

By: Zwiener

H.B. No. 4332

A BILL TO BE ENTITLED

AN ACT

relating to distributed renewable generation and energy storage resources.

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

SECTION 1. Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 113 to read as follows:

CHAPTER 113. SALES AND LEASING OF DISTRIBUTED RENEWABLE GENERATION RESOURCES

Sec. 113.001. DEFINITIONS. In this chapter:

(1) "Distributed renewable generation" has the meaning assigned by Section 39.916, Utilities Code.

(2) "Small commercial customer" has the meaning assigned by Section 39.202(o), Utilities Code.

Sec. 113.002. APPLICABILITY. (a) This chapter applies to a seller or lessor of distributed renewable generation resources.

(b) This chapter does not apply to:

(1) a transaction involving the sale or transfer of the real property on which a distributed renewable generation resource is located;

(2) a person, including a person acting through the person's officers, employees, brokers, or agents, 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 the real

1 property on which the distributed renewable generation resource is
2 or will be affixed; or

3 (3) a third party that enters into an agreement for the
4 financing of a distributed renewable generation resource.

5 Sec. 113.003. LEASE, SALES, AND INSTALLATION DISCLOSURES. A
6 seller or lessor who enters into a purchase, lease, or power
7 purchase agreement with a residential or small commercial customer
8 for the operation of a distributed renewable generation resource
9 shall provide to the customer in writing:

10 (1) contact information of the salesperson and
11 installer of the generation resource;

12 (2) a description of all equipment to be installed;

13 (3) the cost of all equipment to be installed;

14 (4) a detailed accounting of fees associated with the
15 installation or operation of the generation resource;

16 (5) representations, if any, made as part of the
17 agreement regarding the expected operational performance and
18 financial performance of the generation resource; and

19 (6) all applicable warranties.

20 Sec. 113.004. ADDITIONAL DISCLOSURES FOR LEASE AGREEMENTS.

21 In addition to the disclosures required under Section 113.003, a
22 lessor shall provide to a leasing residential or small commercial
23 customer in writing:

24 (1) the term and rate of the lease, including any
25 payment escalators or other terms that affect the customer's
26 payments; and

27 (2) a statement of whether the lease and any

1 applicable warranty or maintenance agreement is transferable to the
2 purchaser of the property where the distributed renewable
3 generation resource is installed.

4 Sec. 113.005. ADDITIONAL DISCLOSURES FOR POWER PURCHASE
5 AGREEMENTS. A residential or small commercial customer who enters
6 into a power purchase agreement is entitled to receive in writing:

7 (1) the disclosures required under Sections
8 113.003(2), (3), (5), and (6);

9 (2) the term and rate of the power purchase agreement,
10 including any payment escalators or other terms that affect the
11 customer's payments; and

12 (3) whether the power purchase agreement and any
13 applicable warranty or maintenance agreement is transferable to the
14 subsequent purchaser of the property where the distributed
15 renewable generation resource is installed.

16 SECTION 2. Chapter 229, Local Government Code, is amended
17 by adding Subchapter C to read as follows:

18 SUBCHAPTER C. REGULATION OF SOLAR ENERGY DEVICES

19 Sec. 229.101. REGULATION OF SOLAR ENERGY DEVICES. (a) In
20 this section:

21 (1) "Municipally owned utility" has the meaning
22 assigned by Section 11.003, Utilities Code.

23 (2) "Small commercial customer" has the meaning
24 assigned by Section 39.202(o), Utilities Code.

25 (3) "Solar energy device" has the meaning assigned by
26 Section 171.107, Tax Code.

27 (b) A municipality may not prohibit or restrict the

1 installation of a solar energy device by a residential or small
2 commercial customer except to the extent:

3 (1) a property owner's association may prohibit the
4 installation under Sections 202.010(d)(1) through (7), Property
5 Code; or

6 (2) the interconnection guidelines and
7 interconnection agreement of a municipally owned utility serving
8 the customer's service area, the rules of the Public Utility
9 Commission of Texas, or the protocols of an independent
10 organization certified under Section 39.151, Utilities Code, limit
11 the installation of solar energy devices due to reliability, power
12 quality, or safety of the distribution system.

