricity to a ~~the~~ purchaser of the cogenerator's thermal output is not for that reason considered to be a retail electric provider or a power generation company.

SECTION 2. Subchapter B, Chapter 37, Utilities Code, is amended by adding Section 37.0521 to read as follows:

Sec. 37.0521. EXCEPTION FOR RETAIL SALES BY CERTAIN QUALIFYING COGENERATORS. (a) A qualifying cogenerator may sell electric energy at retail to more than one purchaser of the cogenerator's thermal output under Sections 35.061 and 36.007.

(b) A qualifying cogenerator that sells electric energy at retail to more than one purchaser is not subject to regulation as a retail electric utility under Chapter 37 or subject to regulation as a retail electric provider or power generation company under this subtitle if the transmission facilities used to provide electricity necessary to serve the purchasers of the thermal output

1 are connected to the purchasers of the thermal output using  
2 transmission facilities that are not owned or operated by an  
3 electric utility.

4 (c) The limitation on the sale of electricity does not apply  
5 to the sale of wholesale electricity.

6 (d) This section does not apply to a municipally owned  
7 utility or an electric cooperative providing service to an area  
8 where competition has not been introduced.

9 SECTION 3. This Act takes effect September 1, 2013.

**ADOPTED**

MAY 17 2013

*Atty Gen*  
Secretary of the Senate

By: Ullin

H.B. No. 2049

Substitute the following for H.B. No. 2049:

By: Elly

C.S. H.B. No. 2049

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to a qualifying cogeneration facility's ability to sell  
3 electric energy to multiple purchasers.

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

5 SECTION 1. Section 31.002(13), Utilities Code, is amended  
6 to read as follows:

7 (13) "Qualifying cogenerator" and "qualifying small  
8 power producer" have the meanings assigned those terms by 16 U.S.C.  
9 Sections 796(18)(C) and 796(17)(D). A qualifying cogenerator that  
10 provides electricity to a the purchaser of the cogenerator's  
11 thermal output is not for that reason considered to be a retail  
12 electric provider or a power generation company.

13 SECTION 2. Subchapter B, Chapter 37, Utilities Code, is  
14 amended by adding Section 37.0521 to read as follows:

15 Sec. 37.0521. EXCEPTION FOR RETAIL SALES BY CERTAIN  
16 QUALIFYING COGENERATORS. (a) Notwithstanding Section 37.001(3), a  
17 qualifying cogenerator may sell electric energy at retail to more  
18 than one purchaser of the cogenerator's thermal output.

19 (b) A qualifying cogenerator that sells electric energy at  
20 retail to more than one purchaser, if not otherwise subject to  
21 regulation as an electric utility, is not as a result of the sale  
22 subject to regulation as:

23 (1) a retail electric provider or power generation  
24 company; or

1           (2) a retail electric utility under Chapter 37.

2           (c) This section does not apply to sales in an area:

3           (1) in which customer choice has not been adopted and  
4 where a municipally owned utility or an electric cooperative is  
5 certificated to provide retail electric utility service; or

6           (2) that is served by an electric utility that  
7 operates solely outside of ERCOT.

8           SECTION 3. This Act takes effect September 1, 2013.

# ADOPTED

MAY 17 2013

*Atty. Gen.*  
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: 

1 Amend C.S.H.B. No. 2049 (Senate committee report) in SECTION  
2 2 of the bill, in added Section 37.0521(b), Utilities Code (page 1,  
3 lines 38-41), by striking "A qualifying cogenerator that sells  
4 electric energy at retail to more than one purchaser, if not  
5 otherwise subject to regulation as an electric utility, is not as a  
6 result of the sale subject to regulation as:" and substituting  
7 "Selling electric energy at retail to more than one purchaser does  
8 not, as a result of that sale, subject a qualifying cogenerator to  
9 regulation as:".

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 20, 2013**

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

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2049** by Huberty (Relating to a qualifying cogeneration facility's ability to sell electric energy to multiple purchasers.), **As Passed 2nd House**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Utilities Code to allow a qualifying cogenerator to sell electric energy at retail to more than one purchaser of the cogenerator's thermal output. The bill would also provide that selling electric energy at retail to more than one purchaser would not, as a result of that sale, subject a qualifying cogenerator to regulation as a retail electric provider, power generation company, or retail electric utility, under certain conditions outlined in the provisions of the bill.

Based on information provided by the Public Utility Commission, duties and responsibilities associated with implementing the provisions of the bill could be accomplished utilizing existing resources.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 473 Public Utility Commission of Texas

**LBB Staff:** UP, RB, AG, ED

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 14, 2013**

**TO:** Honorable John Carona, Chair, Senate Committee on Business & Commerce

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2049** by Huberty (Relating to a qualifying cogeneration facility's ability to sell electric energy to multiple purchasers.), **Committee Report 2nd House, Substituted**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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The bill would amend the Utilities Code to allow a qualifying cogenerator to sell electric energy at retail to more than one purchaser of the cogenerator's thermal output. The bill would also provide that a qualifying cogenerator that sells electric energy at retail to more than one purchaser would not be subject to regulation as a retail electric provider, power generation company, or retail electric utility, under certain conditions outlined in the provisions of the bill.

Based on information provided by the Public Utility Commission, duties and responsibilities associated with implementing the provisions of the bill could be accomplished utilizing existing resources.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 473 Public Utility Commission of Texas

**LBB Staff:** UP, RB, AG, ED

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 9, 2013**

**TO:** Honorable John Carona, Chair, Senate Committee on Business & Commerce

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2049** by Huberty (Relating to a qualifying cogeneration facility's ability to sell electric energy to multiple purchasers.), **As Engrossed**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend the Utilities Code to allow a qualifying cogenerator to sell retail electric energy to more than one purchaser of the cogenerator's thermal output. The bill would also authorize a qualifying cogenerator to sell electric energy at retail to more than one purchaser of its thermal output and not be subject to regulation as a retail electric utility or a power generation company under certain conditions.

Based on information provided by the Public Utility Commission, duties and responsibilities associated with implementing the provisions of the bill could be accomplished utilizing existing resources.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 473 Public Utility Commission of Texas

**LBB Staff:** UP, RB, AG, ED



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**April 12, 2013**

**TO:** Honorable Byron Cook, Chair, House Committee on State Affairs

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2049** by Huberty (Relating to a qualifying cogeneration facility's ability to sell electric energy to multiple purchasers.), **Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Utilities Code to allow a qualifying cogenerator to sell retail electric energy to more than one purchaser of the cogenerator's thermal output. The bill would also authorize a qualifying cogenerator to sell electric energy at retail to more than one purchaser of its thermal output and not be subject to regulation as a retail electric utility or a power generation company under certain conditions.

Based on information provided by the Public Utility Commission, duties and responsibilities associated with implementing the provisions of the bill could be accomplished utilizing existing resources.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 473 Public Utility Commission of Texas

**LBB Staff:** UP, AG, ED

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**March 18, 2013**

**TO:** Honorable Byron Cook, Chair, House Committee On State Affairs

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2049** by Huberty (Relating to a qualifying cogeneration facility's ability to sell electric energy to multiple purchasers.), **As Introduced**

**No fiscal implication to the State is anticipated.**

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 473 Public Utility Commission of Texas

**LBB Staff:** UP, AG, ED