

## **BILL ANALYSIS**

S.B. 398  
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State Affairs  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

In 2015, the Texas Legislature enacted legislation attempting to strike a balance between the ability of a homeowner to install solar generation on their property and limits a homeowners' association may impose on the installation and placement of that solar generation. Since then, a number of municipalities have adopted ordinances that limit the ability of a homeowner to install solar generation on their property that are more restrictive than what was approved for homeowners' associations. S.B. 398 seeks to address this issue by applying the same limits provided for homeowners' associations to municipalities.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

S.B. 398 amends the Business & Commerce Code to require a seller or lessor of distributed renewable generation resources who enters into a purchase, lease, or power purchase agreement with a residential or small commercial customer for the operation of a distributed renewable generation resource to provide the following disclosures in writing to the customer:

- contact information of the salesperson and installer of the generation resource;
- a description of all equipment to be installed;
- the cost of all equipment to be installed;
- a detailed accounting of fees associated with the installation or operation of the generation resource;
- representations, if any, made as part of the agreement regarding the expected operational and financial performance of the generation resource; and
- all applicable warranties.

In addition, a lessor must also provide the following disclosures:

- the term and rate of the lease, including any payment escalators or other terms that affect the customer's payments; and
- a statement of whether the lease and any applicable warranty or maintenance agreement is transferable to a subsequent purchaser of the property where the distributed renewable generation resource is installed.

S.B. 398 entitles a residential or small commercial customer who enters into a power purchase agreement to receive the following written disclosures:

- contact information of the salesperson and installer of the generation resource;

- a description of all equipment to be installed;
- representations, if any, made as part of the agreement regarding the expected operational and financial performance of the generation resource;
- all applicable warranties;
- the term and rate of the agreement, including any payment escalators or other terms that affect the customer's payments; and
- whether the agreement and any applicable warranty or maintenance agreement is transferable to a subsequent purchaser of the property where the generation resource is installed.

S.B. 398 excepts the following from the bill's disclosure requirements:

- a transaction involving the sale or transfer of the real property on which a distributed renewable generation resource is located;
- a person who markets, sells, solicits, negotiates, or enters into an agreement for the sale or financing of a distributed renewable generation resource as part of a transaction involving the sale or transfer of such real property; and
- a third party that enters into an agreement for the financing of a distributed renewable generation resource.

The bill assigns "distributed renewable generation" and "small commercial customer" the meanings provided under the Public Utility Regulatory Act.

S.B. 398 amends the Local Government Code to prohibit a municipality from prohibiting or restricting the installation of a solar energy device by a residential or small commercial customer, except to the extent to which a property owner's association may prohibit the installation or to which the following limit the installation of such devices due to reliability, power quality, or safety of the distribution system:

- the interconnection guidelines and interconnection agreement of a municipally owned utility serving the customer's service area;
- the rules of the Public Utility Commission of Texas (PUC); or
- the protocols of an independent organization, such as ERCOT, that is certified by the PUC to perform certain essential market functions for a power region.

**EFFECTIVE DATE**

September 1, 2021.