13 (c) A municipality may not assess one or more fees or other
14 charges on a person related to the installation of a solar energy
15 device by a residential or small commercial customer that exceeds
16 in the aggregate \$250.00.

17 (d) Pursuant to the following compliance schedule in this
18 subsection, a city or county shall implement an online, automated
19 permitting platform that verifies code compliance and
20 instantaneously issues permits for a residential photovoltaic
21 solar energy system or an energy storage system paired with a
22 residential photovoltaic solar energy system consistent with the
23 system parameters and configurations, including an inspection
24 checklist.

25 (1) A city or county with a population of less than
26 10,000 is exempt from this subsection.

27 (2) A city of county with a population of

1 10,001-50,000 shall satisfy the requirements of this subsection no
2 later than December 31, 2023.

3 (3) A city or county with a population greater than
4 50,000 shall satisfy the requirements of this subsection no later
5 than December 31, 2022.

6 SECTION 3. The heading to Section 202.010, Property Code,
7 is amended to read as follows:

8 Sec. 202.010. REGULATION OF CERTAIN [~~SOLAR~~] ENERGY DEVICES.

9 SECTION 4. Section 202.010(a), Property Code, is amended by
10 adding Subdivision (3) to read as follows:

11 (3) "Distributed renewable generation" has the
12 meaning assigned by Section 39.916, Utilities Code.

13 SECTION 5. Section 202.010(d)(5)(B), Property Code, is
14 amended to read as follows:

15 (B) is located in an area other than an area
16 designated by the property owners' association, unless the
17 alternate location decreases the cost of the system by more than
18 \$1000 or increases the estimated annual energy production of the
19 device, as determined by using a publicly available modeling tool
20 provided by the National Renewable Energy Laboratory, by more than
21 10 percent above the energy production of the device if located in
22 an area designated by the property owners' association. The
23 property owner shall provide to the property owners' association
24 documentation prepared by an independent solar panel design
25 specialist who is certified by the North American Board of
26 Certified Energy Practitioners and is licensed in Texas to show
27 that the alternate location satisfies one of the applicable

1 exception;

2 SECTION 6. Section 202.010(e), Property Code, is amended to
3 read as follows:

4 (e) A property owners' association or the association's
5 architectural review committee may not withhold approval for
6 installation of a solar energy device if the provisions of the
7 dedicatory instruments to the extent authorized by Subsection (d)
8 are met or exceeded. If a property owner's application is not denied
9 in writing by property owners' association or the association's
10 architectural review committee within 90 days from date of receipt
11 of the application, the application is deemed approved unless the
12 delay is the result of a reasonable request for additional
13 information. [~~, unless the association or committee, as applicable,~~
14 ~~determines in writing that placement of the device as proposed by~~
15 ~~the property owner constitutes a condition that substantially~~
16 ~~interferes with the use and enjoyment of land by causing~~
17 ~~unreasonable discomfort or annoyance to persons of ordinary~~
18 ~~sensibilities. For purposes of making a determination under this~~
19 ~~subsection, the written approval of the proposed placement of the~~
20 ~~device by all property owners of adjoining property constitutes~~
21 ~~prima facie evidence that such a condition does not exist.]~~

22 SECTION 7. Section 202.010, Property Code, is amended by
23 adding Subsection (g) to read as follows:

24 (g) A property owners' association may not include or
25 enforce a provision in a dedicatory instrument that:

26 (1) requires three or more inspections by the property
27 owners' association of a distributed renewable generation or energy

1 storage resource before the resource is operational;
2 (2) is more onerous than interconnection rules adopted
3 by the Public Utility Commission of Texas; or
4 (3) imposes any inspection or approval requirements or
5 changes more onerous than those required for a proposed
6 modification or improvement of an owner's property that is
7 unrelated to a distributed renewable generation or energy storage
8 resource.

9 SECTION 8. Subchapter C, Chapter 39, Utilities Code, is
10 amended by adding Section 39.9165 to read as follows:

11 Sec. 39.9165. CONSUMER PROTECTIONS FOR CERTAIN DISTRIBUTED
12 RENEWABLE GENERATION AND ELECTRIC STORAGE RESOURCES. (a) A
13 residential or small commercial customer is entitled to have access
14 to distributed renewable generation and energy storage resources
15 to:

16 (1) generate and export electricity to the grid;
17 (2) consume electricity from the grid; and
18 (3) reduce the customer's use of electricity from the
19 grid.

20 (b) A residential or small commercial customer is entitled
21 to store energy at the location of the customer's connection to the
22 grid.

23 (c) A residential or small commercial customer that
24 installs a distributed renewable generation or energy storage
25 resource is entitled to timely approval of an interconnection
26 agreement and interconnection of the distributed renewable
27 generation or energy storage resource with the customer's

1 transmission and distribution utility or electric utility in
2 accordance with Section 39.554 or 39.916, as applicable. A
3 residential or small commercial customer is entitled to timely
4 approval of any permission to operate or any other approval
5 required for the customer to use the customer's distributed
6 renewable generation or energy storage resource.

7 (d) A residential or small commercial customer is entitled
8 to timely notice from the customer's transmission and distribution
9 utility or electric utility of an improvement and the cost of the
10 improvement to the distribution grid that must be made to allow the
11 customer to install or expand existing distributed renewable
12 generation or energy storage resources.

13 (e) Except for a charge to recover a cost described by
14 Subsection (d), an electric utility or a retail electric provider
15 may not impose a rate or charge on a residential or small commercial
16 customer or require a residential or small commercial customer to
17 take service under a tariff or service plan that applies only to
18 customers who have installed distributed renewable generation or
19 energy storage resources.

20 (f) An electric utility or a retail electric provider may
21 not charge a residential or small commercial customer a fee solely
22 because the customer elects to discontinue service from the utility
23 or provider.

24 (g) An electric utility may not charge a residential or
25 small commercial customer with a distributed renewable generation
26 or energy storage resource a fee to reconnect to the electric grid
27 that is more than the fee charged to a customer in the same rate

1 class who does not have a distributed renewable generation or
2 energy storage resource, except the interconnection fee applicable
3 to the original installation of the distributed renewable
4 generation or energy storage resource.

5 (h) A residential or small commercial customer is entitled
6 to interconnect in a manner that allows the customer to receive
7 power from the customer's energy storage resource when the electric
8 grid is not operating if the customer's distributed renewable
9 generation resource is equipped with an inverter or other
10 technology that complies with a standard developed by a federal
11 agency or standards widely used by industry and other states that
12 enables the distributed renewable generation resource to safely
13 provide power to the customer when the electric grid is not
14 operating.

15 (i) A residential or commercial customer that installs a
16 distributed renewable generation or energy storage resource,
17 regardless of ownership or financing structure of the resource, is
18 entitled to the same interconnection rules, metering rules and
19 programs, and incentive programs that may be provided by their
20 retail electric utility, transmission and distribution utility,
21 municipally owned utility, or an electric cooperative.

22 (j) The commission shall adopt a rule within 1 year of the
23 effective date of this Act that provides standards for billing and
24 crediting mechanisms for distributed renewable generators.

25 (1) The standards shall calculate the value and
26 benefits of distributed renewable generation. The value shall
27 consider benefits of distributed renewable generation to the

1 distribution grid, including time-based and performance-based
2 benefits, technology capabilities, increased resiliency, and
3 present and future grid needs. The billing and crediting mechanism
4 shall be understandable and easy to use for customers.

5 (2) Notwithstanding any other provision of this Title,
6 the standards adopted by the Commission pursuant to this section
7 shall be made available to a customer with distributed renewable
8 generation installed anywhere in this state regardless of whether
9 the customer is served by a retail electric utility, transmission
10 and distribution utility, municipally owned utility, or an electric
11 cooperative.

12 SECTION 9. Section 202.010(f), Property Code, is repealed.

13 SECTION 10. The changes in law made by this Act apply to an
14 agreement governing the sale or lease of a distributed renewable
15 generation system, as defined by Section 39.916, Utilities Code, as
16 added by this Act, entered into on or after the effective date of
17 this Act. An agreement entered into before the effective date of
18 this Act is governed by the law as it existed immediately before the
19 effective date of this Act, and that law is continued in effect for
20 that purpose.

21 SECTION 11. This Act takes effect September 1, 2021.